

MEMO**F-14**

TO: Ty E. Gray, Director

FROM: Tom Finley, Deputy Director *TF*

PRESENTER: Larry Phoenix, FOR3 Regional Supervisor

TITLE: Request to Approve a Notice of Rulemaking Docket Opening, Notice of Proposed Rulemaking Amending Article 3. Taking and Handling of Wildlife.

DESCRIPTION: The Department will ask the Commission to vote to approve a Notice of Rulemaking Docket Opening, Notice of Proposed Rulemaking, and Economic Impact Statement to initiate rulemaking to amend rules within Article 3. Taking and Handling of Wildlife, related to the use of game cameras. The Commission may vote to take action on and/or provide the Department direction on this item.

DATE: November 23, 2020

The Department proposes to amend rules within Article 3 addressing the taking and handling of wildlife to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

The Department believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Department believes it is necessary to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic. This change is in response to customer comments received by the Department.

The team proposes two options intended to further regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

Option #1 Prohibit the Use of Trail Cameras: A person shall not use a trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife.

Arizona Game and Fish Commission Memo

Re: Request to Approve Rulemaking Notices and Economic Impact Statement Amending Rules Within Article 3.

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Option #2 Prohibit the Use of Trail Cameras by Season: A person shall not use a trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife during a season yet to be determined by rule.

If approved by the Commission and in accordance with the exemption authorized under item #2 of Executive Order 2020-02 Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies, the Department will submit the rulemaking docket opening to the Secretary of State's office for publication in the *Arizona Administrative Register*.

The Department will return at a future Commission Meeting to present a Notice of Proposed Rulemaking that includes proposed rule language intended to regulating the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

RECOMMENDATION:

THE DEPARTMENT RECOMMENDS THAT THE COMMISSION VOTE TO APPROVE THE NOTICE OF RULEMAKING DOCKET OPENING, NOTICE OF PROPOSED RULEMAKING, AND ECONOMIC IMPACT STATEMENT AMENDING RULES WITHIN ARTICLE 3. TAKING AND HANDLING OF WILDLIFE.

TF:LP:cmc

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

- 1. Title and its heading:** 12, Natural Resources

Chapter and its heading: 4, Game and Fish Commission

Article and its heading: 1, Definitions and General Provisions
2, Licenses; Permits; Stamps; Tags
3, Taking and Handling of Wildlife

Section numbers: R12-4-111, R12-4-209, R12-4-214, R12-4-301 and R12-4-303 (As part of this rulemaking, the Department may add, delete, or modify additional Sections as necessary)
- 2. The subject matter of the proposed rule:**

The Department proposes to amend rules within Article 3 addressing the taking and handling of wildlife to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife; in compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.
- 3. A citation to all published notices relating to the proceeding:**

None
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Larry Phoenix, Regional Supervisor FOR3

Address: Arizona Game and Fish Department, C/O Celeste Cook
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (928) 263-8850

Fax: 928-692-1523

E-mail: LPhoenix@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.
- 5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

The Department will accept comments during business hours at the address listed in item #4. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.
- 6. A timetable for agency decisions or other action on the proceeding, if known:**

To be determined.

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**

R12-4-111	Repeal
R12-4-209	Repeal
R12-4-214	Repeal
R12-4-301	Amend
R12-4-303	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), 17-251, 17-301, 17-302, 17-305, and 17-309
- 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: 26 A.A.R. (*to be filled in by the Register Editor*), <date>
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name: Larry Phoenix, Regional Supervisor FOR3

Address: Arizona Game and Fish Department, C/O Celeste Cook

5000 W. Carefree Highway

Phoenix, AZ 85086

Telephone: (928) 263-8850

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

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and

Option #1 Prohibit the Use of Trail Cameras

active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the

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opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to repeal the definition of "live-action trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition).

The Commission proposes to define "trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

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

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. This change is in response to customer comments received by the Department.

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 rule.

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 intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in 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 the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). 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: April 16, 2021

Time: 8:00 a.m.

Location: Buckeye, Arizona

Close of record: April 16, 2021

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 the issuance of a regulatory permit, license, or agency authorization.

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:

For R12-4-303, Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Commission has determined the rule is not more stringent than the corresponding federal 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 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-111. ~~Identification Number~~ Repeal

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

Section

R12-4-209. ~~Community Fishing License~~ Repeal

R12-4-214. ~~Apprentice License~~ Repeal

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-301. Definitions

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

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-111. ~~Identification Number~~ Repeal

A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:

1. ~~Full name;~~
2. ~~Any additional names the person has lawfully used in the past or is known by;~~
3. ~~Date of birth; and~~
4. ~~Mailing address.~~

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

R12-4-209. ~~Community Fishing License; Exemption~~ Repeal

- ~~A. A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.~~
- ~~B. The community fishing license is valid for one year from:~~
- ~~1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or~~
 - ~~2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.~~
- ~~C. A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A community fishing license applicant shall provide the following information on the application:~~
- ~~1. The applicant's:~~
 - ~~a. Name;~~
 - ~~b. Date of birth;~~
 - ~~c. Physical description, to include the applicant's eye color, hair color, height, and weight;~~
 - ~~d. Department identification number, when applicable;~~
 - ~~e. Residency status and number of years of residency immediately preceding application, when applicable;~~
 - ~~f. Mailing address, when applicable;~~
 - ~~g. Physical address;~~
 - ~~h. Telephone number, when available; and~~
 - ~~i. E-mail address, when available; and~~
 - ~~2. Affirmation that the information provided on the application is true and accurate; and~~

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3. ~~Applicant's signature and date.~~
- D. ~~In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:~~
 1. ~~In person shall pay the applicable fee required under R12-4-102.~~
 2. ~~Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.~~
- E. ~~In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.~~

R12-4-214. Apprentice License Repeal

- A. ~~An apprentice license authorizes the taking of small game, fur bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.~~
- B. ~~An apprentice license is:~~
 1. ~~A complimentary license,~~
 2. ~~Valid for any two consecutive days; and~~
 3. ~~Issued to a person only once per calendar year.~~
- C. ~~The apprentice license is not valid for the take of big game animals.~~
- D. ~~The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.~~
- E. ~~An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:~~
 1. ~~Be a resident of Arizona,~~
 2. ~~Be 18 years of age or older,~~
 3. ~~Possess an appropriate and valid Arizona hunting license, and~~
 4. ~~Provide the apprentice with instruction and supervision on safe and ethical hunting practices.~~
 5. ~~A short term license does not meet the license requirement of this subsection.~~
- F. ~~A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:~~
 1. ~~The mentor's:~~
 - a. ~~Name;~~
 - b. ~~Arizona hunting license number and effective date of the license; and~~
 2. ~~The applicant's:~~
 - a. ~~Name;~~
 - b. ~~Age;~~
 - c. ~~Date of birth;~~
 - d. ~~Telephone number, when available;~~

- e- ~~Department identification number, when applicable;~~
- f. ~~E-mail address, when available;~~
- g- ~~Physical description, to include the applicant's eye color, hair color, height, and weight;~~
- f. ~~Mailing address, when applicable;~~
- g- ~~Physical address; and~~
- h- ~~Residency status.~~

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-301. Definitions

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to apply a drug directly 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, including unmanned aircraft systems also known as drones.

"Artificial flies and lures" means man-made devices intended as visual attractants to catch fish. Artificial flies and lures does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

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

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

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Device" has the same meaning as provided under A.R.S. § 17-101.

"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 person.

"Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.

"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required

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by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.

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

"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.

"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.

~~"Live action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.~~

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, and loaded with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading shotgun" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.

"Paste-type bait" means a partially liquefied substance used as a lure for animals.

"Pneumatic weapon" means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.

"Pre-charged pneumatic weapon" means an air gun or pneumatic weapon that is charged from a high compression source such as an air compressor, air tank, or internal or external hand pump.

"Prohibited possessor" has the same meaning as provided under A.R.S. § 13-3101.

"Prohibited weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Rifle" means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.

"Shotgun" means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.

"Sight-exposed bait" means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner

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so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.

"Simultaneous fishing" means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures per line.

"Single-point barbless hook" means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.

"Sinkbox" means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

"Smart device" means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

"Trail camera" means an unmanned device used to capture images, video, or location data of wildlife.

"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.

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

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
 - a. Fully automatic firearms, including firearms capable of selective automatic fire.
 - b. Tracer or armor-piercing ammunition designed for military use.
 - c. Any smart device as defined under R12-4-301.
 - d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
3. A person shall not use or possess any of the following while taking wildlife:
 - a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
 - b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
 - c. Any lure, attractant, or cover scent containing any cervid urine.
 - d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, 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.
4. A person shall not by any means:
 - a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
 - b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the

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- take of wildlife.
- c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
 - d. Place any substance in a manner intended to attract bears.
 - e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
 - f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
 - g. Take migratory game birds, except Eurasian collared-doves:
 - i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
 - ii. Using electronically amplified bird calls or baits.
 - iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.
 - iv. Activities described under subsections (g)(i) through (g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
 - h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
 - i. Arrow or bolt,
 - ii. Hybrid device, or
 - iii. Pneumatic weapon .35 caliber or larger.
5. A person shall not use a ~~live-action~~ trail camera, or images from a ~~live-action~~ trail camera, for the purpose of:
- ~~a. Taking~~ taking or aiding in the take of wildlife, or
 - ~~b. Locating~~ locating wildlife for the purpose of taking or aiding in the take of wildlife.
6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
- a. Taking or aiding in the take of wildlife, or
 - b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
 - c. This subsection does not prohibit the use of mapping systems or programs.
7. A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
- a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or

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- b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
- 8. Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.
- 9. For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:
 - a. Water.
 - b. Salt.
 - c. Salt-based materials produced and manufactured for the livestock industry.
 - d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.
- B.** It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.
- C.** Wildlife taken in violation of this Section is unlawfully taken.
- D.** This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE
R12-4-301 and R12-4-303
Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

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Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Commission believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The Commission believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to repeal the definition of "live-action trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition).

The Commission proposes to define "trail camera" to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

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

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The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. This change is in response to customer comments received by the Department.

2. Brief summary of the information included in the economic, small business and consumer impact statement.

The Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements.

The Commission anticipates the proposed repeal of the apprentice license will impact persons who have applied for apprentice licenses numerous times in the past as they will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate

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purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in 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 the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

Name: Celeste Cook, Director's Office Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

The Commission anticipates prohibiting the use of trail cameras for taking or aiding in the take of wildlife may have a negative impact on persons who currently use trail cameras for the purpose of taking wildlife. The Commission anticipates the proposed prohibition may have a minimal impact on businesses that manufacture or sell trail cameras; however, the Commission believes any impact will be insignificant as the cameras may be and are used for many purposes, not just for locating wildlife for the purpose of take.

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The Commission anticipates the proposed prohibition may have a negative impact on businesses that provide guide or outfitter services as they will no longer be able to guarantee they can guide a client to a specific animal; guides advertise their business through promotion of trail camera photographs of prize animals. The Commission anticipates the impact may be minimal to moderate depending on the guide or outfitter service's current use of cameras; some may place between ten and twenty trail cameras on the landscape, while others may place hundreds.

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

- (a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The amendments will benefit the Department by providing it with the necessary authority and resources to more effectively manage the taking and handling of wildlife. The Department does not anticipate additional costs associated with prohibiting the use of trail cameras. While the amendment places additional enforcement duties on Department officers, the Commission has determined that these amendments will not require additional full-time employees.

The Department will benefit from the repeal of the Community Fishing License. While the Commission anticipates some persons will choose not to purchase a general fishing license, it believes most persons will purchase a general fishing license which may generate increased revenue.

The Department will benefit from the repeal of the Apprentice License. The Commission believes this license has been abused by roughly 15% of the applicants who obtain them. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

- (b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

- (c) Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

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The Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission's intent in the proposed rulemaking is to provide the Department additional wildlife management oversight. The Commission has determined that the benefits of the rulemaking outweigh any costs.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

Except as indicated below, the Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. The Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

(a) Identification of the small businesses subject to the proposed rulemaking.

Businesses that provide hunting excursions.

Businesses that provide sporting goods.

Businesses that manufacture trail cameras.

(b) Administrative and other costs required for compliance with the proposed rulemaking.

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed amendments do not place any reporting requirements on businesses.

(d) Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying lawful methods for take and, in doing so, ensuring the continued integrity of and compliance with its rules.

6. Statement of the probable effect on state revenues.

The proposed rulemaking will not significantly impact state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data

has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking amends rules that govern lawful methods for the taking and handling of wildlife. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for this rulemaking. In its review, the team considered all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Department's goals and objectives. The 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 Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

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**
R12-4-111 Repeal
R12-4-209 Repeal
R12-4-214 Repeal
R12-4-301 Amend
R12-4-303 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), 17-251, 17-301, 17-302, 17-305, and 17-309
- 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: 26 A.A.R. (*to be filled in by the Register Editor*), <date>
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Larry Phoenix, Regional Supervisor FOR3
Address: Arizona Game and Fish Department, C/O Celeste Cook
 5000 W. Carefree Highway
 Phoenix, AZ 85086
Telephone: (928) 263-8850
Fax: 928-692-1523
E-mail: LPhoenix@azgfd.gov
Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about 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:**
The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.
Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and

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active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the

Option #2 Prohibit the Use of Trail Cameras by Season

opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to define "trail camera to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

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

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife from July 1 through January 31 annually.

Prohibiting the use of trail cameras from July 1 through January 31 annually will reduce the negative effect trail cameras have on other hunters by preventing hunters from checking their trail cameras during hunts. This

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change will make the use of trail cameras during the primary portion of the special tag seasons and the general, muzzleloader, and archery deer, elk, and pronghorn seasons unlawful. This change will also prohibit the use of trail cameras during the rut for both deer and elk. This change will allow hunters to use trail cameras to locate wildlife from February 1 through June 30, but will prevent hunters from patterning wildlife prior to and during their hunt. This change is in response to customer comments received by the Department.

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 rule.

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 intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no impact to political subdivisions of this state, private

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and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). 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: April 16, 2021

Time: 8:00 a.m.

Location: Buckeye, Arizona

Close of record: April 16, 2021

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 the issuance of a regulatory permit, license, or agency authorization.

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:

For R12-4-303, Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Commission has determined the rule is not more stringent than the corresponding federal 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 3. TAKING AND HANDLING OF WILDLIFE

Section

- R12-4-301. Definitions
- R12-4-303. Unlawful Devices, Methods, and Ammunition

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-111. ~~Identification Number~~ Repeal

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

Section

R12-4-209. ~~Community Fishing License~~ Repeal

R12-4-214. ~~Apprentice License~~ Repeal

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-301. Definitions

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

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-111. ~~Identification Number~~ Repeal

A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:

1. ~~Full name;~~
2. ~~Any additional names the person has lawfully used in the past or is known by;~~
3. ~~Date of birth, and~~
4. ~~Mailing address.~~

ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

R12-4-209. ~~Community Fishing License; Exemption~~ Repeal

- ~~A. A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.~~
- ~~B. The community fishing license is valid for one year from:~~
- ~~1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or~~
 - ~~2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.~~
- ~~C. A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A community fishing license applicant shall provide the following information on the application:~~
- ~~1. The applicant's:~~
 - ~~a. Name;~~
 - ~~b. Date of birth;~~
 - ~~c. Physical description, to include the applicant's eye color, hair color, height, and weight;~~
 - ~~d. Department identification number, when applicable;~~
 - ~~e. Residency status and number of years of residency immediately preceding application, when applicable;~~
 - ~~f. Mailing address, when applicable;~~
 - ~~g. Physical address;~~
 - ~~h. Telephone number, when available; and~~
 - ~~i. E-mail address, when available; and~~
 - ~~2. Affirmation that the information provided on the application is true and accurate; and~~

Option #2 Prohibit the Use of Trail Cameras by Season

3. ~~Applicant's signature and date.~~
- D. ~~In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:~~
 1. ~~In person shall pay the applicable fee required under R12-4-102.~~
 2. ~~Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.~~
- E. ~~In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.~~

R12-4-214. Apprentice License Repeal

- A. ~~An apprentice license authorizes the taking of small game, fur bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.~~
- B. ~~An apprentice license is:~~
 1. ~~A complimentary license,~~
 2. ~~Valid for any two consecutive days; and~~
 3. ~~Issued to a person only once per calendar year.~~
- C. ~~The apprentice license is not valid for the take of big game animals.~~
- D. ~~The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.~~
- E. ~~An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:~~
 1. ~~Be a resident of Arizona,~~
 2. ~~Be 18 years of age or older,~~
 3. ~~Possess an appropriate and valid Arizona hunting license, and~~
 4. ~~Provide the apprentice with instruction and supervision on safe and ethical hunting practices.~~
 5. ~~A short term license does not meet the license requirement of this subsection.~~
- F. ~~A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:~~
 1. ~~The mentor's:~~
 - a. ~~Name;~~
 - b. ~~Arizona hunting license number and effective date of the license; and~~
 2. ~~The applicant's:~~
 - a. ~~Name;~~
 - b. ~~Age;~~
 - c. ~~Date of birth;~~
 - d. ~~Telephone number, when available;~~

Option #2 Prohibit the Use of Trail Cameras by Season

- e. ~~Department identification number, when applicable;~~
- f. ~~E-mail address, when available;~~
- g. ~~Physical description, to include the applicant's eye color, hair color, height, and weight;~~
- f. ~~Mailing address, when applicable;~~
- g. ~~Physical address; and~~
- h. ~~Residency status.~~

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-301. Definitions

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to apply a drug directly 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, including unmanned aircraft systems also known as drones.

"Artificial flies and lures" means man-made devices intended as visual attractants to catch fish. Artificial flies and lures does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

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

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

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Device" has the same meaning as provided under A.R.S. § 17-101.

"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 person.

"Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.

"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required

Option #2 Prohibit the Use of Trail Cameras by Season

by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.

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

"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.

"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.

"Live-action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, and loaded with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading shotgun" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.

"Paste-type bait" means a partially liquefied substance used as a lure for animals.

"Pneumatic weapon" means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.

"Pre-charged pneumatic weapon" means an air gun or pneumatic weapon that is charged from a high compression source such as an air compressor, air tank, or internal or external hand pump.

"Prohibited possessor" has the same meaning as provided under A.R.S. § 13-3101.

"Prohibited weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Rifle" means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.

"Shotgun" means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.

"Sight-exposed bait" means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner

Option #2 Prohibit the Use of Trail Cameras by Season

so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.

"Simultaneous fishing" means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures per line.

"Single-point barbless hook" means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.

"Sinkbox" means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

"Smart device" means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

"Trail camera" means an unmanned device used to capture images, video, or location data of wildlife.

"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.

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

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
 - a. Fully automatic firearms, including firearms capable of selective automatic fire.
 - b. Tracer or armor-piercing ammunition designed for military use.
 - c. Any smart device as defined under R12-4-301.
 - d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
3. A person shall not use or possess any of the following while taking wildlife:
 - a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
 - b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
 - c. Any lure, attractant, or cover scent containing any cervid urine.
 - d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, 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.
4. A person shall not by any means:
 - a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
 - b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the

Option #2 Prohibit the Use of Trail Cameras by Season

- take of wildlife.
- c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
 - d. Place any substance in a manner intended to attract bears.
 - e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
 - f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
 - g. Take migratory game birds, except Eurasian collared-doves:
 - i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
 - ii. Using electronically amplified bird calls or baits.
 - iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.
 - iv. Activities described under subsections (g)(i) through (g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
 - h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
 - i. Arrow or bolt,
 - ii. Hybrid device, or
 - iii. Pneumatic weapon .35 caliber or larger.
5. A person shall not use a trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife from July 1 through January 31 annually.
- ~~5.6.~~ A person shall not use a live-action trail camera, or images from a live-action trail camera, for the purpose of:
- a. Taking or aiding in the take of wildlife, or
 - b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
- ~~6.7.~~ A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
- a. Taking or aiding in the take of wildlife, or
 - b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
 - c. This subsection does not prohibit the use of mapping systems or programs.

Option #2 Prohibit the Use of Trail Cameras by Season

~~7.8.~~ A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:

- a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or
- b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.

~~8.9.~~ Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.

~~9.10.~~ For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:

- a. Water.
- b. Salt.
- c. Salt-based materials produced and manufactured for the livestock industry.
- d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

- B.** It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.
- C.** Wildlife taken in violation of this Section is unlawfully taken.
- D.** This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE
R12-4-303
Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to regulate the use of trail cameras for the purpose of taking or aiding in the take of wildlife.

Arizona's great abundance and diversity of both game and nongame wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of wildlife species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our wildlife species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2020-02 was provided for this rulemaking by Charles Podolak, Natural Resource Policy Advisor, Governor's Office, in an email dated November 9, 2020. In compliance with the requirements of Executive Order 2020-02(2), the Department recommends for consideration the following three rules for elimination: R12-4-111. Identification Number, R12-4-209. Community Fishing License; Exemption, and R12-4-214. Apprentice License.

R12-4-111. Identification Number

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

Because the Department no longer allows an applicant to use their Social Security Number as their Identification Number and the Department's Sportsman's Database automatically assigns an Identification Number, the Commission has determined the rule is no longer necessary to conduct state business.

R12-4-209. Community Fishing License; Exemption

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

Option #2 Prohibit the Use of Trail Cameras by Season

Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license.

R12-4-214. Apprentice License

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule.

The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Commission believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. The apprentice license does not meet the intent of the rule. The Commission believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. For these reasons, the Department proposes to repeal the rule and eliminate the apprentice license.

R12-4-301. Definitions

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to define "trail camera to further implement amendments made to R12-4-303 (unlawful devices, methods, and ammunition) and foster consistent interpretation of Commission rules.

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

Option #2 Prohibit the Use of Trail Cameras by Season

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2).

The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission recognized the need to further evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and proposes to amend the rule to prohibit the use of a trail camera or images from a trail camera for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife from July 1 through January 31 annually.

Prohibiting the use of trail cameras from July 1 through January 31 annually will reduce the negative effect trail cameras have on other hunters by preventing hunters from checking their trail cameras during hunts. This change will make the use of trail cameras during the primary portion of the special tag seasons and the general, muzzleloader, and archery deer, elk, and pronghorn seasons unlawful. This change will also prohibit the use of trail cameras during the rut for both deer and elk. This change will allow hunters to use trail cameras to locate wildlife from February 1 through June 30, but will prevent hunters from patterning wildlife prior to and during their hunt. This change is in response to customer comments received by the Department.

2. Brief summary of the information included in the economic, small business and consumer impact statement.

The Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements.

The Commission anticipates the proposed repeal of the apprentice license will impact persons who have applied for apprentice licenses numerous times in the past as they will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

Option #2 Prohibit the Use of Trail Cameras by Season

The rulemaking is intended to allow the Department additional oversight to handle advances in hunting technology and protect the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity.

Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. More and more, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in 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 the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing rule changes (administration, training, forms, etc.). Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

Name: Celeste Cook, Director's Office Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, Arizona 85086
Telephone: (623) 236-7390
Fax: (623) 236-7677
E-mail: CCook@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

The Commission anticipates the proposed repeal of the apprentice license will impact persons who have applied for apprentice licenses numerous times in the past as they will no longer be able to obtain a complimentary two-day license and will be required to purchase a hunting license. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

The Commission anticipates prohibiting the use of trail cameras for taking or aiding in the take of wildlife during part of the year may have a negative impact on persons who currently use trail cameras throughout the year for the purpose of taking wildlife.

The Commission anticipates the proposed seasonal restriction may have an insignificant impact on businesses that manufacture or sell trail cameras. This is because trail cameras may be used for the purpose of taking of wildlife for the larger part of the year and are also used for other purposes, not just for locating wildlife for the purpose of take. The Commission anticipates the proposed seasonal restriction may have a negative impact on businesses that provide guide or outfitter services as they will be limited in their use of trail cameras; guides advertise their business through promotion of trail camera photographs of prize animals. However, the Commission anticipates the impact will be minimal to moderate depending on the guide or outfitter service's current use of cameras.

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.

The amendments will benefit the Department by providing it with the necessary authority and resources to more effectively manage the taking and handling of wildlife. The Department does not anticipate additional costs associated with the seasonal restriction on the use of trail cameras. While the amendment places additional enforcement duties on Department officers, the Commission has determined that these amendments will not require additional full-time employees. The Department will benefit from the repeal of the Community Fishing License. While the Commission anticipates some

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persons will choose not to purchase a general fishing license, it believes most persons will purchase a general fishing license which may generate increased revenue.

The Department will benefit from the repeal of the Apprentice License. The Commission believes this license has been abused by roughly 15% of the applicants who obtain them. The Commission believes the short-term combination hunting and fishing license and youth combination license are valid options for persons who want low cost opportunities to hunt and fish in Arizona.

(b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

(c) Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission's intent in the proposed rulemaking is to provide the Department additional wildlife management oversight. The Commission has determined that the benefits of the rulemaking outweigh any costs.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

Except as indicated below, the Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. The Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

(a) Identification of the small businesses subject to the proposed rulemaking.

Businesses that provide hunting excursions.

Businesses that provide sporting goods.

Businesses that manufacture trail cameras.

(b) Administrative and other costs required for compliance with the proposed rulemaking.

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed amendments do not place any reporting requirements on businesses.

(d) Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying lawful methods for take and, in doing so, ensuring the continued integrity of and compliance with its rules.

6. Statement of the probable effect on state revenues.

The proposed rulemaking will not significantly impact state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking amends rules that govern lawful methods for the taking and handling of wildlife. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Department tasked a team of subject matter experts to review and make recommendations for this rulemaking. In its review, the team considered all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and

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determining whether the recommendation would cause undue harm to the Department's goals and objectives. The 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 Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.