

**ARIZONA GAME AND FISH COMMISSION
2025 FIVE-YEAR-REVIEW REPORT**



**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 8. WILDLIFE AREAS AND
DEPARTMENT PROPERTY**

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

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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 8, Wildlife Areas and Department Property, are scheduled to be reviewed by March 2025.

This five-year-review report covers three rules in A.A.C. Title 12, Chapter 4, Article 8 that relate to wildlife areas and Department property:

- R12-4-801. General Provisions
- R12-4-802. Wildlife Area and Other Department Managed Property Restrictions
- R12-4-803. Wildlife Area and Other Department Managed Property Boundary Descriptions

The Commission promulgated the rules in Article 8 under an exemption from the Administrative Procedure Act (Act). Under A.R.S. § 41-1005(A)(1), the Act does not apply to any "[r]ule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals." The term "public works" is not defined under Title 17, but the ordinary dictionary definition is "[a]ny building or structure on land ... built by the government for public use and paid for by public funds." The rules identify public usage requirements for public works under the Department's jurisdiction.

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

For all of the Article 8 rules, the authorizing statute is A.R.S. § 17-231(A)(1) and the implementing statutes are A.R.S. §§ 17-231(B)(2) and 41-1005(A).

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

For R12-4-801 General Provisions, the objective of this rule is to establish the purposes for wildlife areas, to specify the types of Commission-owned or -managed property that may be designated as a wildlife area, and to notice the public of restrictions that apply to each specific wildlife area. The rule provides protections to Commission-owned and -managed wildlife areas and other properties, while maximizing public access and use of the same properties.

For R12-4-802 Wildlife Area and Other Department Managed Property Restrictions, the objective of this rule is to establish the restrictions and allowable activities applicable to the use of wildlife areas and other Department managed property. The rule provides protections to Commission-owned and -managed wildlife areas and other properties, while maximizing public access and use of the same properties.

For RI 2-4-803 Wildlife Area and Other Department Managed Property Boundary Descriptions, the objective of the rule is to establish the legal boundary descriptions for designated wildlife areas.

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

For all of the Article 8 rules, the rules appear to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective.

The Department typically amends the Article 8 rules on a biennial basis to implement recommendations resulting from the most recent data/research for specific wildlife areas and boundary descriptions which includes adjusting wildlife boundary descriptions for properties acquired and sold by the Department, increasing consistency between wildlife areas regarding camping, recreational shooting, and travel; and ensuring public safety. Every five years, recommendations are submitted to the Compliance and Strategies Section by Department wildlife managers and biologists after the previous years wildlife, harvest, and habitat data are collected and evaluated. Recommendations are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife.

The Department proposes to amend the rules to implement recommendations resulting from data and research gathered over the last five years for specific wildlife areas. These amendments may include allowing fires in designated areas wherever practical or prohibiting fires to protect human life, property, and natural resources in areas where high fuel loads exist or the wildlife area is in a high fire risk area. Allowing firewood cutting or gathering for noncommercial onsite use only wherever practical or prohibiting firewood gathering in areas that do not support appreciable quantities of utilizable wood, with the possible exception of riparian tree species that are of high wildlife value. Allowing overnight public camping for up to 14 days within any 30-day period wherever practical. Allowing motorized big game retrieval wherever hunting for big game is permitted, where big game animals are present in or near the wildlife area, and the surrounding habitat lends itself to off-road motorized big game retrieval or prohibiting big game retrieval in areas where wildlife, wildlife habitat, crop production, or research activities may be harmed by cross country travel. Allowing hunting and fishing wherever practical, when authorized by Commission Order or prohibiting the use of firearms for the purpose of taking wildlife when the wildlife area is not conducive to the use of firearms due to its proximity to populated areas or occupied dwellings.

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.

For R12-4-801 through R12-4-803, which relate to wildlife areas, the Commission may "[e]stablish game management units or refuges for the preservation and management of wildlife." A.R.S. § 17-231(B)(2). Game management unit boundaries are prescribed under R12-4-108, while wildlife area boundaries are prescribed under R12-4-803. A "management unit" is defined as "an area established by the Commission for management purposes." only. In contrast, a "wildlife area" designation is used for "preservation and management of wildlife."

For all of the Article 8 rules, the rules appear to be consistent with and are not in conflict with applicable statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4."

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

For all of the Article 8 rules, the rules are currently being enforced and the Department is not aware of any problems with the enforcement of the rule.

While the Department has determined the rules are enforceable, the Department proposes to amend R12-4-801 and R12-4-802, based on comments submitted by regional personnel to reduce confusion and lessen burdens and costs wherever practical, and make other changes supported by data gathered over the last five years.

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

For all of the Article 8 rules, the rules are clear, concise, and understandable. While the legal descriptions of the wildlife areas provided under R12-4-803 (Wildlife Area and Other Department Managed Property Boundary Descriptions) are often complex, previous Attorney General reviews indicate the wildlife area boundary descriptions are necessary from a legal standpoint as they identify areas in a manner consistent with real property standards and facilitate enforcement of the restrictions established under R12-4-802.

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.

Written Criticism: On November 8 and 11, 2020 the Department received comments from an individual who had concerns about the Department's management of their wildlife areas (WLA) and in particular the Lamar Haines WLA. The comments had to do with the following: allowing camping and fires on WLA's (which would

lead to increased littering, human/wildlife conflicts, deterrent from wildlife using water on the property, and damage to cultural resources) and target shooting (would lead to illegal take of wildlife). In addition, they were interested in additional signage on hunting regulations. They felt that in some cases WLA's should not allow hunting (Cibola WLA) and that it was a public safety risk with an increasing population in Arizona being interested in watchable wildlife. They felt that WLA's should be safe zones for wildlife and that they did not have to be managed consistently with the surrounding lands. With these concerns they wanted to know why WLAs were established, if not to protect wildlife.

Agency Response: Thank you for taking the time to your comment regarding the proposed changes to the Lamar Haines Wildlife Area restrictions. Please consider this letter as a response to your comments submitted to the Department on November 8th and 11th. Although your comments were received after the public comment period (September 28 through October 28th), please know your comments were shared with the team and the Lamar Haines Wildlife Areas property stewards. Your comments have also been placed in the rule record for consideration by future rule review and rulemaking teams. As stated in R12-4-801 (general provisions) wildlife areas are established to provide protective measures for wildlife, habitat, or both; allow for hunting, fishing, and other recreational activities that are determined to be compatible with wildlife habitat conservation and education; allow for special management or research practices; and enhance wildlife and habitat conservation. "Other recreational activities" include camping, backpacking, hiking, general wildlife viewing and photography, etc. R12-4-802 (wildlife area and other department managed property restrictions) establishes the restrictions and limitations on recreational uses of Commission-owned and -managed wildlife areas, with the intent of maximizing public access and use of these properties. The Commission amends wildlife area restrictions to affect recommendations made from data gathered by regional staff and those submitted by local government agencies (includes political subdivisions), local law enforcement, members of the public, etc. The Commission allows target shooting and, when authorized by Commission Order, hunting, wherever practical. The use of firearms for the purpose of target shooting and/or taking wildlife is prohibited when the wildlife area is not conducive to the use of firearms due to its proximity to populated areas or occupied dwellings. It is important to note, grebes are federally protected migratory birds and may not be taken as defined and protected under federal law. We hope the wildlife biologist who discovered the violation reported the incident to the U.S. Fish and Wildlife Migratory Bird Program for further investigation. The proposal to allow dispersed camping on the Lamar Haines Wildlife Area is based on the foundation of increasing public access where possible, increasing consistency between wildlife area rules when applicable, and increasing consistency across multiple jurisdictions whenever possible, such as bringing the wildlife area rules in alignment with the surrounding Coconino National Forest regulations. Please note that dispersed camping for no more than 14 consecutive days in a 30-day period is allowed on the land surrounding the wildlife area (Coconino National Forest). The Department does not believe the proposed change will elevate the risk of human/wildlife conflicts in the wildlife area because Coconino National Forest management has allowed camping on their lands within the San Francisco Peaks for some time and the Department is not aware of any incidents or received any reports of human/wildlife conflicts involving campers in that area. Overnight camping would be managed by signage, such as informational signs at the entrance to the

wildlife area outlining allowed activities and restrictions. In addition, new map signage posted at the entrance to the wildlife area will not depict the locations of cultural significant sites within the property and informational signs will be utilized to mitigate possible camping impacts to the property and its cultural resources (such as signage stating the area is under surveillance; it is against the law to deface cultural sites, etc.). Because camping access may only be gained by foot and vehicular access is controlled through a locked gate, Regional staff does not expect an influx of recreational or semi-permanent campers as a result of the proposed rule change. Additionally, there are no indications that the property is incurring any significant damage as a result of current public access and use. However, the Department is meeting with U.S.F.S staff to discuss this proposal further. The Commission prohibits fires to protect human life, property, and natural resources in areas where high fuel loads exist or the wildlife. R12-4-802 (wildlife area and other department managed property restrictions) currently prohibits campfires on this wildlife area due to the fuel loads, no fires are allowed on the property; and this rulemaking does not propose to change that. Fire restrictions are implemented in alignment with Coconino National Forest designations based on scientific data gathered by the Coconino National Forest. The Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. This is done by using a science-based process designed to ensure sustainable populations of wildlife for future generations to enjoy. Hunt recommendations are proposed three times annually and are made final through Commission Orders. There are times when a hunt structure is modified mid-cycle. Posting signage that is subject to change on a frequent basis is not cost effective and burdensome to the Department. A person need only review the information provided on the Department's website prior to visiting a wildlife area to determine whether a hunt is occurring in a specific area. Information regarding when and where hunts are going on is readily available in the hunting regulations and on the Department's website. This web page provides access to hunt regulations where you can obtain information on hunt seasons and units: <https://www.azgfd.com/hunting/regulations/>. In addition, to make it simpler, R12-4-802 (wildlife area and other department managed property restrictions) specifies which unit(s) a wildlife area is located in. Simply search for the unit number for the wildlife area that you plan to visit. Please note, small game and nongame hunts may occur in certain areas throughout the entire year. The Commission and Department are entrusted to conserve and protect more than 800 native wildlife species in the state. Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. These activities and public visitation can draw people into local communities and businesses, resulting in a positive impact to local economies. The rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least burden and costs to persons regulated by the rules.

- 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.**

There are no previous economic impact statements for the rulemakings associated with the Article 8 rules because the Commission promulgated the rules under an exemption from the Act. The Act does not apply to any "[r]ule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals."

With respect to the Article 8 rules, the rules do not impose any direct or indirect costs on the regulated community, other state agencies, political subdivisions, private business, or the public. The recreational use of wildlife areas by members of the public is a voluntary activity; and the authorized uses and restrictions are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife.

The Department believes the rules do not impose any costs to agencies or political subdivisions of this state directly affected by the implementation and enforcement of the rules, and does not impose any additional costs or reduction in revenues to businesses (large or small). The Department believes the rules have no effect on the revenues or payroll expenditures of employers in the state. The rules have resulted in minimal administrative costs to the Department. The Department has determined that the benefits of the rules 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.

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 as follows:
Notice of Final Exempt Rulemaking: 27 A.A.R. 242, February 19, 2021, R21-15.

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 Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 8. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff; and the one comment received from the public over the last five years. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was

consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

Wildlife areas are intended to conserve and protect wildlife and to provide public recreational opportunities to the general public. Wildlife areas are comprised of lands owned or leased by the Commission, federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation, and any lands with property interest conveyed to the Commission through an approved land use agreement, where said property interest is sufficient for management of the lands consistent with the objectives of the wildlife area. Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. In addition, these activities and public visitation can draw people into local communities and businesses, positively impacting local economies. The rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least burden and costs to persons regulated by the rules.

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.

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

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 rules do not require the issuance of a regulatory permit, license, or agency authorization.

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 anticipates submitting the Notice of Final Exempt Rulemaking for actions proposed in this report to the Secretary of State's office and a copy of the final exempt rules to the Council in compliance with A.R.S. §41-1024(G) by February 2026.