

**ARIZONA GAME AND FISH COMMISSION
2020 FIVE-YEAR-REVIEW REPORT**



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

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

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every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed.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

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 8, Wildlife Areas and Department Property, are scheduled to be reviewed by March 2020.

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

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

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

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

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

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

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

For R12-4-802 Wildlife Area and Other Department Managed Property Restrictions, the objective of this rule is to establish the restrictions applicable to the use of wildlife areas and other Department managed property. The

rule provides protections to Commission-owned and -managed wildlife areas and other properties, while maximizing public access and use of the same properties.

For R12-4-803 Wildlife Area and Other Department Managed Property Boundary Descriptions, the objective of the rule is to establish the legal boundary descriptions for designated wildlife areas.

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

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

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

The Department proposes to amend R12-4-802 and R12-4-803 to implement recommendations resulting from data and research gathered over the last two years for specific wildlife areas and to incorporate new wildlife areas.

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

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

For all of the Article 8 rules, the rules appear to be consistent with and are not in conflict with applicable

statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4."

However, the Department is aware of some confusion resulting from differences between the Department's wildlife area camping restrictions. The Commission establishes regulations (and/or restrictions) for the lawful activities that may be conducted on that area of land. In some cases, there may be differences between the type and/or the duration of allowed activities. For example, a person camping at a designated wildlife area may be restricted to stays of no more than 14 days within a 45-day period; a person camping at a designated wildlife area may be restricted to stays of no more than 14 days within a 365-day period. The Commission proposes to amend R12-4-802 to establish camping time-frames applicable to all wildlife areas that are less restrictive, reduce confusion, and increase consistency between the Commission's wildlife area rules (14/30 for all wildlife areas)

The Department proposes to amend R12-4-802 and R12-4-803, based on comments submitted by regional personnel to reduce confusion and lessen burdens and costs wherever practical, and make other changes supported by data gathered over the last two years.

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

For all of the Article 8 rules, the rules are currently being enforced.

However, there are times when the Department finds it necessary to post signs placing additional restrictions on the use of wildlife areas (e.g., timing, type, duration, nature of use, or to prohibit access). These restrictions are in addition to the restrictions established under R12-4-802 (Wildlife Area and Other Department Managed Property Restrictions) and there are concerns that the signs alone are unenforceable.

The Department proposes to amend R12-4-801 to establish the Department may post signs placing additional restrictions on the use of wildlife areas related to timing, type, duration, nature of use, or to prohibit access.

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

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

Other Department Managed Property Restrictions).

- 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 related to the Article 8 rules.

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

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

With respect to the Article 8 rules, the rules do not impose any direct or indirect costs on the regulated community, other state agencies, political subdivisions, private business, or the public.

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

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

The Department did not receive any analyses.

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

The previous report was approved by G.R.R.C. at the May 5, 2015 Council Meeting, which stated the Department anticipated submitting the final exempt rules to the Secretary of State's office by Council by March 2016. The Department completed the courses of action indicated in the previous five-year review report as follows:

- Notice of Final Exempt Rulemaking: 22 A.A.R. 951, April 29, 2016.

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

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 8. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff; no comments were received from the public over the last five years. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

Wildlife areas are intended to conserve and protect wildlife and to provide public recreational opportunities. Wildlife areas are comprised of lands owned or leased by the Commission, federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation, and any lands with property interest conveyed to the Commission through an approved land use agreement, where said property interest is sufficient for management of the lands consistent with the objectives of the wildlife area. Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. In addition, these activities and public visitation can draw people into local communities and businesses, positively impacting local economies.

Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. In addition, these recreational activities and public visitation can draw visitors into local communities and businesses. The rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least

burden and costs to persons regulated by the rules.

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

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

The Department anticipates submitting the Notice of Final Exempt Rulemaking for actions proposed in this report to the Secretary of State's office by February 2021.