

**ARIZONA GAME AND FISH
COMMISSION
2024 FIVE-YEAR REVIEW REPORT**

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE



**PREPARED FOR THE
GOVERNOR'S REGULATORY REVIEW COUNCIL**

ARIZONA GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

FIVE-YEAR REVIEW REPORT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

For all rules within Article 4, the authorizing statute is A.R.S. § 17-231(A)(1).		
For each rule within Article 4, the implementing statutes are as follows:		
R12-4-401.	Live Wildlife Definitions	• A.R.S. §§ 17-102, 17-238, and 17-306
R12-4-402.	Live Wildlife; Unlawful Acts	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-240, 17-250(A), 17-250(B), and 17-306
R12-4-403.	Escaped or Released Live Wildlife	• A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-314
R12-4-404.	Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-306, and 17-331
R12-4-405.	Importing, Purchasing, and Transporting, Live Wildlife Without an Arizona License or Permit	• A.R.S. §§ 17-102, 17-238(B), and 17-306
R12-4-406.	Restricted Live Wildlife	• A.R.S. §§ 17-231(A)(2), 17-231(B)(8), 17-255, 17-255.02, and 17-306
R12-4-407.	Exemptions from Special License Requirements for Restricted Live Wildlife	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-306, and 17-371(D)
R12-4-408.	Holding Wildlife for the Department	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306
R12-4-409.	General Provisions and Penalties for Special Licenses	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 41-1005
R12-4-410.	Aquatic Wildlife Stocking License; Restocking License	• A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 41-1005
R12-4-411.	Live Bait Dealer's License	• A.R.S. §§ 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-333, and 41-1005
R12-4-412.	Special License Fees	• A.R.S. §§ 17-333 and 41-1005
R12-4-413.	Private Game Farm License	• A.R.S. §§ 3-1205, 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-333, and 41-1005
R12-4-414.	Game Bird License	• A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-333, and 41-1005
R12-4-415.	Repealed	
R12-4-416.	Repealed	
R12-4-417.	Wildlife Holding License	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, and 41-1005
R12-4-418.	Scientific Activity License	• A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(B), 17-240(A), 17-306, and 41-1005
R12-4-419.	Repealed	
R12-4-420.	Zoo License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-333
R12-4-421.	Wildlife Service License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), 17-306, and 41-1005
R12-4-422.	Sport Falconry License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-333, 17-371(D), 25-320(P), and 41-1005

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R12-4-423.	Wildlife Rehabilitation License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238(A), 17-240(A), 17-306, and 41-1005
R12-4-424.	White Amur Stocking License; Restocking License	• A.R.S. §§ 17-238(A), 17-240(A), 17-306, 17-317, 17-333, and 41-1005
R12-4-425.	Restricted Live Wildlife Lawfully Possessed Without License or Permit Before the Effective Date of Article Four and Any Subsequent Amendments	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A) , and 17-306
R12-4-426.	Possession of Nonhuman Primates	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306
R12-4-427.	Exemption from Requirements to Possess a Wildlife Rehabilitation Permit	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306
R12-4-428.	Captivity Standards	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A) , and 17-306
R12-4-429.	Expired	
R12-4-430.	Importation, Handling, and Possession of Cervids	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-318

2. **Objective of the rule, including the purpose for the existence of the rule.**

R12-4-401. Live Wildlife 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 4. The rule was adopted to facilitate consistent interpretation of, and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

R12-4-402. Live Wildlife: Unlawful Acts: The objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

R12-4-403. Escaped or Released Live Wildlife: The objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The rule was adopted to enable the Department to more closely monitor the use of wildlife in Arizona and to ensure proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License: The objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are

specified in a Commission Order. The rule was adopted to provide a mechanism that allows a person to lawfully possess and dispose of live wildlife taken from the wild.

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit:

The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The rule was adopted to allow individuals to import wildlife not listed as restricted live wildlife and at the same time provide protection for public, wildlife, and livestock health.

R12-4-406. Restricted Live Wildlife: The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that are otherwise prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rule was adopted to identify those live wildlife species that would pose a threat to Arizona's natural resources, public health as well as the health and safety if left unregulated. When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors:

- Protection of public health and safety;
- Biological impact on species and ecosystems;
- Consistency with federal, state, and county regulatory agencies; and
- Potential economic impact.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife: The objective of the rule is to establish the types of scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide specific exemptions from special license requirements which are typically situations that are temporary.

R12-4-408. Holding Wildlife for the Department: The objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule also allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf. The rule was adopted to allow a person to continue to possess and transport the wildlife while the resulting judicial process runs its course. The Department needed to establish a method that ensures wildlife is humanely held as evidence for a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed.

R12-4-409 General Provisions and Penalties for Special Licenses: The objective of the rule is to establish general provisions and administrative compliance applicable to all special licenses, as well as enforcement actions

that may be taken when a special license holder is convicted offense involving cruelty to animals, fails to remedy a noticed violation, or fails to comply with requirements of the rule governing the applicable special license. The rule was adopted to ensure Arizona's wildlife resources are placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife.

R12-4-410. Aquatic Wildlife Stocking License; Restocking License: The objective of the rule is to establish requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The rule was adopted to protect natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife, while still allowing persons to stock aquatic wildlife for personal or commercial use.

- The Department issues approximately 150 live aquatic wildlife stocking licenses on an annual basis.
- The aquatic wildlife stocking license is valid for no more than 20 consecutive days, except that an aquatic wildlife stocking or restocking license issued to a political subdivision of the state for the purpose of vector control is valid for one calendar year.
- The fee for the initial aquatic wildlife stocking license is \$100; the fee for an aquatic wildlife restocking license is \$20.

R12-4-411. Live Bait Dealer's License: The objective of the rule is to establish the requirements necessary to allow a person to conduct a commercial live bait retail sales operation. The rule includes authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The rule was adopted to protect native aquatic wildlife from parasite/pathogen transmissions that may be carried by live baitfish while allowing a person to sell live baitfish commercially.

- The Department issues approximately 11 initial live bait dealer licenses on an annual basis.
- The live bait dealer license is valid until the last day of the third December from the date of issuance.
- The fee for the initial live bait dealer license is \$135; the fee for a renewal of a live bait dealer license is \$35.

R12-4-412. Special License Fees: The objective of the rule is to establish requirements for the issuance of an initial and renewal of special licenses issued under Article 4. The rule was adopted to establish fees for special licenses. The Department receives no appropriations from the general fund and operates primarily with the revenue generated from the sale of licenses, permits, stamps, tags, special licenses and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The Department conducted an internal audit and cost analysis of the Department's special license program and determined the Department incurs significant administrative costs during the review and inspection stage of the special license issuance process. The audit estimated the annual administrative burden of the special

license program was approximately \$228,000 (i.e. application review, facility inspections, determination of eligibility, ongoing support, review of annual reports and forms, and corrective measures when required). As a result of the audit, a formal team was tasked with assessing each special license. The team evaluated the licensing process for each special license from start to finish and benchmarked fees for similar licenses issued by other states. Previously, only eight of the special licenses required a fee; the remaining nine special licenses were issued at no cost to the applicant. The formal special license team's report provided recommendations intended to help offset pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team.

R12-4-413. Private Game Farm License: The objective of the rule is to establish the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species. The rule includes authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The rule was adopted to protect native wildlife from parasite and pathogen transmissions that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife.

- The Department issues approximately 11 private game farm licenses on an annual basis.
- The private game farm license is valid until the last day of the third December from the date of issuance.
- The fee for the initial private game farm license is \$395; the fee for a renewal of a private game farm license is \$145.

R12-4-414. Game Bird License: The objective of the rule is to establish the requirements that allow a person to possess, release, and take pen-reared game birds. The rule includes authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to allow a person to lawfully conduct activities using captive pen-reared game birds listed as restricted live wildlife, while providing protection for public health, and wildlife health and habitat.

- The Department issues approximately:
 - Sixty game bird field trial licenses on an annual basis.
 - Thirty-four game bird field trial training licenses on an annual basis.
 - Fifty game bird hobby licenses on an annual basis.
 - Six game bird shooting preserve licenses on an annual basis.
- Except for the game bird field trial license which is valid for a period of ten days (sufficient to cover one event), game bird licenses are valid until the last day of the third December from the date of issuance.
- The fee for the:
 - Game bird field training license is \$95; the fee for a renewal of a game bird field training license is \$45.
 - Game bird hobby license is \$80; the fee for a renewal of a game bird hobby license is \$40.
 - Game bird shooting preserve license is \$425; the fee for a renewal of a game birds shooting preserve

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license is \$155.

- Game bird field trial license is \$45.

R12-4-417. Wildlife Holding License: The objective of the rule is to establish the requirements that allow a person to possess and care for restricted live wildlife lawfully possessed under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The rule was adopted to allow for holding wildlife only for identified activities, such as educational display, advancement of science, or for the humane treatment of wildlife unable to meet its needs in the wild.

- The Department issues approximately 100 wildlife holding licenses on an annual basis.
- The initial and renewal fee for the wildlife holding license is \$20.

R12-4-418. Scientific Activity License: The objective of this rule is to establish the requirements that allow a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to permit a person to collect, capture, mark, or salvage wildlife for scientific purposes

- The Department issues approximately 255 scientific activity licenses on an annual basis.
- The initial and renewal fee for the wildlife holding license is \$70.

R12-4-420. Zoo License: The objective of the rule is to establish the requirements that allow captive live wildlife in a commercial facility where the principal business is exhibiting wildlife to the public and for purposes related to the advancement of science, conservation, education, or wildlife management. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to promote the conservation of wildlife species through education, exhibition, and wildlife management.

The Department issues approximately 23 zoo licenses on an annual basis.

The zoo license is valid until the third December from the date of issuance.

The fee for an initial zoo license is \$425; the fee for a renewal of a zoo license is \$155.

R12-4-421. Wildlife Service License: The objective of the rule is to establish the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or when the health or well-being of the wildlife is threatened by its immediate environment. The rule includes authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions

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necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to ensure a person working in the wildlife service industry handles wildlife in a practical, humane, and environmentally acceptable manner.

- The Department issues approximately 132 wildlife service licenses on an annual basis.
- The wildlife service license is valid until the third December from the date of issuance.
- The fee for an initial wildlife service license is \$245; the fee for a renewal of a wildlife service license is \$95.

R12-4-422. Sport Falconry License: The objective of the rule is to establish the requirements that allow a person to take and use raptors listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry. The rule includes authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. In 2008, 50 C.F.R. 21.29 (falconry standards and falconry permitting) was amended to eliminate the dual permitting system and transfer falconry permitting administration to the individual states, provided the state's laws, rules, processes, and forms met the minimum standards under 50 C.F.R. 21.29. If a state failed to meet standards for certification, any persons possessing a Migratory Bird Treaty Act species (MBTA) raptor for falconry in that state would be required to permanently release into the wild, euthanize, or transfer their raptor to a licensed falconer in a certified state or jurisdiction, a captive propagation program, or the Department. In order to continue permitting sport falconry using MBTA raptors in Arizona, the rule must remain in place and continue to meet U.S. Fish and Wildlife Service (USFWS) standards for certification. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

- The Department issues approximately 80 sport falconry licenses on an annual basis.
- The sport falconry license is valid until the last day of the third December from the date of issuance.
- The fee for the initial and renewal sport falconry license is \$145.

R12-4-423. Wildlife Rehabilitation License: The objective of the rule is to establish the requirements that allow a person to rehabilitate and release live wildlife. The rule includes authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. Wildlife Rehabilitation is defined as the treatment and temporary care of injured, diseased, and displaced native wildlife, and the subsequent release of healthy individuals to appropriate habitats in the wild. The rule was adopted to allow persons to provide treatment and care for injured, disabled, orphaned, or otherwise debilitated wildlife to assist the Department in protecting Arizona's wildlife resources.

- The Department issues approximately 8 wildlife rehabilitation licenses on an annual basis.
- The wildlife rehabilitation license is valid until the last day of the third December from the date of issuance.
- The fee for the initial and renewal wildlife rehabilitation license is \$20.

R12-4-424. White Amur Stocking License; Restocking License: The objective of the rule is to establish the requirements that allow a person to possess and transport white amur. The rule includes authorized activities,

administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. Triploid white amur are virtually sterile and are an effective biological control tool and can consume its body weight in plant material every day. The rule was adopted to allow for the use of triploid white amur in vegetation control in closed aquatic systems while protecting the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur.

- The Department issues approximately 217 white amur stocking licenses and 168 white amur restocking licenses on an annual basis.
- The white amur stocking and restocking licenses are valid for no more than 20 consecutive days.
- The fee for the initial white amur stocking license is \$270; the fee for a white amur restocking license is \$120.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments: The objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed before becoming classified as restricted live wildlife under R12-4-406 (restricted live wildlife) without having to apply for and obtain a special license. The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. The Commission restricts certain wildlife species from possession because they pose a threat to human health and safety, have a negative biological impact on species and ecosystems, have a negative economic impact, and to be consistent with federal, state, and county regulatory agencies. Notification is required so the Department can track and monitor these species. The rule was adopted to provide a mechanism that allows a person to continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license.

R12-4-426. Possession of Nonhuman Primates: The objective of the rule is to establish requirements for the possession of nonhuman primates. The rule includes containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health and safety. The rule was adopted as a result of a petition from the Arizona Department of Health Services (ADHS) which compiled data documenting primate exposures to humans (35 documented exposure incidents from 1994 to 1997). The risks posed by primates include zoonotic diseases, pathogenic organisms, and physical injury.

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License: The objective of the rule is to establish criteria that allow a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license. The rule includes authorized activities, wildlife species that may be held without a wildlife rehabilitation license, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The rule was adopted to provide a mechanism that allows a private

person to provide care for displaced, injured, or orphaned wildlife with minimal risk of causing injury to other wildlife or posing a threat to the public health and safety.

R12-4-428. Captivity Standards: The objective of the rule is to establish the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of wildlife possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The rule was adopted to ensure humane handling, care, and treatment of wildlife in captivity.

R12-4-430 Importation, Handling, and Possession of Cervids: The objective of the rule is to establish the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of Chronic Wasting Disease (CWD) to free-ranging or captive wildlife in the state. The intent behind the rule is to protect native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. Outbreaks can lead to significant decreases in license revenue sales due to decreased hunter participation. If wildlife diseases are introduced into Arizona and spread to native wildlife, the Department will have to divert resources to disease prevention and mitigation instead of wildlife management and habitat enhancement. Rural economies would also be adversely impacted. The U.S. Department of Agriculture (USDA) disperses \$17 to \$19 million annually to help states monitor CWD.

The detection of CWD in new areas is expanding. According to the most recent maps, CWD has been detected in 30 U.S. states and two Canadian provinces. Herds in Colorado, Utah, and New Mexico have tested positive for CWD in either captive or free-ranging cervid populations. Since beginning surveillance more than 20 years ago, the Department has collected and tested over 30,000 cervid samples (elk, mule deer, and white-tailed deer) and none have tested positive for CWD.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes. In addition, comments received since the last rule review was conducted are reviewed and considered. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective. The Department believes the following rules are effective in achieving the objectives identified

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above:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

The Department proposes to increase the effectiveness of the following rules as described below:

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** The rule allows for the giving of live wildlife as a gift and the rule as written has also unintentionally created a loophole for the commercialization and hybridization of reptiles. There have been numerous law enforcement cases where officers cannot successfully prove a potential reptile poaching because the person possessing the reptile under suspicious circumstances claims they received the reptile as a “gift.” Department law enforcement officers have also investigated and prosecuted reptile collectors who are unlawfully breeding and selling the offspring. While both the personal propagation and gifting of wild Arizona native amphibians and reptiles is a popular hobby with ethical herpetological enthusiasts, the rule as written is being exploited by commercial wildlife traffickers, primarily by claiming the reptiles in their possession represent “gifts” from unidentified others, or that their unlawful sale of native reptiles within Arizona or across state lines

represent mere “gifts.” The Department recommends amending the rule to require a person who receives live wildlife as a gift to purchase a hunting and/or fishing license, as appropriate, in order to ensure the wildlife is, and remains, lawfully possessed.

- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife:** Under Commission Order 43 (reptiles), a person may lawfully possess one desert tortoise per person and the progeny of any lawfully held desert tortoise, provided the person possessed the tortoise prior to April 28, 1989. However, the unlawful propagation of desert tortoises has resulted in the surrender of hundreds of tortoises to the Department, requiring the Department to expend excessive resources housing the tortoises and searching for suitable homes under the Desert Tortoise Adoption Program. The Department has established a team of subject matter experts who are meeting to evaluate approaches and techniques to address the issues resulting from the propagation and gifting of desert tortoises and then make recommendations for rule amendments at the time of rulemaking.
- **R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-412. Special License Fees:** An internal audit and cost analysis of the Department’s special license program determined the administrative costs incurred by the Department when processing a renewal of a special license are typically less than an initial license because the renewal license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department determined that a first-time license application, failure to renew the special license before it expired, or a change to the licensed facility, species of wildlife held under the license, or staff conducting activities under the license would require an initial application and fee. However, the Department has learned that wildlife are transferred between license holders for valid reasons, such as rehabilitation, conditioning, preparation for release into the wild, and humane transfers. These transfers can take place at any time during the license period and having to apply for an initial license and pay another license fee when the license holder is halfway through the licensing period is burdensome and not in keeping with the intent of the rule. The Department recommends amending both rules to require an initial application and license fee only when there is a change to the licensed facility or license holder. The Department believes these criteria are reasonable and will make the rule less burdensome.
- **R12-4-430 Importation, Handling, and Possession of Cervids:** CWD is always fatal and will have serious negative impacts on the state’s deer population if it becomes established in Arizona (Almberg et al. 2011). CWD infection decreases deer survival odds and lowers total life expectancy (Miller et al. 2008). If a large percentage of the population were to become infected there could be negative impacts for the population, including: A decline in doe survival, which results in an overall reduced population (Gross and Miller 2001); fewer older bucks, as male animals may be more likely to be infected due to specific male social and behavioral tendencies (Miller et al. 2008, Jennelle et al. 2014); and an overall decline in population (Gross and Miller 2001, Almberg et al. 2011), as shown in Colorado and Wyoming. In an area of Colorado with high CWD prevalence, mule deer numbers have plummeted by 45%, in spite of good habitat and protection from hunting. In Wyoming a monitored infected population experienced a 10.4% annual decline, with CWD-

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positive animals having a higher mortality rate than non-infected deer (Edmunds et al 2016). Acting to prevent the spread of CWD to new areas slows the transmission of the disease between individuals. The Department recommends amending the rule to replace reference to the 2003 USDA's publication "Brucellosis in Cervidae: Uniform Methods and Rules" with reference to the USDA's updated publication "National Bovine Brucellosis Surveillance Plan" U.S.D.A. A.P.H.I.S.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The Department believes the following rules are consistent with regulations, statutes, and rules; regulations, statutes, and rules used to determine consistency include 9 C.F.R. 2.30, 50 C.F.R. 10.13, A.R.S. § Title 17 and 12 A.A.C. Chapter 4:

- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

Overall the following rules are not consistent with or are in conflict with statutes and rules; the Department proposes to increase their consistency with statutes and rules as described below:

- **R12-4-401. Live Wildlife Definitions:** Both R12-4-101 and R12-4-401 define the term, "live baitfish."

Because this term is referenced in Articles 3 and 4 rules, it is more appropriate for the term to be defined under R12-4-101. The Department recommends repealing the definition of “live baitfish.”

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** In 2019, R12-4-315 and R12-4-316 (Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs) were combined to increase consistency between Commission Orders, rules, and Department publications. As a result, R12-4-315 and R12-4-316 were repealed and a new rule was adopted, R12-4-314 (Possession, Transportation, or Importation of Aquatic Wildlife). The Department recommends amending the rule to replace the reference to R12-4-316 with R12-4-314.
- **R12-4-406. Restricted Live Wildlife:** The rule incorporates by reference the October 1, 2019 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.
- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife:** The rule incorporates by reference the January 1, 2019 edition of 9 C.F.R. 2.30 (registration), which involves the registration of facilities with the USDA. The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.
- **R12-4-413. Private Game Farm License:** In the last rulemaking the Commission attempted to increase consistency between all special licenses and agency record retention requirements and extended the time frame for maintaining records to a period of five years. Subsection (K)(7) requires the Private Game Farm License holder to maintain records for a period of three years. The Department recommends amending the rule to require the license holder to maintain records for a period of five years to increase consistency and reflect agency record retention requirements.
- **R12-4-423. Wildlife Rehabilitation License:** The waiting period between the time an applicant fails the wildlife rehabilitation license exam and when the applicant is eligible to retake the exam also differs across the Department’s Regions. The Department recommends amending the rule to establish a consistent waiting period (will be determined by the applicant and special license administrator).
- **R12-4-430 Importation, Handling, and Possession of Cervids:** Under R12-4-425 (restricted live wildlife lawfully possessed without license or permit before the effective date of Article 4 or any subsequent amendments) a person who lawfully possessed wildlife prior to it being classified as restricted live wildlife had to notify the Department of the possession and use of the wildlife. This notification was required so the Department is made aware of the location of the restricted wildlife for tracking and monitoring purposes. Cervids are listed as restricted live wildlife under R12-4-406 (restricted live wildlife), which means a person must have a lawful exemption or possess a special license in order to lawfully possess them in Arizona. Even though cervids have been listed as restricted live wildlife since 2002, the Department still encounters persons possessing cervids lawfully obtained prior to 2002 but who have not notified the Department pursuant to R12-4-425. The Department intends to address these instances on a case-by-case basis. The Department believes that over time, these instances will be reduced through agency interactions or natural attrition. In addition, special license holders are required to maintain records associated with the license and make them

available to the Department for inspection upon request, this includes veterinary care records. With the last rulemaking amending Article 4 rules, the Commission amended all special license rules to require a license holder to maintain and make available for inspection all records maintained by the special license holder for a period of five-years. This is also necessary for persons possessing cervids. The Department recommends amending the rule to also require persons possessing a cervid to maintain and make available for inspection all records pertaining to the origin and disposition of cervids for a period of five-years after the disposition or death of the animal.

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

The following rules are currently being enforced. Department employees can inspect documentation for rule compliance. Officers can check for rule compliance when routinely patrolling the lands and waterways of Arizona, and issue warning orders or citations. To the extent that the Department is aware, the Department believes there are no problems with the enforcement of the following rules:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date

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of Article 4 or Any Subsequent Amendments

- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department proposes to increase the ability to enforce the following rules as indicated:

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** The rule is enforced as written; however, because the rule allows persons to both propagate and gift live native herpetofauna (typically, reptiles), the rule is being unlawfully utilized by commercial wildlife traffickers to collect and unlawfully sell Arizona reptiles, both in-state and out-of-state. While both the personal propagation and gifting of wild native amphibians and reptiles is a popular hobby with ethical herpetological enthusiasts, Department officers are increasingly encountering commercial reptile traffickers who claim the reptiles they are selling are instead being “gifted” to their recipients, or that the reptiles in their possession represent “gifts” from unnamed persons. In addition, certain native reptile species considered desirable in the commercial wildlife trade may be being collected on a scale that could threaten wild populations. The Department recently successfully prosecuted a reptile trafficker who unlawfully collected, propagated and sold hundreds of Rosy boas, a native snake. This trafficker was part of a multi-state network of reptile poachers who illegally collect, trade, and sell reptiles, usually across state lines to evade enforcement by their state of residence. The Department recommends amending the rule to require a person who is gifted wildlife to purchase a hunting and/or fishing license, as applicable in order to ensure the wildlife is, and remains, lawfully possessed.

6. Clarity, conciseness, and understandability of the rule.

The Department believes the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer’s License

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- R12-4-412. Special License Fees
- R12-4-417. Wildlife Holding License
- R12-4-420. Zoo License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

Overall, the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice, however, the Department proposes to further clarify the following rules as indicated:

- **R12-4-406. Restricted Live Wildlife:** There is public confusion over aquatic species sold in the aquarium and pet trade; some are often misidentified or mislabeled and can evade wildlife restrictions. To add clarity, the Department recommends amending the rule as follows:
- Replace reference to the species "*Arapaima gigas*" with the family "*Osteoglossidae*." These typically large bodied apex predators have the potential to compete with, and prey upon, current sport and native fish assemblages where they are established and are known to have detrimental impacts to current fish populations; their ability to breath air makes them especially hardy. *Arapaima gigas* (giant arapaima) is currently restricted, so expanding this restriction to the family level would help capture other analagous species.all species of the family *Mysidae*; all species of the family *Pimelodidae*; all species of the family *Siluridae*; Common names include: wels catfish, "glass catfish", and wallago catfish; and all species of the family *Sisoridae*; Common name: goonch catfish. In addition, the following changes decrease the taxonomic rank in order to be more inclusive of species that are closely related to species already restricted under the rule. The Department the Department recommends amending the rule to: under subsection (J)(4), remove "The species *Arapaima gigas*. Common name: bony tongue" and replace with "All species of the family *Osteoglossidae*; Common names include: arapaima, arowana, and bony tongue"; under subsection (J)(19), change "The species *Hoplias malabaricus*. Common name: tiger fish" to "All species of the genera *Hoplias* and *Hydrocynus*; Common name: tiger fish and South American wolf fish"; under subsection (K)(1), add the families *Cambaroididae* and *Cricoidoscelosidae*; under subsection (L)(5), change "All species of the genus *Pomacea*. Common names include: apple snail or Chinese mystery snail" to "All species of the family *Ampullariidae*. Common name: apple snail"; add to subsection (L) "All species of the genus *Cipangopaludina*. Common name: Chinese mystery snail"; under subsection (J)(9), add the common names "whale" catfishes, and candiru to "All species of the family *Cetopsidae* and *Trichomycteridae*. Common name: South American catfish."
- **R12-4-409 General Provisions and Penalties for Special Licenses:** The following rules require the special

license holder to submit to the Department an annual report on the past year's activities and acquisitions: R12-4-413. Private Game Farm License, R12-4-414. Game Bird License, R12-4-417. Wildlife Holding License, R12-4-418. Scientific Activity License, R12-4-420. Zoo License, R12-4-421. Wildlife Service License, R12-4-423. Wildlife Rehabilitation License, and R12-4-430. Importation, Handling, and Possession of Cervids. The annual report is due to the Department on or before January 31st of each year for the previous calendar year. The report form is furnished by the Department and is required regardless of whether or not activities were performed during the previous year. If a special license holder fails to submit a timely report, the special license becomes invalid and the Department will not process the special license holder's renewal application until the annual report is received. With the last Article 4 rulemaking, special license fees were established and the period in which the license is valid for was expanded from one to three years. The rulemaking resulted in confusion and inconsistent processes regarding the due date for the annual report and the validity (status) of the special license when the special license holder fails to submit a timely report. The Department recommends amending the rule to clarify the completed annual report is due on or before January 31st but may be submitted as soon as January 1st. The rules identified above will require similar updates.

- **R12-4-413. Private Game Farm License:** Overall, the rule is clear, concise, and understandable. However, subsection (B) and (C) address similar scenarios and can be confusing to members of the public. The Department recommends combining the two subsections to make the rule more concise.
- **R12-4-414. Game Bird License:** There is public confusion as to when and what type of game bird license is required for specific activities and the species that may be held under the license. The Department recommends clarifying the type of activities authorized under each license type to make the rule more concise.
- **R12-4-418. Scientific Activity License:** There is public confusion regarding whether a person who holds a scientific activity license must also possess a wildlife holding license in order to photograph wildlife. This is considered an acceptable activity under the license. The Department recommends amending the rule to clarify that a scientific activity license allows a person to photograph and/or video wildlife for noncommercial purposes when specified on the license.
- **R12-4-421. Wildlife Service License:** There is public confusion as to what rodent species may be removed under the authority of a license issued by the Arizona Department of Agriculture, Pest Management Division, without having to possess a wildlife service license. The Department recommends amending the rule to clarify the license exemption.
- **R12-4-422. Sport Falconry License:** Subsection (EE) requires a sport falconry license holder importing raptors into Arizona to provide a health certificate issued no more than 30 consecutive days prior to importation. Subsection (J) also addresses scenarios where a health certificate is required. The Department recommends amending the rule to move the language under subsection (EE) to subsection (J) to clarify health certificate requirements. In the last rulemaking, the Commission amended the rule to exempt sport falconry license holders from the requirements of R12-4-428 (captivity standards). Subsection (M) references the

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captivity requirements under R12-4-409(I), which is confusing. The Department recommends removing the reference to R12-4-409(I) to make the rule more concise.

- **R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments:** Subsection (A)(2)(d) incorrectly cites subsection (F) for permanent marking requirements when subsection (G) is the subsection that establishes permanent marking requirements. The Department recommends amending the rule to cite the correct subsection to make the rule more concise.
- **R12-4-430 Importation, Handling, and Possession of Cervids:** The Department recommends amending the rule to replace the outdated publication reference of brucellosis in cervids with a current publication reference to make the rule more concise.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written comments for the following rules.

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License

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- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department received the following comments relating to rules within Article 4. Live Wildlife:

R12-4-409 General Provisions and Penalties for Special Licenses

Comments suggest the Commission revise subsections (H)(3) and (H)(5) to prevent unfair stipulations from being applied to an applicant's special license.

Agency Response: This suggestion is not supported because R12-4-409 applies to all special license holders and the ability to place additional stipulations on a special license whenever it is determined necessary to conserve wildlife populations, prevent the introduction and proliferation of wildlife diseases, prevent wildlife from escaping, protect public health or safety, or ensure humane care and treatment of wildlife is beneficial to all special license holders. If this language were not here, the live wildlife special license rules would need to cover all aspects of possessing all species of wildlife, which would inevitably result in a negative impact to both the special license holder and the Department simply because “one size does not fit all.”

R12-4-417. Wildlife Holding License:

Comments indicate the Commission should allow a wildlife holding license holder to collect funds to aid in recovering costs related to the facility maintenance and care of animals they possess under the license.

Agency Response: The Department believes the costs associated with lawfully held wildlife are the responsibility of the person possessing the wildlife. In December 2015, Article 4 rules were amended to clarify costs related to veterinary care, damage and/or injuries caused by the wildlife, capture, transport, release, etc. are the license holder's responsibility.

R12-4-421. Wildlife Service License:

Comments suggest the Commission should amend the rule to establish an organizational process where a single wildlife service license issued to an organization and allow the organization to be responsible for the enforcement of license rules and reporting.

Agency Response: Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or

held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. 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 native species would be in jeopardy.

Comments suggest the Commission should amend the rule to clarify what is meant by "six months full-time employment or volunteer experience handling wildlife of the species or groups designated on the application."

Agency Response: Further clarifying the six-month experience requirement specified in rule would be problematic as it has the potential to "box" the Department in. The current language provides greater flexibility to both the applicant and Department. The rule does not prohibit a person from mentoring individuals under their license; in these instances any wildlife removed by the "apprentice" would be included in the license holder's annual report. The Department believes that any costs associated with wildlife held legally or illegally (costs related to veterinary care, damage and/or injuries caused by the wildlife, capture, transport, release, etc.) are the responsibility of the person possessing the wildlife.

R12-4-422. Sport Falconry License:

Comments indicate the Commission should amend subsection (M) to remove references to R12-4-409(I) which references captivity standards.

Agency Response: Because sport falconry license holders are exempted from captivity standards, the Department agrees and recommends amending the rule to remove references to R12-4-409(I) from subsection (M).

Comments suggest the Commission amend the rule to allow any falconer who is qualified to sponsor an apprentice to conduct raptor facility inspections on behalf of the Department.

Agency Response: This suggestion has the potential to impact all facility inspections, not just raptor facilities. The State of Arizona owns and manages all wildlife in this state as a sovereign trust responsibility which by law cannot be delegated to private entities or persons.

Comments suggest the Department assign Department Wildlife Managers (WM) to perform facility inspections and equipment inspections.

Agency Response: This suggestion is not supported because it has the potential to impact all special license facility inspections, not just raptor facilities. The State of Arizona owns and manages all wildlife in this state as a sovereign trust responsibility which by law cannot be delegated to private entities or persons, including special license holders. In addition, the Department's Wildlife Managers are assigned to Wildlife Manager districts where they are required to be the Department's "on the ground" point of contact, as well as the local area expert in wildlife, fisheries, and habitat management. They are the most visible Department

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representative and duties include: recommending and assisting with habitat improvement projects; conducting game surveys and making hunt recommendations; assisting with wildlife and fisheries surveys and management activities; performing information and education activities such as public outreach; conducting Hunter Education programs; conducting wildlife law enforcement patrol and investigations; making arrests and serving warrants; preparing comprehensive case reports; and testifying in court. The Department does not recommend taking the responsibility of inspections away from the sport falconry license administrators and adding them to the long list of responsibilities already assigned to Wildlife Managers.

Comments suggest the Department should consolidate the regional falconry coordinators into a single state-level position.

Agency Response: This suggestion is outside of the scope of Commission rules and has been forwarded to the Department's Wildlife Management Division for consideration.

Comments suggest the Commission should allow falconry as a method of take for coyote.

Agency Response: Falconry is currently an acceptable method of take for cottontail rabbits, Eurasian collared-doves, migratory game birds, tree squirrels, and upland game birds. Benchmarking with other Western states indicates they allow falconry for the take of predatory animals. Under A.R.S. 17-101(B)(10); the definition of "predatory animals" means foxes, skunks, coyotes, and bobcats. The Department agrees with this suggestion and recommends amending R12-4-304 to allow sport falconry as a lawful method of take for coyote.

Comments suggest the Commission amend the rule to establish a five-year sport falconry license.

Agency Response: The Department does not receive tax dollars and is supported solely through license sales, excise taxes, and watercraft registration fees. In 2014, the Commission directed the Department to develop fees with the intention of recovering the cost of providing a service now and into the future. Providing for future costs is important because the Department typically does not adopt or adjust fees on a frequent basis. The Department conducted an internal audit and cost analysis of the Department's special license program and determined the Department incurs significant administrative costs and burdens during the review and inspection stage of the special license issuance process (i.e. application review, facility inspections, determination of eligibility, ongoing support, review of annual report, and corrective measures when required). The team evaluated the licensing process for each special license from start to finish and benchmarked fees for similar licenses issued by other states. The formal special license team's report provided recommendations intended to help offset the administrative burden associated with pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team. The Department recently amended Article 4 rules to establish three-year licenses wherever feasible. In addition, the special license fees were based on three-year cycles. These amendments became effective on July 1, 2021. The Department recommends retaining the current three-year time-frame

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and reevaluating all special license fees once it is determined the current fees are not sufficient to cover administrative costs.

Comments suggest the Department allow office staff, hunter education volunteers, and/or master falconers to certify as Sport Falconry License examination proctors.

Agency Response: This suggestion is not supported because of issues other wildlife agencies have experienced. For example, wildlife agencies in California and Washington implemented similar programs that allowed master falconers to proctor exams. Both states sport falconry examinations were compromised. As a result, each agency was forced to develop new examinations. The California Department of Fish and Game stopped offering examinations, which prevented persons from applying for an apprentice sport falconry license, and just began offering sport falconry examinations in certain regional offices and are doing so on a limited basis.

Comments suggest the Commission should allow master falconers to submit photographs and diagrams, in lieu of an in-person inspection.

Agency Response: This suggestion is not supported for the same reasons identified above. However, the Department recommends amending the rule to allow the Department to photograph an applicant's or license holder's facility during an inspection.

Comments suggest defining "within the nesting area" to further clarify the peregrine falcon regulations.

Agency Response: This suggestion is outside of the scope of rulemaking as it applies to Commission Order 25. This suggestion has been forwarded to the Terrestrial Wildlife Program for consideration.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The following rules were amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making; the amended rules were approved by G.R.R.C. on February 2, 2021 and made effective on July 1, 2021:

- R12-4-401. Live Wildlife Definitions
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License

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- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430. Importation, Handling, and Possession of Cervids

The Commission's intent in the last rulemaking amending the Article 4 rules was to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipated the majority of the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipated the rulemaking would result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission determined there were no less intrusive or costly alternative methods of achieving the purpose of the rulemaking and that the benefits of the rulemaking outweigh any costs.

The following rule was last amended through exempt rulemaking made effective July 1, 2021 and the Department offers the following economic, small business, and consumer impact statement:

- R12-4-412. Special License Fees:

The Commission anticipated the rulemaking in general would benefit persons regulated by the rule by increasing the amount of time the license is valid from one to three years. The Commission anticipated a decline in special license applications due to requiring a fee, however, the objective of the rulemaking was to attain partial cost recovery for the administration of special licenses or to come as close to that goal as possible. It is important to note, except for the Sport Falconry and Zoo license fees which were increased in

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2007, wildlife special license fees have not increased in over 25 years. The Commission anticipated the exempt rulemaking would result in an increase in revenue due to requiring a fee for all special licenses. Purchasing a special license is voluntary and a person who chooses to apply for and purchase a special license will incur those costs associated with that license. The Commission anticipated the rulemaking would not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this State, or affect a person's ability to practice an activity; have a significant impact on a person's income, revenue, or employment in this state related to that activity.

The following rule was last amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making of the rule; the amended rules were approved by G.R.R.C. on February 7, 2017 and made effective on April 8, 2017:

- R12-4-402. Live Wildlife: Unlawful Acts

The Commission anticipated the proposed amendments would have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipated the implementation of the rulemaking would have no measurable impact on Department operations. The Commission anticipated the Department would benefit from maintaining jurisdiction over Arizona's wildlife and wildlife habitat and the enhanced ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat.

The following rules were last amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making of the rules; the amended rules were approved by G.R.R.C. on October 6, 2015 and made effective on December 5, 2015:

- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-408. Holding Wildlife for the Department
- R12-4-426. Possession of Nonhuman Primates

The Commission anticipated the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipated persons possessing wildlife subject to the unique identifier and prohibition on propagation would have a minimal impact on persons regulated by the rule. However, the Commission believed it was a reasonable economic burden since the person possessing the wildlife chose to do so and determined the costs and burdens could be further reduced through captivity protocols. The Commission anticipated the rulemaking would result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission determined there were no less intrusive or costly alternative methods of

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achieving the purpose of the rulemaking and that the benefits of the rulemaking outweigh any costs.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses for Article 4 rules.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

The Department completed the course of action indicated in the previous five-year review report for Article 4 rules as follows:

- Permission to pursue rulemaking granted: September 23, 2019
- Notice of Rulemaking Docket Opening: 26 A.A.R. 1850, September 4, 2020
- Notice of Proposed Rulemaking: 26 A.A.R. 1791, September 4, 2020
- Public Comment Period: September 4, 2020 through October 4, 2020.
- G.R.R.C. approved the Notice of Final Rulemaking at the February 2, 2021 Council Meeting.
- Notice of Final Rulemaking: 27 A.A.R. 321, February 26, 2021.

The Department did not indicate a course of action in the previous five-year review report for the following rules:

- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-408. Holding Wildlife for the Department
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates

R12-4-412. Special License Fees was adopted after the previous five-year review report was approved by the Governor’s Regulatory Review Council on February 2, 2021.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The purpose of the Arizona Game and Fish Commission (Commission), the Arizona Game and Fish Department (Department), and the Director of the Department is “to manage wildlife and wildlife habitat in this state as provided by law.” Laws 2012, Ch. 283 § 3. “Control of the department is vested in the game and fish commission.”

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A.R.S. § 17-201(A). The Commission appoints the Director who is “the chief administrative officer of the game and fish department.” A.R.S. § 17-211(A).

With regard to general rulemaking authority, the Commission is required to “[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of [A.R.S. Title 17, Game and Fish].”

The Department actively seeks to ensure its processes and programs align with current technology and circumstances, such as implementing three-year special licenses. The ability to submit one application every three years instead of annually benefits special license holders and the Department through reduced costs and burdens. Rules are also designed to update best business practices, such as requiring special license holders to retain license related documentation (includes veterinary reports and health certificates, in addition to licensure documents and evidence of legality (ownership) for an established period of time (five years).

The rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission’s and Department’s responsibilities and impose only those requirements that are necessary to meet the Commission’s objectives.

When amending Commission rules, the Department tasks a team of subject matter experts to review and make recommendations for rules. In its review, the team considers all comments from the public and agency staff that administer and enforce the rules, historical data, and the Department’s overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department’s mission to conserve and protect wildlife. The team then determines whether the request is authorized by statute, is consistent with guidance provided by the Governor and Commission and is with the Department’s overall mission, is least burdensome to regulated persons, and can be effectively implemented.

A.A.C. Title 12, Chapter 4, Article 4 contains twenty-six rules denominated as live wildlife. The intent of the Article 4 rules is to provide greater clarity to the laws and rules governing many aspects of live wildlife possession, importation, transportation, possessing, and disposal of live wildlife.

Article 4 rules establish unlawful activities for persons taking and possessing live wildlife, the Department’s authority to take possession of wildlife unlawfully held or that may pose a danger to public health and safety, or are unlawfully possessed. Article 4 definitions assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 4 rules.

Article 4 rules protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The rules establish a listing of live wildlife for which a special license is required in order to possess the wildlife and/or engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rules establish the general provisions and administrative compliance applicable to special licenses, as well as regulatory actions that may be taken when a special license holder is convicted of an offense involving cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule.

The public benefits from rules that clearly outline the requirements in which a private entity may utilize live wildlife for public exhibition and education, while maintaining the standards necessary to ensure the health and safety of the public, wildlife, and wildlife habitat.

The public benefits from rules that protect the public safety, health, and welfare; and protect and conserve Arizona's wildlife resources. The Department benefits from rules that helps ensure the proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

The public benefits from rules that are clear and concise, along with continued protection from improper handling and use of wildlife. The Department benefits from rules that allows continued regulatory oversight of activities pertaining to wildlife. The public and Department benefit from rules that are understandable.

Except as identified below, the Department believes the rules impose the least burden and costs to persons regulated by the rules:

- **R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-412. Special License Fees:**
An internal audit and cost analysis of the Department's special license program determined the administrative costs incurred by the Department when processing a renewal of a special license are typically less than an initial license because the renewal license typically takes less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department determined that for a first-time license application, a failure to renew the special license before it expired, a change to the licensed facility or, species of wildlife held under the license, or a change of staff conducting activities under the license would require an initial application and fee. However, the Department has learned that wildlife are often transferred between license holders for valid reasons, such as rehabilitation, conditioning, preparation for release into the wild, and humane transfers. These transfers can take place at any time during the license period and having to apply for an initial license and pay another license fee partway through the licensing period is burdensome. The Department recommends amending the rules to require an initial application and license fee only when there is a change to the licensed facility or license holder. The Department believes these criteria are reasonable and will make the rule less burdensome.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The following rules are based on state law and federal law is not directly applicable to the rule:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department has determined the following rules are not more stringent than their corresponding federal laws:

- **R12-4-401. Definitions, R12-4-406. Restricted Live Wildlife, and R12-4-422. Sport Falconry License,** federal regulation 50 C.F.R. 17.11 provides a list of migratory birds governed by the Migratory Bird Treaty Act.

- **R12-4-401. Definitions and R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 10.13 provides a list of the wildlife species determined by USFWS or the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration to be endangered species or threatened species.
- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife**, federal regulation 9 C.F.R. Subpart C 2.30 establishes the registration procedures for research facilities.
- **R12-4-413. Private Game Farm License and R12-4-414. Game Bird License**, federal regulation 50 C.F.R. 21.13 establishes exemptions from federal permitting requirements for captive-bred migratory waterfowl.
- **R12-4-420. Zoo License and R12-4-428. Captivity Standards**, federal regulation 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), regulates the treatment of animals in research and exhibition and establishes the minimally acceptable standard for animal treatment and care.
- **R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 21.3 establishes permitting procedures for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding or marking of migratory birds.
- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-011 "Bovine Tuberculosis Eradication: Uniform Methods and Rules" establishes the minimum standards and requirements for the maintenance of tuberculosis-free accredited herds of cattle and bison and the maintenance of State or zone status in the USDA's tuberculosis eradication program.
- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-16 "Brucellosis in Cervidae: Uniform Methods and Rules" establishes the minimum program standards and procedures of the Cooperative State-Federal Cervid Brucellosis Program to eradicate and monitor brucellosis in farm or ranch-raised Cervidae.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037.

- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License

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- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License

The following rules do not require the issuance of a regulatory permit, license, or agency authorization:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-412. Special License Fees
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend the following rules as indicated in this report:

- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License

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- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department anticipates requesting an exception to the rulemaking moratorium proscribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

The Department proposes no course of action for the following rules:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards