

**Arizona Game and Fish Commission
2017 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 3. TAKING AND HANDLING WILDLIFE**

**Prepared for the
Governor's Regulatory Review Council**



ARIZONA GAME AND FISH COMMISSION
 12 A.A.C. 4, ARTICLE 3. TAKING AND HANDLING WILDLIFE
 2017 FIVE-YEAR REVIEW REPORT
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REPORT: ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 3, Taking and Handling Wildlife, are scheduled to be reviewed by March 2017.

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

For all rules within Article 3, the Department proposes to replace the term "individual" with "person," where applicable, to increase consistency between Commission rules. A.R.S. § 1-215, defines "person" as a corporation, company, partnership, firm, association or society, as well as a natural person.

The Department anticipates requesting an exception to the rulemaking moratorium by March 2017 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by April 2018, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements. These documents are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086.

R12-4-301. DEFINITIONS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-231(A)(1)

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

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

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

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

However the Department proposes to amend the rule to repeal the definitions of "cervid" and "person" as these terms are, or will be, defined under R12-4-101.

The Commission recognized the need to evaluate regulatory measures pertaining to the use of trail cameras as they relate to the 'take of wildlife' and the Fair Chase hunting ethic; and directed the Department to evaluate current rule language and make recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device. The Department proposes to define "live-action trail camera," "developed water source," and "point water source" to reflect amendments made to R12-4-303.

In addition, the Department proposes to define "deadly weapon," "prohibited possessor," and "prohibited weapon" as a result of changes made to R12-4-303. Under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. The Department proposes to amend R12-4-303 to prohibit a person who is a prohibited possessor from using a deadly weapon or prohibited weapon to take wildlife.

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

Enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an order in which a definition is used. It is not the term that is cited, but the violation. To the extent that the Department is aware, there have been no problems with enforcement. Providing definitions for the unique terms used in Article 3 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 3 rules.

The Department believes amending terms and defining additional terms will facilitate the consistent interpretation of those rules. The Department proposes to amend the definition of "artificial flies and lures" to reflect language used in Commission Order and public outreach materials, and prohibit the use of chemical and organic attractants. Many anglers believe scented, flavored, and chemically treated devices are legal artificial lures because the definition does not specifically prohibit them and their use is causing unacceptable mortality rates in released trout caught in some catch-and-release waters. Since this definition was adopted, the popularity of these types of baits, often marketed as "lures" and "artificial," has increased. The purpose of restricting scented, flavored, and chemically treated flies and lures is to minimize the mortality of fish, particularly trout because they tend to gulp the lure deeper, resulting in a 30 to 90% mortality rate after being released.

The Department also proposes to amend the rule to define "hybrid device" and "smart device" to address emerging technology. A.R.S. §§ 17-231(A)(3) and 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. This change is in response to customer comments received by the Department.

During this review, the Department determined it would be beneficial to amend the rules that provide definitions for all Commission rules and live wildlife rules. The Department proposes to amend R12-4-101 by defining the terms "bow," "crossbow," "handgun," "muzzleloading shotgun," "pneumatic weapon," "rifle," and "shotgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules. In addition, the Department proposes to repeal the definition of "cervid" under R12-4-301 and transfer the definition of cervid under R12-4-401 to R12-4-101.

In addition, the Department proposes to amend the definitions for "aircraft" to address the use of drones. In recent years, due to the affordability and availability of drones, their use has significantly increased. As a result of a survey conducted by a consulting firm, the Teal Group, it is estimated that about two million consumer drones, or unmanned aerial systems, will be sold worldwide in 2016 alone, with one-third of them being purchased in the U.S. Drones are considered "aircraft" by the Federal Aviation Administration.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 rule 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 received the following written criticism of the rule:

Written Comment: August 11, 2013. Has the Department defined "edible portions of game meat" and "waste"? I cannot locate a definition for either anywhere in the regulations. Also, if the Department has not already defined these terms, please do so in order to inform hunters, Department officers, and court personnel of what is meant? Wyoming seems to have very useful definitions for these two terms that could be considered for adoption within Arizona.

Agency Response: A.R.S. 17-340(A)(7) defines edible portions of game meat; however, this definition does not address edible portions of mountain lion or bear. The Department proposes to define "edible portions of game meat" to reflect the statutory definition and ensure consistent interpretation of the term. Most dictionaries define "waste" as "to fail or neglect to use." The Department believes the common definition of the term "waste" is sufficient.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to add definitions for "cervid" and "pre-charged pneumatic weapon" to make rules within Article 3 more concise. In addition, definitions included under R12-4-101 that were applicable to only Article 3 rules and definitions included throughout Article 3 were transferred to R12-4-301 to ensure compliance with Secretary of State rule formatting recommendations. The Commission anticipated the proposed amendment would have little or no impact on persons regulated by the rule.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes definitions to facilitate consistent interpretation and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules. The public benefits from a rule that defines terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. The public and Department benefit from a rule that is understandable. The

Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-301 as follows:

- Revise the definition of “aircraft” to clarify drones are considered to be aircraft.
- Revise the definition for "administer" to make the rule more concise.
- Revise the definition for "artificial flies and lures" to prohibit the use of chemical and organic attractants; also reverse the terms "flies" and "lures" to reflect language used in Commission Orders and public outreach materials.
- Repeal the definition of "cervid" under R12-4-301 and transfer the definition of cervid under R12-4-401 to R12-4-101.
- Define "deadly weapon" to facilitate a consistent interpretation of Commission rules.
- Define "device" by referencing the definition of "device" under A.R.S. § 17-101 to facilitate a consistent interpretation of Commission rules.
- Define "edible portions of game meat" to increase consistency between statute, Commission Orders, and rules. This change is in response to customer comments received by the Department.
- Define the terms "hybrid device" and "smart device" to address emerging technology. This change is in response to customer comments received by the Department.
- Define "live-action trail camera," "developed water source," and "point source water" to reflect amendments made to R12-4-303.
- Repeal the definition of "nonprofit" and "person" as person is defined under R12-4-101 and the Department proposes to transfer the definition of "nonprofit" to R12-4-101.
- Define the term "pneumatic weapon" to aid in facilitating a consistent interpretation of Commission Orders

and rules.

- Define "prohibited possessor" and "prohibited weapon" to facilitate a consistent interpretation of Commission rules.
- Define the term "single-point barbless hooks" to address fish mortality issues.
- Transfer definitions impacting multiple Game and Fish Articles to R12-4-101.
- Define the terms "export" and "import" to facilitate a consistent interpretation of Commission Orders and rules.
- Define the terms "bow," "crossbow," "handgun," muzzleloading shotgun," "rifle," and "shotgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules. This change is in response to customer comments received by the Department.
- Replace the term "buffalo" with "bison" to reflect terminology used by the scientific community.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-302. USE OF TAGS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-301, 17-331, and 17-332

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

The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a licensee shall attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person shall attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is

effective.

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 rule is consistent with and is not in conflict with 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.

The rule is currently being enforced. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

However, the Department is aware of a problem with the enforcement of the rule. The rule establishes that only the hunter listed on the tag shall use the tag and attach it to game lawfully harvested by the hunter listed on the tag. When two persons are hunting, any deviation from this process would mean both parties are involved in the violation. There is a circumstance within the current rule that results in only one person unlawfully using a tag in violation of the rule. For example: Hunter A harvests an elk. Hunter A then allows Hunter B to place Hunter B's tag on the elk, enabling Hunter A to continue hunting for another elk after having reached their bag limit for elk. Even though both parties were involved in the unlawful tagging of the elk, only Hunter B would be cited under this rule. The Department proposes to amend the rule to establish that it is unlawful for a person to allow another person's tag to be attached to wildlife that person harvested.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 has not received any written criticisms of the rule.

- 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 rule was last amended in 2015 and the amendments became effective on January 3, 2016. The rule was amended to remove descriptive language relating to the manner in which the tag is attached to wildlife and specify that the tag shall be attached to the wildlife carcass in the manner indicated on the tag. The Commission anticipated prospective vendors, who were previously eliminated from consideration due to their inability to meet specific tag feature requirements, would benefit by being able to submit a proposal and possibly be awarded a bid. The Department has not published a request for proposals for tags and holds that there has not been sufficient time to satisfactorily evaluate the actual economic impact resulting from the last rulemaking.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

In addition, the rule was recently amended as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1049, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.

- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 3025, December 4, 2015.

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 rule establishes requirements for the possession and use of tags issued by the Department. The overarching goal of the Department's game management program is to protect, restore, and manage game populations and their habitats; to maintain the natural diversity of Arizona; and to provide wildlife-oriented recreational opportunities for present and future generations. The Department issues a specific number of tags to aid in managing game for sustainable populations. The rule benefits persons regulated by the rule by establishing the manner and method in which a person may lawfully use a Department-issued tag, ensuring only those lawfully in possession of a tag may use the tag for wildlife they harvested, thereby preventing misuse of this public resource. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-302 to establish that it is unlawful for a person to allow another person's tag to be attached to wildlife that person harvested.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-251, 17-305, and 17-309

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

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

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

Overall, the rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

However, the Department believes the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase. Hybrid devices (weapons with components from two or more different devices) and smart devices are becoming more and more prevalent in the hunting industry. The Department proposes to amend the rule to clearly define the components of these devices that are unlawful when taking game.

In addition, the Commission recognized the need to evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the ‘take of wildlife’ and the Fair Chase hunting ethic, and directed the Department to evaluate current rule language and make recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device. The Department also developed language to

address the use of satellite imagery as it relates to the Fair Chase hunting ethic. The Department proposes to amend the rule as directed by the Commission.

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 rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4. However, the Department proposes to amend the rule to reference all acts prohibited under the Migratory Bird Treaty Act to increase consistency between laws and regulations governing migratory bird hunting.

Under A.R.S. § 17-309(A)(4), it is unlawful to discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. Under R12-4-303(A)(3)(h), it is unlawful to discharge a pneumatic weapon .30 caliber or larger while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. The Department proposes to amend the rule to prohibit the discharge of an arrow or bolt while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident, to increase consistency between statute and rules.

In addition, under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. The Department proposes to amend the rule to prohibit a person who is a prohibited possessor from using a deadly weapon or prohibited weapon to take wildlife.

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

Overall, the rule is enforced as written. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation. However, a growing concern is the increasing use of hybrid and smart devices. The Department proposes to amend the rule to clearly define the components of these devices that are unlawful when taking wildlife. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined.

In addition, the Department is aware of instances where a hunter who lives on the edge of a municipal boundary is unable to archery hunt on his own property because Commission Order closes areas within one-fourth mile of

an occupied residence. For example, a hunter who lives on the edge of a forest boundary and who is miles away from the nearest residence is unable to archery hunt on their own property because of the location of their own home. The Department proposes to amend the rule to prohibit a person from firing a bolt or arrow within one-fourth mile of an occupied structure unless permitted by the owner of the structure. This language mirrors statutory language under A.R.S. § 17-309, which prohibits a person from discharging a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge, or building without permission of the owner or resident.

The Department is aware of instances where persons have used a watercraft to chase and harass waterfowl in an effort to force the waterfowl to take flight so they may be hunted by another person. The Department proposes to amend the rule to clarify prohibited activities to ensure consistent interpretation of A.R.S. § 17-301 as it applies to migratory birds.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department is aware of some confusion as to what distance constitutes "one-fourth mile." The Department proposes to clarify this distance by also referencing this distance in yards (440).

However, the Department is aware that there is some confusion regarding the use of full-jacketed ammunition. Full-jacketed ammunition is sold by sporting goods stores and is often labeled by the manufacturer for use in target practice, but there are manufacturers who also label the ammunition for use in hunting. Confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for military use." A person could assume this would indicate the ammunition is not designed for military. The Department proposes to amend the rule to remove "designed for military use" and specify that any ammunition that does not expand on impact shall not be used for the take of wildlife to make the rule more concise. The use of full-jacketed ammunition for hunting is prohibited because it does not create a substantial wound for the humane harvest of an animal. The uniform and aerodynamic design means the ammunition is more likely to penetrate the animal and keep going out the other side, possibly injuring people farther downrange and leaving only a small wound in the animal, resulting in more wounding loss. This would impact hunter opportunity, because a person who wounds an animal may not be aware the animal was wounded and would continue to hunt and possibly wound or take another animal. Ammunition designed to expand creates a wound cavity and slows the bullet down so that it will not to continue beyond the target with much force, if at all.

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 rule 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 received the following written criticism(s) of the rule:

Written Comment: December 6, 2012. My experience in Unit 10 during the 2012 bull elk hunt was like a visit to the San Diego Zoo as far as the number of people in the unit. Unfortunately, because of all the "year round" visitors, the animals were very shy and getting a look was quite difficult. We hope that, in the future, the Department will reduce foot traffic. The other issue is those nasty cameras. Arizona needs legislation that will take those annoying cameras "out of the picture." At the very least, get them off of the Strip before the gene pool is shot out and there are no dream bucks to look forward to. It may not be a popular decision, but it has to be done. Forget the easy dollar and return to preserving the quality of the hunt, not the quality of the camping trip. The Department is going to lose real hunters that are meaningful to wildlife.

Agency Response: 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. The Department's mission is to protect and manage game wildlife populations and their habitats to maintain the natural diversity of Arizona, as well as to provide game wildlife-oriented recreational opportunities for present and future generations. This is done by using science-based methods to ensure wildlife is managed within the biological limits of each species. Management strategies also are developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field surveys, and public meetings are the methods used to involve the public. For more information on the public process, visit the Department's website at www.azgfd.gov/h_f/hunt_guidelines.shtml. The Department has evaluated the use of trail cameras to aid in the taking of wildlife and proposes to prohibit or restrict the use of certain trail cameras.

Written Comment: June 11, 2013. I am asking the Department to reconsider the ban on all night vision equipment. I used this type of equipment exclusively for night hunting of mountain lions. It is the most accurate way of accessing and identifying all animals at night. I also have invested a lot of money in night vision equipment as it has become a hobby of mine. I have helped harvest four lions within the multiple bag limit areas since night time hunting was implemented. I currently use thermal imaging because it is 100% accurate in identifying all animals. I hope the Department reconsiders this ban on all night vision equipment and opens its use to the pursuit of lions and coyotes in areas where permitted. Otherwise, the Department will have taken away the tools necessary for predator hunters to participate in and meet harvest objectives, especially for lions and coyotes in sheep, cattle, and fawning areas.

Agency Response: Prior to December 9, 2011, it was unlawful to hunt predators from sunset to sunrise. The December rulemaking that authorized night hunting also prohibited the use of all night vision equipment for the take of wildlife. This prohibition does not include devices such as laser range finders, scopes with self-illuminating reticles, and fiber optic sights that do not project a visible light onto an animal. While persons may have invested in this equipment as a hobby, it has never been lawful to use when taking wildlife in Arizona. The Commission determined it was necessary to restrict the use of night vision equipment to protect the sport of hunting, ensure fair chase, and increase safety. Night hunters identify their quarry by its eye shine and, under normal circumstances, the human eye does not produce a "shine." However, the human eye will produce a "shine" when seen through night vision equipment, making the use of this equipment a public safety hazard.

Written Comment: August 9, 2014. As I am sure the Department is aware, the subject of trail cameras can be a touchy subject. I have taken it upon myself to gather opinions and concerns from other sportsman. I have lived in St. George UT since 1987; before that, I lived in Burns OR on my family's ranch. We owned all sorts of livestock and encountered many species of wildlife. From the age of nine, I studied wildlife and wildlife habitat management and am currently pursuing a degree in Wildlife Biology. Since 1991, my focus has been on the Arizona Strip, primarily for wildlife observation and research. When trail cameras (cameras) were recognized as a great resource tool for the hunting industry, the popularity of cameras has exploded. My concerns are as follows: 1) Excessive use. There are some guides who have installed over 200 cameras in one game management unit (unit) and when added to the eight to fifteen used by an individual hunter there can be more than twenty cameras on every water catchment located in most every unit. 2) Damage. In some cases, steel T-posts are driven into water lines between the water catchment and the water trough resulting in leaks that drain the water storage tanks. These leaks can be expensive to repair and the money spent on repairs could go towards other Department projects. 3) Entitlement. Some persons feel they are entitled to a specific water catchment because they have a camera on site. This could prevent other persons from checking or retrieving their cameras. Some persons have even blocked roads and trails where they have installed a camera. There have been physical confrontations because every person who has a camera on a specific water source has a feeling of entitlement for the trophy animal they have been watching. 4) Littering: Because the cost of a camera is pretty reasonable, some persons do not want to take the time to retrieve their cameras and they abandon them and/or the steel T-posts resulting in the contamination of public land. I have personally pulled batteries out of different water troughs. 4) Pressure: If there is ongoing traffic to and from a specific water source, wildlife will not use that water source. 5) Advantage: Because guides use so many cameras, they have the advantage of knowing where the trophy animals are; guides have covered about 90% of all water resources on each unit. Very few giant mule deer are slipping through the cracks. The individual hunter wants a great hunting experience, but due to the excessive use of cameras, their experience is tainted in some shape or form. 6) Quality: Because most every water source on any given unit is covered, no mule deer buck is overlooked; mule deer bucks are not reaching full maturity because they are harvested before growing to their maximum age potential. 7) Visual Resource: The presence of 15 or more cameras on one water source is an eye sore. Several units lie on the boundary of Grand Canyon National Park. Some tourists have mentioned their concerns over the presence of cameras;

having so many cameras is disturbing and looks tacky. Options: I have asked the sportsmen I surveyed how they would like the issue addressed: 1) Prohibit the use of cameras; 2) Regulate the use of cameras; or 3) Do nothing. The results indicate 70% of the persons surveyed want the use of cameras regulated; 20% want the use of cameras prohibited; and 10% say do nothing. I propose limiting the use of cameras by quota; set a limit on the number of cameras that may be used at any given time in a unit by a guide or person. For example, a guide service or outfitter can only use 20 trail cameras per unit and a person working for a guide service or outfitter using cameras cannot place any cameras in that unit. Each camera would be marked with the person's personal information and numbered one through twenty. This would apply to individual hunters as well. The owner of a guide service or outfitter cannot create multiple companies in order to use more than 20 cameras. Marking cameras is an easy way of regulating cameras and tracking who is using and abandoning them in the field. Fines resulting from convictions could be used to fund and maintain a camera registration system. Cameras are a great innovation when used for hunting and research. I personally use 15 to 20 at any given time, to research mountain lion populations and identify mule deer migratory patterns. But, due to the number of concerns, a regulation of some sort needs to be put into place. An outright ban would be a ridiculous endeavor, but allowing someone to install over 200 cameras is just out of line. Limited use of trail cameras is a more desirable alternative. Please review the comments at: http://www.monstermuleys.info/cgi-bin/dcforum/dcboard.pl?az=show_thread&om=2583&forum=DCForumID33&omm=0.

Agency Response: The Department has evaluated the use of trail cameras to aid in the taking of wildlife and proposes to prohibit or restrict the use of certain trail cameras and satellite imagery.

Written Comment: July 9, 2015. Under R12-4-303, it is unlawful to take game using tracer, armor-piercing, or full-jacketed ammunition designed for military use. Over the counter full-jacketed ammunition from a sporting goods store is not designed for military use; is it legal to use for small game or predators? Can I use full-jacketed ammunition that I have made myself (hand loads)?

Agency Response: Full-jacketed ammunition is designed to maintain its shape when it hits and penetrates a target; it does not exhibit any of the characteristics of a mushroomed lead bullet on impact. The use of full-jacketed ammunition for hunting is prohibited because it does not create a substantial wound for humanely harvesting an animal. The uniform and aerodynamic design means the ammunition is more likely to penetrate the animal and keep going out the other side, possibly injuring people farther downrange and leaving only a small wound in the animal, resulting in more wounding loss. This would impact hunter opportunity, because a person may not be aware the animal is wounded and would continue to hunt and possibly wound or take another animal. The Department agrees the existing rule language can be confusing and proposes to add clarity by amending the rule to remove "designed for military use" and specify that any ammunition that does not expand on impact shall not be used for the take of wildlife.

Written Comment: October 26, 2016. I live in southern Arizona and have dedicated much of my life to Arizona's outdoors. I have a bachelor's degree in Natural Resources from the University of Arizona and worked for the Department for a few years during my studies. My grandfather introduced me to traditional archery as a young boy and the passion began. He taught me the ways of the game and the ethics behind being a Sportsman. That the wildlife is a resource for us to enjoy, as well as protect if needs be. Well since my early years as an archer, my passion for the outdoors has evolved, and the love for big game hounds has been my focus. I am writing you to make you aware of a very serious situation emerging in not only ethics and modern hunting technologies, but for those wildlife populations that we as Sportsmen must look out for. I have been hunting and raising big game hounds for close to 15 years now. It takes total dedication not only to your dogs in caring for and training them, but knowledge of your quarry as well, in this cause the Mountain Lion. In the arid Southwest, especially Arizona, hound hunting has always been a very difficult and time consuming endeavor, and most of us Houndsmen prefer it that way. Over the last 10 years a new technology has been developing and has found its way into Lion/Bear hunting with hounds and proven to be beyond lethal. Cellular Trail Cameras. Now regular trail cameras have become a common tool in hunters of all species tactics. But the Cellular Trail Cameras (CTC's) are a completely different beast. With the ever advancing technological age we live in, we must be careful not to lose sight of what hunting really means and teaches us, these devices are taking that away. So the main challenge of actually catching a lion with scent hounds is finding that "catchable track" as we call it. That's the hunting part of it. Traditionally, days, even weeks are spent in the field hunting hard, reading sign, working your hounds, in search of that catchable track. Typically (on the bare ground not snow conditions) this is 6 hours or less, a very narrow window. So here's where the change has come. Now any hunter can hang one of these CTC's on a tree and as soon as the camera is triggered it instantly sends the image to the owner via cellular. For most species that hunters use Trail Cameras for, deer, elk, turkeys, etc.; this really provides no advantage. But when an animal like a lion or bear is being pursued by their scent, and the fresher the better, this becomes a very lethal tool. The houndsmen community is very small and word travels fast. Over the last 5 years especially, these CTC's have really started to make an impact on not only the way hounds are hunted, but our lion numbers as well. The trouble is it's not only the few local houndsmen that own and operate these CTC's. Now some non-houndsmen are starting to set them up and notifying a houndsmen once they have a "fresh track" to chase. As far as how many lions have been taken with this method statewide? I can't say for sure. But of the 10 houndsmen in the local area I know personally, over half of them are using this technology and it's no doubt having an impact on lion numbers. I wouldn't be writing you had I not had firsthand experience with these devices. I live in one of the Sky Island mountain ranges south of Tucson. I hunt my hounds statewide but naturally spend a lot of time hunting lions close to home. About a year ago I hunted local tom lion for almost 4 months. Having to always be checking and guessing where he may be, as lions travel such a great deal. I'd hit his sign here and there but always be too far behind to catch up, (normal lion hunting). Well the lazy side got the best of me, and I bought a Spartan brand cellular trail camera that works on the Verizon Wireless network. Hung the cam in a high saddle I knew the tom came thru, and within days, he did. My cell phone beeped one morning while I was sitting at my house and I had his picture, and the dogs loaded and was on his scent within an hour. The dogs caught him quickly, in about a mile. As I sat there looking up at him with the dogs barking

treed I began thinking. About how hard I'd hunted him the past 4 months and how much fun I had, and how much I learned hunting for his fresh sign, and then to think I cheated all of that using technology. That lion was too awesome of an animal to deserve to be caught that way. It really cheapened the whole experience. I had no plans on killing him, never did, so I pulled my hounds and left. I got rid of the camera the next day and never looked back. The CTC's completely go against the whole idea of Fair Chase. It's an unfair advantage to the wildlife when real-time images are sent to the hunter who isn't even present in the field. The Department does a good job of trying to keep our hunting heritage intact, and I believe this is a major issue that needs to be addressed. Simply restricting "any device used to send pictures/information real-time to the hunter not in the field via wireless/wifi.." would be all it would take. It could easily fall under R12-4-303. In closing, there are just certain ways we as Sportsmen should go about the pursuit of an animal. This new technology/method does nothing except capitalize on the kill, not the hunt. All we can do is make sound, logical regulations on technological devices being used to cheat the hunt, and directly affect the take of wildlife.

Agency Response: The Department has evaluated the use of trail cameras to aid in the taking of wildlife and proposes to prohibit or restrict the use of certain trail cameras and satellite imagery.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove language prohibiting the use of noise suppressors and the possession of certain weapons; and allow the use of shotgun larger than 10-gauge for the take of wildlife. The rule was amended to prohibit the discharge of a pneumatic weapon .30 caliber or larger within one-fourth mile of an occupied structure unless permitted by the owner; the use of scent lures containing any cervid urine; the use of electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices, or laser sites; the use of edible or ingestible substances to attract big game for the purposes of hunting; holding wildlife at bay during daylight hours and injuring, confining, or placing a tracking device on wildlife; placing any substance, device, or object in, on, or near a water source to intentionally restrict wildlife from using the water source; and the use of dogs to pursue or hold at bay any bear or mountain lion for another hunter unless the hunter is present for the entire pursuit. The Commission amended the rule to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. The Commission anticipated the rulemaking would make the rule more concise, resulting in a rule that is less burdensome. The Commission anticipated allowing the use of shotgun larger than 10-gauge would benefit persons who would like to use these devices, stores that sell these devices and/or ammunition, and the Department may experience an increase in revenues due to increased tag sales and federal excise taxes hunters pay on ammunition and firearm purchases. The

Federal Aid in Wildlife Restoration act establishes a 10% tax on ammunition and firearms used for sport hunting; the proceeds are distributed to states for the purpose of wildlife restoration.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes those devices, methods, and ammunition that are unlawful for taking any wildlife in Arizona. In most cases, unless a specific activity is prohibited by law, it is presumed to be a legal activity. However, in general, Title 17 is not written in the permissive voice and requires the Commission to adopt rules establishing those devices and methods that are lawful or unlawful for the taking of wildlife. The Department and persons regulated by the rule benefit from a rule that establishes devices and methods that are unlawful for the taking of wildlife. In most cases, devices and methods are deemed unlawful because they are not a lethal and humane method for the take of wildlife, can significantly affect hunter harvest rates, or are likely to compromise the spirit of fair chase. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

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

Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Department has determined the rule is not more stringent than the corresponding federal 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 rule does 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 proposes to amend R12-4-303 as follows:

- Remove "designed for military use" and specify that any ammunition that does not expand on impact cannot be used for the take of wildlife to make the rule more concise. This change is in response to customer comments received by the Department.
- Prohibit the use of a projectile that uses a secondary propellant to make the rule more concise.
- Prohibit the use of any smart device; this includes but is not limited to any device equipped with a target tracking system; electronically-controlled, electronically-assisted, or computer-linked trigger.
- Reference all acts prohibited under the Migratory Bird Treaty Act to increase consistency between regulations and rules governing migratory bird hunting.
- Prohibit the discharge of an arrow or bolt while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. This change is in response to customer comments received by the Department.
- Reference the one-fourth mile distance in yards (440) to make the rule more concise.
- Prohibit the use of live-action trail cameras and satellite imagery for the purpose of taking or aiding in the take of wildlife. This change is in response to customer comments received by the Department.
- Prohibit the use of any trail camera for the purpose of taking or aiding in the take of wildlife within one-fourth mile of the outer perimeter of a developed water source or point water source. This change is in response to customer comments received by the Department.
- Prohibit a person who is a prohibited possessor from using a deadly or prohibited weapon for the take wildlife.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-235, 17-251, 17-301, 17-302, and 17-305

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

The objective of the rule is to establish lawful devices and methods a person may use to take wild mammals, birds, and reptiles during seasons established by Commission Order. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that may be used for the take of specific wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4. However, the Department proposes to amend the rule to reference R12-4-422 wherever falconry is listed as a method of take because R12-4-422 establishes requirements and restrictions for the take of raptors and hunting with raptors.

However, the Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

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

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

The availability of hybrid devices is increasing. The Department proposes to amend the rule to address the use of hybrid devices for the taking of wildlife.

In August 2013, the rule was amended to allow the use of pre-charged pneumatic weapons for the take of certain wildlife. Further discussion with persons in the pre-charged pneumatic weapon industry indicate that it is also necessary to reference foot pounds of energy to prevent wounding loss. Muzzle energy is the kinetic energy of a projectile as it is expelled from the muzzle of a pre-charged pneumatic weapon. Measured and indicated by foot pounds of energy, muzzle energy tends to be a more accurate representation of the power of a pre-charged pneumatic weapon. The Department proposes to add foot pounds of energy requirements wherever a pre-charged pneumatic weapon is authorized for that species.

The Department believes technological advances in ceramic or ceramic coated broadheads have proven to be as effective as traditional metal broadheads. A ceramic broadhead is made out of very hard ceramic and is typically produced by dry-pressing zirconia powder and firing them through the process of compacting and forming a solid mass of material by heat or pressure. The broadhead is sharpened by grinding the edges with a diamond-dust-coated grinding wheel. Zirconia is 8.5 on the Mohs scale of mineral hardness, compared to 4.5 for normal steel and 7.5 to 8 for hardened steel and 10 for diamond. This very hard edge significantly reduces the need for sharpening. The Department proposes to amend the rule to allow the use of ceramic and ceramic-coated broadheads.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to amend the rule to replace the term "buffalo" with "bison" to reflect terminology used by the scientific community. In addition, the Department proposes to amend the rule to replace references to "handguns using black powder or synthetic black powder" with "muzzleloading handguns"

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 received the following written criticism(s) of the rule:

Written Comment: November 5, 2012. I have hunted javelina for years and have harvested them with both compound and recurve bows. Has the Department considered allowing spear hunting; will it ever be a possibility in the future? I believe it would add a level of difficulty to the hunt that is sometimes missing.

Agency Response: The Commission's intent in listing devices and methods lawful for the take of wildlife is to ensure lethal and humane methods are used when taking of wildlife, that hunter harvest rates are not negatively impacted, and the spirit of fair chase is not compromised. The Commission does not consider the spear to be a humane method of take for terrestrial wildlife, and believes the use of a spear would increase wounding loss.

Written Comment: July 3, 2013. I think the Department used poor game management principles when it decreased the bow draw weight and increased the shot distance, which is what will occur now that the use of bait is prohibited. Why implement rules that may increase the number of wounded and unrecovered animals? Granted, most hunters use good judgment and know their shooting zone. However, a lot of hunters who were used to taking close-up shots due to the use of bait, will now have to take longer shots. Some states do not have a 30 lb. minimum draw weight and they have thick cover (which results in shorter average shot distances). I do not even recall a comment and review period or any discussion of the reduced draw weight. It certainly did not get the same attention as the baiting prohibition or the license fee change.

Agency Response: The Department disagrees. Technological advances in bows and arrows have increased the effectiveness of bows manufactured with lower draw weights. The Department also believes this change provides added opportunity for youth, women and elderly persons. The public comment period for the draft exempt rulemaking that proposed the draw weight reduction ran from October 16 to November 16, 2011.

Written Comment: January 7, 2015. I would like to see 22 mags back in for turkey hunting and crossbows for deer.

Agency Response: In 2013, the Commission amended R12-4-304 to provide only those devices and methods that have been authorized by Commission Order for the take of turkey to make the rule more concise. Prior to 2013, the rule authorized a number of devices and methods to take turkey, but, historically, the Commission by Order only permitted the take of turkey with bow and arrow, crossbow, and shotgun shooting shot due to hunter safety concerns. Crossbows are a legal method of take for deer during a general or muzzleloader season; during an archery-only season, deer may be taken with a crossbow provided the person has a valid crossbow permit.

Written Comment: January 7, 2015. It seems that we could gain a better group of trophy animals if we put an antler point limit on general hunts. Youth could be restricted to hunting two points and spikes, but for the general hunt a three point on at least one side restriction might help.

Agency Response: The rule addresses the methods of take that may be used during specific seasons authorized under Commission Order, but it does not regulate the legal animal for a specific management unit, genus or species. 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. The Department's mission is to protect and manage game wildlife populations and their habitats to maintain the natural diversity of Arizona, as well as to provide game wildlife-oriented recreational opportunities for present and future generations. This is done by using science-based methods to ensure wildlife is managed within the biological limits of each species. Management strategies also are developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field surveys and public meetings are the methods used to involve the public. For more information on the public process, visit the Department's website at www.azgfd.gov/h_f/hunt_guidelines.shtml. The Department does not recommend antler point restrictions; in addition, most western states and provinces have discontinued statewide antler-point restrictions. The two main reasons for abandoning widespread antler-point restrictions are: (1) unacceptable accidental-illegal kill and (2) harvest mortality was increased (focused) on the very age classes they intended to promote. Available data and experience suggest antler-point restrictions result in no long-term increase in either the proportion or number of mature bucks or the total deer population. A few jurisdictions still have limited areas with antler-point restrictions due to hunter preference, not a biological need. The use of antler-point restrictions in a combined strategy with general open seasons is used in at least one case to maximize hunting opportunity. Most western states and provinces have concluded that sustainable improvements in buck-to-doe ratios and the number of mature bucks can only be realized by reducing harvest through: 1) a limited quota license system that decreases overall total buck harvest (as we do in Arizona), or by 2) setting a short hunting season in early fall when mature bucks are less vulnerable. While antler-point restrictions may increase the proportion of bucks in certain populations with low buck-to-doe ratios, there is no evidence they substantially increase the total number of adult (mature) bucks.

Written Comment: August 5, 2015. Increase the poundage of a bow to 40 lbs. for all big game, but especially elk and bear.

Agency Response: The Department disagrees. Technological advances in bows and arrows have increased the effectiveness of bows manufactured with lower draw weights. The Department also believes this change provides added opportunity for youth, women, and elderly persons.

Oral Comment: The Crosman website states the airbow is neither a crossbow nor a rifle, but the commenter believes it could meet the definition of a crossbow. While current rule and statute do not define "crossbow," the rule establishes crossbow feature requirements (minimum draw weight of 125 lbs., using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges). The commenter stated the weapon is faster, more lethal, more accurate, and easier to use than a crossbow. The commenter stated that disabled persons have trouble pulling and locking a standard crossbow and this weapon can be pulled and locked using only two fingers. The commenter believes this new weapon should be allowed for use by disabled persons possessing a crossbow permit or CHAMP (<https://www.crosman.com/airbow>).

Agency Response: The Department agrees and proposes to amend the rule to allow the use of pre-charged pneumatic weapons that fire an arrow or bolt for all big game, except bison and elk. In addition, the Department proposes to amend R12-4-301 to define "crossbow" to aid in facilitating a consistent interpretation of Commission Orders and 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.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to add pre-charged pneumatic weapons as a lawful method of take; require a person who is using dogs to pursue bears or mountain lions to immediately kill or release the bear or mountain lion that has been treed, cornered, or held at bay; and prohibit the use of a shotgun larger than 10-gauge for migratory birds. The Commission anticipated the rulemaking would benefit persons regulated by the rule by making the rule more concise and by authorizing additional devices and methods to take wildlife.

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.

Not applicable. In the previous five-year review report, the Department indicated it proposed no course of action for R12-4-304.

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 rule establishes those devices, methods, and ammunition that a person may use to take wild mammals, birds, and reptiles during seasons established by Commission Order. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. Given the multitude of devices that are available to the sporting and hunting public, it is necessary for the Commission to establish lethal and humane methods and devices for the take of wildlife to reduce wounding loss and ensure harvest rates do not impact hunter opportunity and the spirit of fair chase is not compromised. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

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

Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Department has determined the rule is not more stringent than the corresponding federal 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 rule does 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 proposes to amend R12-4-304 as follows:

- Establish when a hybrid device may be lawful for the take of wildlife.
- Replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.
- Allow the use of ceramic and ceramic-coated broadheads.
- Replace references to "handguns using black powder or synthetic black powder" with "muzzleloading handguns" to make the rule more concise.
- Add foot pounds of energy requirements wherever a pre-charged pneumatic weapon is authorized for that species to reduce wounding loss and ensure the lethal and humane take of that species.
- Allow the use of pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal cutting edges and capable of firing a minimum of 250 feet per second, except bison and elk. This change is in response to customer comments received by the Department.
- Replace the term "buffalo" with "bison" to reflect current terminology used by the scientific community and make the rule more concise.
- Incorporate by reference the most recent version of 50 C.F.R. 20.21.
- Reference R12-4-422 where falconry is listed as a method of take because R12-4-422 establishes requirements and restrictions for the take of raptors and hunting with raptors.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-302, 17-307, 17-331, and 17-371

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

The objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of wildlife. The Commission's rule protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule was adopted to prevent the unlawful possession, transport, import,

export, or sale of wildlife and allow for lawful possession by establishing the methods for complying with governing statutes.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17, and A.A.C. Title 12, Chapter 4. However, to increase consistency between Commission rules, the Department proposes to amend the rule to require a person to attach a tag to the wildlife in the manner indicated on the tag.

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

The rule is currently being enforced as written. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

Under A.R.S. § 17-302(A), a landowner or lessee who is a livestock operator and who has recently had livestock attacked or killed by bear or mountain lion may lawfully exercise such measures as necessary to prevent further damage from the offending bear or mountain lion, including the taking of such bear or mountain lion; and further states that dogs may be used to facilitate the pursuit of the depredating bear or mountain lion. The statute also states that no portion of an animal taken pursuant to A.R.S. § 17-302 shall be retained or sold by any person except as authorized by the Commission. In response to comments made by hunters, the Commission amended R12-4-305(H) to allow a person who takes a depredating bear or mountain lion to retain the carcass provided the person has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag (unless the person has already taken the applicable bag limit for that big game animal). This change also prevented the animal from going to waste. In the past, to manage bear populations in certain management units, the Commission authorized nonpermit-tag hunts from March 21 to May 1 to allow hunters to harvest male bears with the assumption that the boars emerge from the dens first. The Department received a

call from a hunter with a permit-tag who wanted to hunt a bear that had depredated a landowner's calf. Unfortunately, because there was an open season and the hunter had a permit-tag, the hunter could hunt and kill the bear but could not keep the bear's carcass. The Department proposes to amend the rule to remove the phrase "during a closed season" to allow a person who possesses any valid bear or mountain lion tag to harvest the animal and prevent the bear or mountain lion, as applicable, from going to waste.

The current rule establishes the process by which a person who lawfully takes wildlife under a tag may authorize another person to possess the head or parts of the carcass. This process provides the person given the head or carcass with evidence of legality. Only big game are taken under a tag, which means the rule does not establish a process for wildlife lawfully taken without a tag, such as doves, waterfowl, sandhills cranes, and fish. The Department proposes to amend the rule to establish a process that allows a person to gift wildlife taken without a tag and enable the person receiving the wildlife to transport it to its final destination.

In addition, the Department proposes to amend the rule to specify the manner in which a person may provide evidence of legality for Eurasian collared-doves.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to replace the phrase "wild mammal, bird, or reptile" with "wildlife" to indicate the rule applies to all wildlife unless otherwise specified to make the rule more concise. In addition, the Department proposes to amend the rule to replace the term "buffalo" with "bison" to reflect terminology used by the scientific community.

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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to clarify the purpose and use of both the Carcass/Transportation/Shipping Permit and the Transportation and Shipping Permit; replace the term "bobcat permit-tag" with the term "bobcat seal" to incorporate amendments made to R12-4-307; require a trapper to obtain a bobcat seal within 10 days after the close of the season to ensure accurate biological and harvest data are maintained to better monitor bobcat populations within Arizona; establish requirements for the importation of a cervid, taken in another state and for the removal of a cervid lawfully killed or slaughtered at a game farm to reduce the likelihood of the introduction of Chronic Wasting Disease from nonnative cervids; and prohibit the transport of live crayfish and allow the sale of crayfish carcasses to aid in the conservation of native aquatic species. The Commission anticipated amendments made to establish bobcat seal requirements would impact persons regulated by the rule and the Department. Previously, only persons who wished to sell a bobcat pelt or unskinned carcass were required to obtain a bobcat seal. Often, a trapper would store their bobcat pelts until they were ready to sell them, sometimes years later when bobcat hide prices were high. Trappers would incur costs associated with time and effort to take the bobcat pelt or unskinned carcass to a Department office or other published location. The Commission anticipated the Department would incur costs associated with the increase in bobcat inspections. However, data indicates the same numbers of inspections are occurring; they are now conducted at the end of the season instead of over time. The Commission anticipated a person would incur costs associated with the preparation and packaging of the cervid carcass if the person chooses to use a commercial meat processing company to prepare the carcass. However, when compared to costs associated with an out-of-state hunt, these additional costs are minimal. Additional opportunities for the take and removal of nonnative crayfish were created by establishing guidelines for the collection, transportation, and sale of crayfish carcasses. The Commission anticipated persons regulated by the rule and the Department would benefit because crayfish have a negative impact on the state's native aquatic wildlife populations through competition, predation, or disease vectoring, and this activity will assist in conserving native aquatic species. The public would also benefit from the opportunity to take advantage of the ability to take, use, and/or sell nonnative crayfish.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes the requirements for the lawful possession, transport, import, export, or sale of wildlife. The intent of the rule is to prevent the unlawful possession, transport, import, export, and sale of wildlife and allow for lawful possession by prescribing the methods for complying with applicable governing statutes. The State, Department, and general public benefit from a rule that protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule benefits the Department, hunters, and those persons with interests in livestock operations where there are established populations of bear and mountain lion. Hunters and anglers benefit because the rule establishes proof of evidence of legality and provides a lawful option to give a portion of their take/catch to another person without violating law or rule. Hunters also have an additional opportunity to take and possess mountain lion or bear. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-305 as follows:

- Replace the phrase "wild mammal, bird, or reptile" with "wildlife" to indicate requirements apply to aquatic and terrestrial wildlife unless otherwise specified.
- Require a person to attach a tag to the wildlife in the manner indicated on the tag to increase consistency between Commission rules.
- Specify the manner in which a person may provide evidence of legality for Eurasian collared-doves.
- Remove the phrase "during a closed season" to allow a person who possesses any bear or mountain lion tag to harvest the animal and prevent a bear or mountain lion, as applicable, from going to waste.
- Establish a process that allows a person to gift wildlife taken without a tag to another person and enable the person receiving the wildlife to transport it to its final destination.
- Replace the term "buffalo" with "bison" to reflect terminology used by the scientific community.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-306. BUFFALO HUNT REQUIREMENTS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), and 17-233

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

The objective of the rule is to establish rules of practice governing bison hunts, which are conducted by the Department to harvest bison appropriate to management objectives and land carrying capacity. In Arizona, bison are found on two wildlife areas operated solely by the Department; Raymond, located east of Flagstaff, and House Rock, located east of the North Kaibab National Forest. Both wildlife areas are managed to provide viewing opportunities as well as hunting opportunity. The rule was adopted to ensure the Department manages these herds on a sustainable basis.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with 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.

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

In the past, the hunts on Raymond and House Rock were managed differently to allow the Department flexibility in how these hunts were conducted. Because the Department has more effective controls in place for these hunts, the Department proposes to amend the rule to combine bison hunt requirements into one subsection.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to amend the rule to replace the term "buffalo" with "bison" to reflect terminology used by the scientific community.

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 rule 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 has not received any written criticisms of the rule.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 26, 2013. The Commission anticipated the rulemaking would benefit the Department by allowing for more precise management of supplemental bison hunts.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

- 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 rule establishes rules of practice governing bison hunts, which are conducted by the Department to harvest bison appropriate to management objectives and land carrying capacity. A hunter who takes a bison, or their designee, is required to present the bison in person to the Department for inspection. The Department proposes to amend the rule to allow the hunter to check out either in person or by telephone to reduce the burden and costs on persons regulated by the rule. The Department is aware of electronic methods implemented by other fish and wildlife agencies that allow a person to check-in or check-out electronically, such as an online system or cell phone application. The Department intends to explore additional check-in and check-out methods to reduce the costs and burdens to persons regulated by the rule. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. However, there may be instances where a hunter will be required to present the bison in person; this is likely to occur when a Department employee does not accompany the hunter during hunts in Management Units 5A and 5B. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-306 as follows:

- Replace the term "buffalo" with "bison" to reflect terminology used by the scientific community.
- Combine bison hunt requirements under subsections (C) and (D) into one subsection to increase consistency and make the rule more concise.
- Replace the phrase "successful hunter" to "hunter who harvests," because the Department believes a harvest

is not required in order to have a successful hunt.

- Allow hunters who lawfully take a bison in Management Units 5A and 5B to check out by telephone, unless specifically required by the Commission through Commission Order. This change is in response to customer comments received by the Department.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-239, 17-301, 17-302, 17-333, 17-333.02, 17-361, and 17-371

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

The objective of the rule is to establish requirements and restrictions necessary to regulate trapping in a fair and humane manner with the utmost regard for wildlife management principles, safety, and trapping reporting requirements. Trapping is the use of a device to remotely catch an animal. Fur-bearing and predatory animals may be trapped for a variety of purposes, including food, the fur trade, pest control, and wildlife management. Trapping is a controversial activity and trappers must co-exist with house pets, backcountry recreationists, suburbanites, and ranchers. Under A.R.S. §17-301, it is unlawful to take wildlife with any leghold trap, instant kill body gripping design trap, or by a poison or a snare on any public land. The rule was adopted to establish requirements and restrictions to ensure responsible trapping and safeguard the future of trapping and ensure consistent interpretation of and compliance with A.R.S. §17-301.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

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

In 2013, the Legislature amended A.R.S. Title 17 to allow the Arizona Game and Fish Commission to establish license classifications and fees. As a result of the subsequent rulemaking, any person age 10 and older is required to possess a license in order to lawfully take wildlife. The Department proposes to amend the rule to require a person age 10 or older to possess a trapping license in order to trap in Arizona. Because A.R.S. § 17-333.02 requires a person applying for a trapping license to successfully complete a trapping education course before being issued a trapping license and trapping is exclusive to a niche group, the Department does not believe this change will have a significant impact on persons regulated by the rule. In addition, under A.R.S. § 17-361(D) a person who possesses a trapping license is required to submit a trapping report. However, a trapper under the age of 14 was not required to submit a trapping report because they were not required to possess a trapping license. Reducing the trapping license age requirement will enable the Department to gather additional valuable harvest data and increase consistency between license requirements.

The Department has amended license rules within Article 2 (licenses; permits; stamps; tags) and 4 (live wildlife) to increase consistency in format between application requirements. The Department proposes to amend the rule to reflect changes made to other license application rules to increase consistency between Commission rules.

The Department also proposes to amend the rule to incorporate other areas developed for public use as referenced under R12-4-321 to increase consistency between rules within Article 3.

In addition, under A.R.S. 17-309 and R12-4-303, a person is prohibited from conducting certain activities involving the take of wildlife within a specific distance from "an occupied farmhouse or other residence, cabin, lodge or building," while this rule references "occupied residence or building." The Department proposes to amend the rule to increase consistency between statute and Commission rule.

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

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to remove redundant language regarding the issuance of a trapping registration number. In addition, since the rule was last amended the Department implemented a new organizational structure; the Game Branch is now referred to as the Terrestrial Wildlife Branch. The Department proposes to amend the rule to reference the Terrestrial Wildlife Branch to make the rule more concise by referencing the appropriate Department program.

In addition, the Department is aware of some confusion as to what distance constitutes "one-half mile." The Department proposes to clarify this distance by also referencing this distance in yards (880).

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 rule 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 received the following written criticism(s) of the rule:

Written Comment: February 21, 2016. Considering the statewide use of cage (live) traps for all public land trapping, in which case the confined animal is safe from attacks of other predators, please consider a 48 hour check instead of the current daily visitation. Most cage traps are secluded and in the shade which is quite comfortable for them. **Additional comment:** Considering GMU 13a/13b are managed for "trophy" mule deer, with very limited tags issued each year, giving those units less hunter "traffic" especially after the deer hunting season. Please consider allowing the use of leghold traps on public lands in unit's 13a/13b. **Additional comment:** Considering that game fish are "taken" with "game bird" feathers (hackles on dry fly, etc.) please consider removing the restriction from the trapping regulations concerning use of "game bird" feathers in live cage traps.

Agency Response: A legislative amendment is required before the Department may change the inspection requirement. The requirement that a trapper check his or her traps daily is prescribed under A.R.S. § 17-361(B), which states all traps in use shall be inspected daily. Checking a trap daily can prevent the escape of an animal from a live trap, facilitate the release of non-target animals as soon as possible, reduce the risk of fur or trap theft, and reduce the risk of a predator taking the trapped animal. Under A.R.S. §17-301, it is unlawful to take

wildlife with any leg-hold trap, instant kill body gripping design trap, or by a poison or a snare on any public land. The use of feathers from either a game bird (i.e., quail, ducks, doves) or a nongame bird (i.e., blue jay, woodpeckers, flickers) are prohibited under A.R.S. § 17-309(A)(18) and R12-4-307(H)(1)(c). However, this restriction does not apply to feathers from pigeons, domestic fowl (such as chickens, white ducks or white turkeys) or feathers from a feather pillow; these feathers may be used both inside and outside a confinement trap.

Written Comment: January 12, 2017. I am a retired scientist who worked 23 years studying birds for the U.S. Department of Interior. I have hunted and fished since the age of 10 and I have trapped a bit. I have no objection to hunting, fishing, or trapping when done properly. I also know how important wildlife management is to maintaining many wildlife populations around the world. I live in the foothills of the Santa Catalina Mountains where coyotes, javelina, and white-tail deer are common and where bobcats are seen rarely. I discovered this winter that a trapper was regularly placing his cage traps (live traps) for bobcats within 100 yards of private property. One of five traps I found was less than one inch of a property fence and ten feet from a bench. I've talked to the three landowners closest to four of the trap locations. All of them don't want the local bobcats killed. Some of my neighbors and I have, to a degree, acclimated the bobcats so they can be approached. I once stalked to 32 feet from a bobcat and all it did was, at that point, crouch. A few times in 2016 I saw bobcats pass by me within 100 feet. The cats learn to not fear man, then the local trapper takes advantage of their tameness and traps them. Were you to agree with my recommendation and disallow live trapping within 0.5 miles of private property (unless landowner and any other landowners within 0.5 miles allows the trapping), it would be much less likely for half tame cats to be taken from their human friends. Leg-hold trapping is already disallowed near objecting humans. You may decide that 0.5 mile is not the right distance, but I hope you chose a distance that is at least 0.5 mile. I know only of the circumstances near my home but suspect the problem is general, and that many hundreds of landowners are not aware that their local bobcats are being more easily removed because of their close association with admiring humans.

Agency Response: The activity you described is already prohibited. Under R12-4-307(H)(2)(b), a person shall not set a trap within one-half mile of any occupied residence or building without permission of the owner or resident.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 26, 2013.

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 comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes requirements and restrictions to ensure responsible trapping and safeguard the future of trapping. Fur-bearing and predatory animals may be trapped for a variety of purposes, including food, the fur trade, pest control, and wildlife management. The Department issues the following trapping licenses: approximately 30 Resident and Nonresident Youth Trapping License (\$10) on an annual basis; approximately 390 Resident Trapping License (\$30) on an annual basis; and approximately 25 Nonresident Trapping License (\$275) on an annual basis. A trapper who takes bobcat is required to obtain a bobcat seal (\$3); the Department issues approximately 1,720 bobcat seals on an annual basis. A trapper is required to obtain a bobcat seal to comply with Convention on International Trade in Endangered Species (CITES), assist the Department in recording population and biological information that helps in management decisions, and provide a mechanism that allows the trapper to sell, transfer, or export the bobcat pelt. In the past, a trapper was required to obtain a bobcat seal only if the trapper was exporting the bobcat carcass or pelt out of state. This did not provide an

accurate accounting of the number of bobcats taken in Arizona in any given year. In order to obtain biological data in a useful manner, the rule was amended to require a trapper to obtain a bobcat seal within 10 days of the close of the trapping season. The Department proposes to amend the rule to require a trapper to ensure a bobcat seal is attached to a bobcat no later than April 1 of each year to reduce the burden on persons regulated by the rule; this is approximately 30 days after the close of the trapping season and coincides with the date the annual trapping report is due. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule complies with A.R.S. § 41-1037. The trapping license and bobcat seal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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 R12-4-307 as follows:

- Remove redundant language to make the rule more concise.
- Require a person age 10 or older to possess a trapping license in order to trap in Arizona to increase consistency between Commission rules.
- Require a person under 10 years of age to obtain a trapper registration number.
- Reflect changes made to other license application rules to increase consistency between Commission rules.
- Reference the one-half mile distance in yards (880) to make the rule more concise.
- Replace "occupied residence or building" with "an occupied farmhouse or other residence, cabin, lodge or building," to increase consistency between statute and Commission rule.
- Incorporate "developed wildlife viewing platform" and boat "ramp" as referenced under R12-4-321 to increase consistency between rules within Article 3.
- Require a trapper to ensure a bobcat seal is attached to a bobcat no later than April 1 of each year to reduce the burden on persons regulated by the rule.
- Reference the Terrestrial Wildlife Branch to make the rule more concise by referencing the appropriate

Department program.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-211(D), 17-211(E)(4), 17-231(A)(3), 17-231(A)(4), 17-250(A)(4), 17-301, 17-307, 17-331, and 17-333

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

The objective for the rule is to establish requirements for wildlife check stations and wildlife inspections, as authorized by the Director. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. Under A.R.S. § 17-211(E), game rangers and wildlife managers may inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-211(E) and all applicable laws and rules.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective. The rule was reviewed with regard to biological data gathering needs as well as necessary measures to ensure compliance with state wildlife laws and no additions were deemed necessary.

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 rule is consistent with and is not in conflict with 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.

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department believes that a successful hunt does not mean a hunter has to harvest wildlife; whether a person bags a bull elk, a spike deer, a limit of dove, or goes home empty-handed, the Department believes the times spent in the field with friends and family are some of the best times a person can ever have. The Department proposes to amend the rule to replace the phrase "successful hunter" to "hunter who harvests" because the Department believes a harvest is not required in order to have a successful hunt.

In addition, the Department proposes to replace the phrase "produce and display any license, tag, stamp, or permit required for taking or transporting wildlife" with "provide evidence of legality as defined under R12-4-301" 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 received the following written criticism(s) of the rule:

Written Comment: January 8, 2015. The Department should count the harvest of big game species by requiring a mandatory hunter check in by phone or online. I harvested an elk this season and the Department would have no way of knowing that.

Agency Response: The Department mails voluntary questionnaires to all hunt permit-tag holders for all permitted hunts. This method is used to develop a statistical analysis of total harvest for a given hunt at a minimal cost and with minimal manpower expended. Under specific circumstances where special management objectives are desired, check stations with mandatory check out of all harvested animals are implemented.

However, the Department continues to evaluate the feasibility of implementing a mandatory hunter questionnaire as new technologies emerge. At this time, a mandatory check out process would place additional burdens on persons regulated by the rule.

Written Comment: January 12, 2015. Last year, I successfully hunted a black bear in Unit 8. My husband and I took off a day of work so that we could start hunting on opening morning. After two long days of hunting, I killed a bear. Because of the current regulations, there was a mandatory "check in" for any bears killed during the hunt. I completely support and understand this process. However, because check-in facilities are not open during the weekend, this poses an inconvenience to hunters. A person must present the bear for inspection during the week, during business hours. This forces sportsmen and women to take a day off, just to report their kill. I work from 7:00 a.m. to 5:00 p.m. and my husband works out of town during the week. How can we bring the bear to an office for inspection within the allotted time without taking another day off? We would rather save those precious days off for another opportunity to hunt. We actually had to enlist a friend, who took the day off to take my bear to an office for inspection. I would like to propose that during bear hunts, when a check in is required, that some stations are established to bring harvested animals to for check in. Or, perhaps Department hours could be extended to include evening hours during the week to process the bears.

Agency Response: A hunter who has harvested a bear is required to check-out by phone or in person within 48 hours. This requirement allows the Department to close a bear hunt as soon as the harvest objective has been reached. Once the initial objective is reached, the hunter is required to present the skull, hide and proof of sex for inspection within 10 days of harvest. This requirement allows the Department to gather valuable biological data with regard to wildlife health and composition. The Department believes 10 days provides a reasonable amount of time for the hunter or designee to arrange for an inspection at one of the Department offices. Extending Department hours of operation, or establishing temporary check stations to accommodate the few hunters that may not be able to come to a Department office during the week, would add substantial operating costs to the Department. This may have unintended consequences and detract from other critical operations necessary to manage wildlife for the public's benefit. However, it is important to note, when circumstances prevent a hunter from presenting his or her animal within the initial 10-day period, the Department may work with the hunter to schedule an appointment to inspect the animal, provided the hunter telephones the Department before the initial 10-day time period has passed.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove the requirement

that a person who takes a deer, elk, pronghorn antelope, or bison under a special big game license tag to submit the skull or skullcap for inspection and photographing; establish bobcat seal requirements; and allow the Department to conduct inspections of all lawfully taken wildlife. The Commission anticipated the rulemaking would benefit persons regulated by the rule by removing the requirement for successful special big game license tag hunters to physically check harvested deer, elk, pronghorn antelope, or bison and allow hunters to provide harvest information by telephone or in person.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes requirements for wildlife check stations and wildlife inspections, as authorized by the Director. Under A.R.S. § 17-211(E), game rangers and wildlife managers may inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. The Department is aware of electronic methods implemented by other fish and wildlife agencies that

allow a person to check-in or check-out electronically, such as an online system or cell phone application. The Department intends to explore additional check-in and check-out methods to reduce the costs and burdens to persons regulated by the rule. The rule benefits the public and persons regulated by the rule by authorizing the Department to establish inspections, check stations, and roadblocks for the purposes of gathering the biological data essential for managing the State's wildlife and verifying compliance with state wildlife laws. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-308 as follows:

- Replace the phrase "successful hunter" to "hunter who harvests," because the Department believes a harvest is not required in order to have a successful hunt.
- Replace the phrase "produce and display any license, tag, stamp, or permit required for taking or transporting wildlife" with "provide evidence of legality as defined under R12-4-301" to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish the restrictions, application, reporting, and exemption from requirements for the authorization for use of drugs on wildlife, including but not limited to, fertility drugs, growth hormones, and tranquilizers. Such drugs are used in research and population management for fertility control, disease prevention or treatment, immobilization, or growth stimulation. Before adopting this rule, the Department was made aware other jurisdictions within the U.S. that were experiencing issues resulting from the use of drugs on wildlife that negatively impacted that jurisdiction's public health and wildlife. Those jurisdictions had to reactively enact regulations to address those negative impacts. The rule was adopted to proactively provide the Department with measures designed to ensure the necessary regulatory measures are in place for the use of drugs on wildlife.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

The Department proposes to amend the rule to require a person applying for authorization to use drugs on wildlife to indemnify the department against any injury or damage resulting from the use of animal drugs in light of recent law suits taking place at the federal level.

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 rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

However, other rules that require a person to present a license, stamp, permit, or authorization to members of law enforcement also reference "wildlife manager" and "game ranger." The Department proposes to reference "wildlife manager" and "game ranger" to increase consistency between Commission rules.

In 2013, R12-4-428 (captivity standards) was amended to remove veterinary inspection requirement from R12-4-428 and place the inspection requirement only in those rules where an inspection should be required; R12-4-413 (game farms) and R12-4-420 (zoos). The Department proposes to amend the rule to replace the reference to R12-4-428 with R12-4-413 and R12-4-420 to make the rule more concise and increase consistency between Commission rules.

In 2015, Article 4 special license rules were amended to notice license holders that a special license does not exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize the license holder to engage in any activity using wildlife that is protected by federal regulation. The Department proposes to amend the rule to state the authorization does not exempt a person from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize a person to engage in any activity using wildlife that is protected by federal regulation to increase consistency between Commission rules.

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

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

The Department proposes to amend the rule to remove the requirement that the applicant include information regarding federal approvals and/or permits in the required plan because having this language in rule implies the Department verifies that the applicant possesses all of the necessary approvals and/or permits and that those approvals and/or permits are valid. The Department believes it is the applicant's responsibility to ensure they apply for and obtain all required federal approvals and/or permits.

The Department proposes to amend the rule to require the written endorsement to be signed by a person who has the authority to sign documents on behalf of a government agency, university, or institution to ensure the applicant has sufficient permission to conduct the activities noted on the application and associated documents.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to establish due dates for the annual and final report 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 rule 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 has not received any written criticisms of the rule.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 26, 2013. The Commission anticipated amendments made to R12-4-309 would benefit persons regulated by the rule and the Department by ensuring the rule did not negatively affect operations where the use of drugs on domestic animals or wildlife is regulated by another agency.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.

- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes restrictions, application, reporting, and exemption requirements for the authorization for use of drugs on wildlife to ensure the Department has the necessary proactive regulatory measures in place for the use of drugs on wildlife. The public and the Department benefit from a rule that establishes the criteria and standards that must be achieved by a person requesting authorization to use drugs on wildlife. The rule provides the regulatory measures necessary to protect public health and safety and the protection and preservation of Arizona's wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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 R12-4-309 as follows:

- Establish the authorization does not exempt the person issued an authorization to use drugs on wildlife from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize the license holder to engage in any activity using wildlife that is protected by federal regulation.
- Remove the requirement that the applicant include information regarding federal approvals and/or permits in the required plan because having this language in rule implies the Department verifies that the applicant

possesses all of the necessary approvals and/or permits in place and that those approvals and/or permits are valid. The Department believes it is the applicant's responsibility to ensure they apply for and obtain all required federal approvals and/or permits.

- Reference "wildlife manager" and "game ranger" to increase consistency between Commission rules.
- Establish due dates for the annual and final report to make the rule more concise.
- Replace the reference to R12-4-428 with R12-4-413 and R12-4-420 to make the rule more concise.
- Require the written endorsement to be signed by a person who has the authority to sign documents on behalf of a government agency, university, or institution to ensure the applicant has sufficient permission to conduct the activities noted on the application and associated documents.
- Require the person with authorization to indemnify the Department against any injury or damage resulting from the use of animal drugs.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-310. FISHING PERMITS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-301, 17-331, and 17-333

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

The objective of the rule is to establish requirements for the fishing permit available to governmental agencies and nonprofit organizations that provide rehabilitation and treatment services for persons with disabilities. The Commission recognizes fishing and hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. The rule was adopted to permit these agencies to provide outdoor fishing opportunities to persons with physical, developmental, or mental disabilities, without requiring them to obtain a fishing license.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any

written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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

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

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

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the rule to replace the reference to "lesson plan" with "curriculum outline" to make the rule more concise. The Department's Education Branch is responsible for the issuance of the fishing permit; their internal documents and outreach information refers to the instructional document as a curriculum outline, rather than a lesson plan: a lesson plan is a detailed description of topics to be covered in a single class (to include what information is provided when); a curriculum outline establishes the key points that must be covered in a single class. The order and manner in which the instruction is provided should be left to the judgment of the instructor as more or less information on a particular key point may be required depending on the individuals receiving the instruction. The Department proposes to replace the term "lesson plan" with curriculum outline" 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 has not received any written criticisms of the rule.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to clarify that the rule does not apply to aquaculture facilities administered by the U.S. Fish and Wildlife Service, commercial facilities operating under a valid license from the Department of Agriculture, and the use of supplements as part of conventional livestock operations. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by ensuring the rule would not negatively affect operations where the use of drugs on domestic animals or wildlife is regulated by another agency.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

- 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 rule establishes requirements for a fishing permit available to governmental agencies and nonprofit organizations to provide fishing opportunities to persons with physical, developmental, or mental disabilities. The Commission recognizes fishing and hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. The rule was adopted to permit these agencies to provide outdoor fishing opportunities to persons with physical, developmental, or mental disabilities, without requiring them to obtain a fishing license. The Department issues approximately 90 no-fee fishing permits on an annual basis. The information required, for both the application and report, is minimal. In 2013, the rule was amended to remove the one-hour educational instruction requirement to reduce the burden and costs to persons regulated by the rule. The Department's Education Branch is responsible for the issuance of the fishing permit. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule complies with A.R.S. § 41-1037. The permits described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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 R12-4-310 as follows:

- Replace the term "individual" with "person," to increase consistency between Commission rules. Under A.R.S. § 1-215, "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.
- Replace the reference to "lesson plan" with "curriculum outline" to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-301, 17-331, and 17-335

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

The objective of the rule is to establish the circumstances under which a person is not required to possess a fishing or hunting license while taking wildlife. A.R.S. § 17-331 states, “Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase.” The rule was adopted to identify the circumstances under which a fishing or hunting license is not required due to statutory exemptions or when determined necessary by the Commission. The Commission recognizes fishing or hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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

A.R.S. § 17-215 states, each employee and volunteer who has contact with children or vulnerable adults as part of their regular duties must have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or provide the department documentation of the person's application for a fingerprint clearance card. The

Department proposes to amend the rule to allow a person to provide documentation of the person's application for a fingerprint clearance card as prescribed under A.R.S. § 17-215.

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

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

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the rule to reference "trapping license" as one of the licenses that may be revoked by the Commission; provide examples of terrestrial mollusks and crustaceans; and remove the reference to "sport fishing contractor" as the Department no longer contracts this service 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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to clarify the meaning of "private waters," the taking of live terrestrial mollusks or crustaceans from private property, that free fishing opportunities do not apply to waters of the Colorado River and portions of Lake Powell, and that a sanctioned fishing program and authorized volunteer instructor requirements to ensure fishing education programs are

conducted in the manner approved by the Department; include any Saturday during National Fishing and Boating Week; and establish a hunting license exemption for persons participating in an introductory hunting event organized, sponsored or sanctioned by the Department. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by clarifying fishing license exemptions and reducing barriers for persons who are interested in participating in fishing or hunting education events.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes the circumstances under which a fishing or hunting license is not required. The Commission recognizes fishing or hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. Data suggests the future of fishing, hunting, and shooting sports is uncertain. The number of active anglers, hunters, and sport shooters has decreased in the U.S., and fewer young people are entering these sports. However, while data indicates that participation in the U.S. has been declining, there are strategies that

the Department can pursue to retain and recruit anglers, hunters, and shooters in these sports. Qualitative research indicates a non-angler's, non-hunter's, and non-shooter's willingness to at least consider these sports is influenced by participating in an introductory program that the participant knows is conducted in a safe and controlled manner and is free of charge. The Department and the public benefit from a rule that introduces the public to the sports of angling and hunting. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-311 as follows:

- Reference "trapping license" as one of the licenses that may be revoked by the Commission to reflect current practices.
- Provide examples of terrestrial mollusks and crustaceans to make the rule more concise.
- Remove the reference to "sport fishing contractor" as the Department no longer contracts this service.
- Establish that a person may provide documentation of the person's application for a fingerprint clearance card when they are still waiting to receive their fingerprint clearance card to increase consistency between statute and rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(5), 17-232, and 17-301

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

The objective of the rule is to establish lawful devices and methods a person may use to take aquatic wildlife during seasons established by Commission Order. A.R.S. § 17-301 authorizes the Commission to determine lawful methods for the taking of fish. The rule was adopted to establish additional devices and methods by which a person may lawfully take aquatic wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

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

Because scientific terms are italicized in other Commission rules, the Department proposes to italicize scientific terms referenced in this rule to increase consistency in formatting with other Commission rules. In addition, A.R.S. § 17-236(C) and R12-4-307 prohibit a person from knowingly disturbing a person's trap without the owner's permission. The Department proposes to amend the rule to prohibit a person from knowingly disturbing a person's trap unless authorized to do so by the owner to increase consistency between statute and rule.

In addition, under A.R.S. § 17-211(E)(4), a game ranger may seize all wildlife taken or possessed in violation of law or showing evidence of illegal taking. The Department proposes to amend the rule to state aquatic wildlife taken in violation of Title 17 or this rule is unlawfully taken.

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

The rule is currently being enforced. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation. However, inconsistent enforcement occurs due to differing interpretations of the definition of artificial flies and lures in regard to scented, flavored, and/or chemically treated "lures." Some officers believe the use of scented, flavored, and chemically treated products is prohibited because of the wording "intended as visual attractants" implies that the devices should not include olfactory or taste attractants. Other officers do not believe they are prohibited because the wording does not clearly prohibit them. The Department believes amending the definition of artificial flies and lures will ensure consistent interpretation and enforcement.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to amend the rule to state a person may not use more than two lines at any one time while fishing to facilitate a consistent interpretation of simultaneous fishing.

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 received the following written criticism(s) of the rule:

Written Comment: July 22, 2013. I would like to voice my opinion on bow fishing for catfish; please do not let that law pass. It would devastate our catfish population. If they can go out and find 1,700 pounds of carp in one night; they could to the same or more in one night if a big group of them go out and bowfish.

Agency Response: This comment is in response to a 2013 rulemaking (see 19 A.A.R. 826, April 26, 2013), but it was received after the final rulemaking already had become effective (July 1, 2013). The Commission received a petition asking to allow the use of bow and arrow for the take of catfish. The Commission directed the Department to evaluate bow and arrow for the take of catfish during the next rule review. The Department considered the implications of allowing the use of bow and arrow for the take of catfish and determined this method would not have an impact on catfish populations and recommended amending the rule to allow the take of catfish with a bow and arrow when authorized by Commission Order. The Commission took a cautious approach and authorized the use of bow and arrow for the take of catfish in specific waters. Fish population

surveys and an angler survey at Roosevelt Lake in 2014 did not indicate this method has a negative impact to catfish populations at the reservoir. While some persons believe allowing the use of bow and arrow for the take of catfish would greatly impact catfish populations, surveys conducted by Department employees indicate allowing archery or crossbow as a lawful method to take catfish has not significantly impacted the resource and provides additional recreational sport harvest opportunity for those persons who choose to use this method of take.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to allow the use of bow and arrow or crossbow for the take of catfish, where designated by Commission Order, allow the Commission to open seasons limited to specific locations and specific times for the take of catfish with bow and arrow or crossbow; and allow the use of pneumatic weapons for the take of bullfrogs. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by providing authorizing additional lawful devices and methods to take aquatic wildlife.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.

- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes lawful devices and methods a person may use to take aquatic wildlife during seasons established by Commission Order. Under A.R.S. § 17-301, fish may be taken only by angling unless otherwise provided by the Commission. The Department and persons regulated by the rule benefit from a rule that establishes the lawful devices and methods by which a person may lawfully take aquatic wildlife. The Department proposes to amend the rule to prohibit a person from snagging aquatic wildlife or using a bow and arrow, crossbow, snare, gig, spear or spear gun within 200 yards of a designated swimming area, as indicated by way of posted signs or notices, and fishing pier to protect public health and safety. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-313 as follows:

- Italicize scientific terms referenced in this rule to increase consistency in formatting with other Commission rules.
- Clarify a person may not use more than two lines at any one time while fishing to facilitate a consistent interpretation of simultaneous fishing.

- Prohibit a person from snagging aquatic wildlife or using a bow and arrow, crossbow, snare, gig, spear or spear gun within 200 yards of a designated swimming area, indicated by way of posted signs or notices, to protect public health and safety.
- Prohibit a person from using a bow and arrow, crossbow, snare, gig, spear or spear gun within 200 yards of a fishing pier to protect public health and safety.
- State aquatic wildlife taken in violation of this rule is unlawfully taken to clarify that only those methods authorized by statute and rule are lawful for the take of aquatic wildlife.
- Prohibit a person from knowingly disturbing the crayfish net or minnow trap of another unless authorized to do so by the owner to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to establish requirements necessary for the temporary possession of live fish. All freshwater game fish are listed as restricted live wildlife. Under R12-4-406, a person must possess a valid special license and any required federal authorization or have a lawful exemption in order to lawfully possess restricted live wildlife. The rule was adopted to provide a lawful mechanism by which a person can temporarily hold live freshwater game fish.

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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

Under A.R.S. § 17-236(C) and R12-4-307, a person is prohibited from disturbing the trap of another unless permitted by the owner. The Department proposes to amend the rule to prohibit a person from knowingly disturbing the trap of another unless authorized to do so by the owner to increase consistency between statute and Commission rules.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 rule 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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to comply with the Arizona

Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or persons regulated by the rule.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes requirements for the temporary possession of live fish. Under R12-4-406, a person must possess a valid special license and any required federal authorization or have a lawful exemption in order to lawfully possess restricted live wildlife; all game fish are considered restricted live wildlife. The rule benefits person by providing a lawful exemption under which a person can temporarily hold live freshwater game fish. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-315 to prohibit a person from knowingly disturbing the live box or stringer of another unless authorized to do so by the owner to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

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

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

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

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove red shiner from the list of baitfish that can be lawfully imported, transported, and possessed by live anglers. The Department was concerned that bait dealers selling red shiner as baitfish could be affected by the proposed change. Before amending the rule, the Department contacted all currently licensed live bait dealers in an effort to determine whether they sold red shiner and the potential impact this change may have on their live bait businesses. The Department learned that none of the live bait dealers sold red shiner. The Commission anticipated the rulemaking would benefit the Department and persons regulated by the rule by controlling the introduction of undesirable species and lessening the probability of baitfish, crayfish, and waterdogs being released in waters where they have the potential to become established and compete with existing and native aquatic wildlife and harm native habitat.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule establishes restrictions and requirements that allow Department to achieve management plans for aquatic wildlife, while providing wildlife-oriented hunt opportunities for the public. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-316 to make nonsubstantive formatting change to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-234, and 17-301

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

The objective of the rule is to establish special restrictions and requirements for various seasons to allow the Department to achieve management plans and goals for the preservation and harvest of aquatic wildlife, while providing maximum hunt opportunities for the public. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

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

Overall, the rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

However, a number of internal comments indicate there are unintentional consequences associated with the rule. The term "single barbless hook" can be interpreted to represent a hook with more than one point, such as a treble hook which is a single hook with three points. The use of treble hooks is causing unacceptable mortality rates of released trout in some catch-and-release waters. The Department proposes to amend the rule to define "single-point barbless hook" to address fish mortality issues, particularly involving trout because they tend to gulp the hook deeper, resulting in a 30 to 90% mortality rate after being released, depending upon whether the hook is removed or the line is cut.

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

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 rule 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 received the following written criticism(s) of the rule:

Written Comment: October 9, 2014. Since crayfish are an invasive species, I suggest the Department remove the fishing license requirement or offer a low cost option for harvesting them. I would love to help out with this problem, but the Arizona fishing license is too expensive for me.

Agency Response: The Department disagrees. The activity described is "take" as defined under A.R.S. §17-101 and requires either a fishing license or special license issued under Article 4 (live wildlife). An Arizona general fishing license costs \$37 for a resident and \$55 for a nonresident. The fishing license is valid for the year-round take of aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The license authorizes a license holder to take aquatic wildlife statewide, including Mittry Lake and Topock Marsh, the Arizona shoreline of Lake Mead, Lake Mohave, Lake Havasu, and Commission-designated community waters. When fish purchased in a market typically cost upward of \$3.99 per pound, and crayfish purchased in a market cost upward of \$5.99 per pound, the value of the Arizona fishing license is greater than the cost of the fishing license.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to ensure compliance with the Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or persons regulated by the rule.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

- 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 rule establishes restrictions and requirements that allow Department to achieve management plans for aquatic wildlife, while providing wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. The Department and persons regulated by the rule benefit from a rule that establishes requirements for the various angling structures. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-317 as follows:

- Establish the Commission's authority to limit a "catch and immediate release" season to the use of a single-point barbless hook, thereby providing the Commission with the authority and flexibility to effectively manage state resources.
- Reverse the terms "flies" and "lures" to reflect language used in Commission Orders and public outreach materials.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-234, 17-235, 17-251, 17-301, 17-305, 17-307, 17-333, 17-346, and 17-371(D)

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

The objective of the rule is to establish special restrictions and requirements for various hunt structures in order to allow the Department to achieve management goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

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

The rule appears 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. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

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

The Department proposes to amend the rule to add foot pounds of energy requirements wherever a pre-charged pneumatic weapon is authorized for that season to increase consistency between rules within Article 3.

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

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the rule to reference rules where lawful devices are defined to ensure consistent interpretation of terms used within Commission Orders and rules and make the rule more concise.

In the current rule, R12-4-301 is referenced under each season. The Department proposes to amend the rule to reference R12-4-301 under subsection (A). The Department proposes to amend the rule to reference "muzzleloading handguns" under subsection (C)(7) to ensure persons regulated by the rule are aware that only a muzzleloading handgun is lawful under that season and 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 rule 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 received the following written criticism(s) of the rule:

Written Comment: January 23, 2013. I would like to propose the Department establish a traditional archery season; just like muzzleloader is to rifles; traditional is to modern compounds. The Department could sell more tags during the high demand seasons and still have reduced harvests (i.e., more revenue per big game animal). I am not sure, but I do not think any other state's do this, so Arizona could possibly pioneer it. This would please the traditional archers and possibly draw a new crowd. I do not know details, but it is an idea to consider.

Agency Response: The Department carefully balances demand among archery, muzzleloader, and general seasons. It is the Department's goal to establish seasons that provide desirable hunt structures or more opportunity for hunters. Based on hunter questionnaire data, 96% of archery deer hunters and 98% of archery elk hunters choose to hunt with a compound bow; less than 4% of archery deer and elk hunters choose to hunt with a primitive bow (e.g., recurve or long bow). Pragmatically, hunters already have seasons delineated in which the various weapon types may be used and a person may choose the weapon types they prefer.

Written Comment: January 9, 2015. Allocate a pioneer hunt in a few units for general rifle antelope, rifle elk and rifle deer or tags can be allocated to pioneer license holders. The hunt can occur during the general rifle hunt, but the permits would be allocated to older hunters who possess a Pioneer License. There was an increase in antelope permits for this year in a number of units; these permits could have been allocated to Pioneer Licenses holders. I truly believe that these older hunters have a limited amount of time left to hunt.

Agency Response: The Department believes the random draw process provides an equitable allocation of hunt permit-tags to all persons, regardless of age. Creating additional methods for issuing big game hunt permit-tags would not only be discriminatory, it is inconsistent with the Department's hunter retention efforts. The Department strives to encourage participation in a greater diversity of wildlife opportunities outside of big game hunting.

Written Comment: February 14, 2016. I wish the Department would combine the youth hunt drawings with the main hunt drawing so youth applicants are in the drawing with everyone else. If a youth draws a tag, they can have a separate season that is a separate season or an extension of the main season, perhaps into the following weekend. To allocate permits to any one group of persons provides them an unfair advantage and is

not fair to everyone else.

Agency Response: The Commission disagrees. The Commission believes providing youth with hunting opportunities is not only designed to recruit new hunters, but also to retain them.

Written Comment: July 3, 2013. I suggest adding shotguns shooting slugs to the javelina HAM hunt. Their range is less than that of a modern muzzleloader and it gives a person more shots, but not nearly the number of shots as a semi-automatic handgun. Most hunters already have a shotgun; we start our youth off dove hunting with shotguns. A person can use the same gun, so it keeps cost of youth hunts down. It would be perfect for the youth hunt; the maximum gauge could be 20-28-410 for the youth hunt. No buckshot would be allowed due to the collateral damage it may cause. The Department could call it a HAMS hunt (Handgun-Archery-Muzzleloader-Shotguns). Since the Department has already increased the number of tags available and the bag limit for javelina; this might increase the overall harvest. It could be used every other year or so for areas that are overpopulated. I have hunted javelina with a handgun and a muzzleloader for over 20 years. I regularly hunt in a group of four and all of us would rather hunt javelina than elk. After you take an elk, hours of work begins. With javelina, you are back to the vehicle in 45 minutes with a dressed javelina. Spice this hunt up, brag about it, "new and exciting way to take javelina."

Agency Response: The Department disagrees; a shotgun shooting slugs is capable of firing multiple shots, which provides an advantage to the hunter and increases the risk of shooting multiple javelina.

The following comments are from persons interested in allowing the use of crossbows during an archery-only season:

Written Comment: July 1, 2015. I think crossbow should be able to be used during archery-only seasons for persons over 65.

Written Comment: January 7, 2015. Possibly 22 other states allow the use of crossbows during a general archery season, either for part or all of it. I would like the Department to consider allowing the use of a crossbow during the archery-only season. One of the reasons for doing so is the crossbow has less of a learning curve. The purchase of crossbows in this state and their accessories would add revenue to the Pittman and Robertson fund and would get more people into the woods generating tourism revenue at the local level as well.

Agency Response: The Department disagrees. Crossbows generally fire with higher levels of kinetic energy, more speed and greater accuracy, providing an advantage to a hunter who uses a crossbow over one that uses a bow and arrow. At this time, crossbows may be used during general season for the take of big game, small game, predators, furbearers, nongame, and the handgun, archery and muzzleloader (HAM) season for the take of javelina. In addition, a person with a crossbow permit issued under R12-4-216 may use a crossbow during an

archery-only hunt.

The following comments are from persons interested in a primitive style muzzleloader season:

Written Comment: July 3, 2013. Muzzleloaders should be limited to primitive-style muzzleloaders. The inline/sabot muzzleloaders, which can accurately fire out to 250 yards and are rapidly reloaded, should not be allowed. These muzzleloaders defeat the purpose of muzzleloader-specific seasons and reduce the odds for true muzzleloader hunters who enjoy a primitive hunt. Limiting the hunts to primitive muzzleloaders also would allow more hunters in the field.

Written Comment: April 25, 2014. What kind of wildlife future we are going to have in Arizona this century, and into the next century? This question was posed by Mr. Voyles in a great message concerning the last wild jaguar in Arizona. It has been a long ride from 1974 to 2014, back when I first started hunting with a muzzleloading rifle; hunting with a soot-burner made us feel kin to Crockett, Boone and Bridger. Back then, muzzleloading hunters represented a tiny fraction of all hunters. Today, the majority of the estimated 4 million muzzleloader hunters do so to take advantage of special muzzleloader-only seasons. The modern muzzleloader hunter uses a muzzleloader that no longer has anything to do with a primitive challenge; some don't use black powder and others use a .45 caliber bullet, which can result in a muzzleloader that is accurate out to 500 yards. If this overlooked lack of ethics and fair chase continues it will only serve to further deteriorate the caliber of tomorrow's hunter.

Oral Comment: October 27, 2014. (submitted during a public meeting) I would like to see the Round Valley limited hunts continue as I really enjoy them and can easily get drawn for the tags available in Round Valley. The hunts provide a long enough period of time for me to get out and figure out the elk in those areas. I would like to propose the Department make them muzzleloader hunts. I love hunting with a muzzleloader and would like the Department to limit the types of muzzleloaders or technology associated with muzzleloaders to make them a more primitive weapon.

Agency Response: The Department carefully balances demand among archery, muzzleloader, and general seasons. If the Department were to add a "primitive muzzleloader" season (e.g. flintlock only with no scope), balancing demand and harvest would result in a hunting structure that is more complex. The Department benchmarked with other states that have a restricted muzzleloader season and learned that a majority of those states only restrict sights and scope magnification. The Department also surveyed all muzzleloader hunters who drew a tag for a muzzleloader hunt in the past five years to determine whether a limited weapon muzzleloader season is supported by the majority of muzzleloader hunters. The responses indicate the majority of muzzleloader hunters (82.2%) are not in favor of a primitive muzzleloader season.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove language referencing the possession of a personal protection handgun. The Commission anticipated the rulemaking would benefit the Department by aligning the rule with statute; and persons regulated by the rule by allowing them to carry non-hunting handguns for personal protection.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

- 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 rule establishes special restrictions and requirements for various hunt structures in order to allow the Department to achieve management plans and goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. The Department proposes to amend the rule to place the lists of devices and methods listed under each season by the range of effectiveness, from greatest range to least range to assist persons regulated by the rule; knowing which devices and methods are most effective may aid a person in choosing a device or method for their hunt. The Department proposes to amend the rule to allow a person to use a single shot pre-charged pneumatic weapon discharging a single projectile .35 caliber or larger as a lawful method of take during a "handgun, archery, and muzzleloader (HAM)" season to provide persons regulated by the rule additional hunter opportunity. The Department and persons regulated by the rule benefit from a rule that establishes and requirements for various hunt structures. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-318 as follows:

- Reference rules that define lawful devices to make the rule more concise and ensure consistent interpretation of term used within Commission Orders and rules.
- Provide the lists of devices and methods listed under each season by the range of effectiveness, from greatest range to least range.
- Add single shot pre-charged pneumatic weapons discharging a single projectile .35 caliber or larger with a required minimum of 100 foot pounds of energy as a lawful method of take during a "handgun, archery, and muzzleloader (HAM)" season to provide persons regulated by the rule additional hunter opportunity.

- Add foot pounds of energy requirements wherever a pre-charged pneumatic weapon is authorized for that season to increase consistency between rules.

The Department proposes to amend R12-4-318 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by April 2018.

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

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

Authorizing statute: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to prohibit the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, “A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission.” The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

The Department proposes to amend the definitions for "aircraft" to address the use of drones. Drones are considered "aircraft" by the Federal Aviation Administration. In recent years, the availability and use of drones has increased significantly. As a result of a survey conducted by a consulting firm, the Teal Group, it is estimated that about two million consumer drones, or unmanned aerial systems, will be sold worldwide in 2016 alone with one-third of them being purchased in the U.S.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 rule 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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to ensure compliance with the Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or persons regulated by the rule.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule prohibits the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Department proposes to amend the rule to provide further clarity to the term "aircraft" by adding including drones. The Department anticipates these changes will result in a rule that is more understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

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

Federal regulation 50 C.F.R. 19 is applicable to the subject of the rule. The Department has determined the rule is not more stringent than the corresponding federal law. 50 C.F.R. 19 establishes general prohibitions and exceptions for the use of aircraft for the taking of wildlife, requirements for the contents and filing of annual

reports by the States regarding permits issued for such shooting or harassing, and regulations necessary for effective enforcement of the Fish and Wildlife Act of 1956 as amended.

- 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 rule does 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 proposes to amend R12-4-319 to clarify drones are considered to be aircraft.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-320. HARASSMENT OF WILDLIFE

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

Authorizing statute: A.R.S. § 17-231(A)(1)

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

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

The objective of the rule is to prohibit the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, “A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission.” The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with 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.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 rule 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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to ensure compliance with the Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or persons regulated by the rule.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule prohibits the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Department proposes to amend the rule to provide further clarity to the term "aircraft" by referencing drones. The Department anticipates these changes will result in a rule that is more understandable. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-320 to replace the term "individual" with "person" to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-321. RESTRICTIONS FOR TAKING WILDLIFE IN CITY, COUNTY, OR TOWN PARKS AND PRESERVES

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-234, 17-301(D), 13-3107, and 13-3108

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

The objective of the rule is to establish restrictions for hunting in city, county, or town parks and preserves. The rule was adopted to allow a person to hunt in city, county, or town parks and preserves where possible. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective: "To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions."

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

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

The rule appears 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. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4. Under R12-4-307(H)(2)(a), a trapper shall not set a trap within one-half mile of certain public use areas. The Department proposes to amend the rule to align this rule with R12-4-307(H)(2)(a).

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

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

The Department believes the distance restrictions provided in rule are needed to ensure public health and safety. Persons participating in a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order use their hand or a catch-pole, snake hook, or snake tongs. Because these methods and devices do not use projectiles, they do not pose the same type of hazard; the Department proposes to amend the rule to exempt persons participating in a reptile and amphibian limited weapon hand or hand-held implement season from the 1/4 and 1/2 mile prohibition when hunting in a city, county, or town park or preserve.

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

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

Because some parks have replaced a physical check in station with an online check in system, the Department proposes to amend the rule to clarify a hunter shall declare their intent to hunt when the park or preserve has a check in process.

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 rule 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 has not received any written criticisms of the rule.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to implement legislative amendments made to A.R.S. §§ 13-3107 and 13-3108, which transferred the authority to regulate the use of firearms for the take wildlife within municipal boundaries to the Arizona Game and Fish Commission. The Commission anticipated the rulemaking would benefit persons regulated by the rule by aligning the rule with statute.

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.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. In addition, the rule was renumbered from R12-4-301 to R12-4-321. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

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 rule was established to effect restrictions for hunting in city, county, or town parks and preserves that allow persons to hunt in city, county, or town parks and preserves where possible. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective: "To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions." The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-321 as follows:

- Prohibit a person from setting a trap within one-half mile of certain public use areas to align this rule with R12-4-307(H)(2)(a).
- Add “developed trailhead” and “developed wildlife viewing platform” to align this rule with R12-4-307(H)(2)(a).
- Clarify a hunter shall declare their intent to hunt when the park or preserve has a check in process.
- Exempt a person participating in a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order from the 1/4 and 1/2 mile restrictions.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.

R12-4-322. PICKUP AND POSSESSION OF WILDLIFE CARCASSES OR PARTS

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(8), 17-307, and 17-371

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

The objective of the rule is to allow persons to pick up and possess naturally shed antlers, horns, or other wildlife parts that are not fresh without a permit or Department inspection when it can be determined the animal died of natural causes and prohibit the pickup and possession of any threatened or endangered species carcass or its parts. Prior to adopting this rule, law and rule did not adequately address the legality of picking up fresh wildlife parts.

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

The rule appears 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.

Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to this rule. The Department believes this data indicates the rule is effective.

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 rule is consistent with and is not in conflict with 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.

The rule is currently being enforced and the Department is not aware of any problems with the enforcement of the rule. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation.

The Department proposes to amend the rule to allow a Department employee or agent to assist in determining whether an inspection by a law enforcement officer is required to reduce the burden on the Department and persons regulated by the rule. In the event a law enforcement officer is not available, a Department employee or agent who has experience in determining whether an animal died from natural causes may conduct the inspection.

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

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

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 has not received any written criticisms of the rule.

- 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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was adopted to allow persons to pick up and possess naturally shed antlers, horns or other wildlife parts that are not fresh without a permit or Department inspection and pick up; possess a fresh wildlife carcass or its parts if the person voluntarily notifies the Department of the find; and prohibit the possession of carcasses or parts of carcasses of threatened or endangered species. The Commission anticipated the rulemaking would have no impact on persons regulated by the rule.

- 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.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by August 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2408, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the April 2, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 826, April 26, 2013.

- 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 rule establishes the procedures for picking up and possessing carcasses or parts of wildlife, if not contrary to federal law or regulation. The Department believes outdoor activities provide a multitude of wildlife experiences, including the discovery of wildlife parts such as skulls, bones, or shed antlers and recognizes the role that these parts play in fostering interest and future participation in outdoor activities. The public benefits from a rule that allows them to lawfully possess wildlife parts they have found in the field, such as the antlers of a deer or elk. The Department benefits from a rule that provides the public with a method to pick up and possess wildlife carcasses and parts without having to petition the Commission. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than 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 rule does 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 proposes to amend R12-4-322 to allow Department employees or agents to assist in determining whether an inspection by a law enforcement officer is required to reduce the burden on the Department and persons regulated by the rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2018.