



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 19, 2018

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WSR 18-19-103

Agency: Washington Department of Fish and Wildlife (WDFW) 18-252

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: This is to add section 200 to existing WAC chapter 220-640 based on changes from ESSB 6040 passed during the 2014 legislative session

Citation of rules affected by this order:

New: WAC 220-640-200 Deleterious exotic wildlife

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 77.04.090, RCW 77.04.130, RCW 77.15.568, RCW 77.08.010, RCW 77.65.510, RCW 77.65.515, RCW 77.65.520

Other authority: None

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-15-048 on July 13, 2018 (date).

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>1</u>	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: September 19, 2018

Name: Kelly Susewind

Title: Director, Department of Fish and Wildlife

Signature:



NEW SECTION

WAC 220-640-200 Deleterious exotic wildlife. (1) The following animals are hereby designated as deleterious exotic wildlife:

(a) Birds: In the family Anatidae, the mute swan (*Cygnus olor*).

(b) Mammals:

(i) In the family Viverridae, the mongoose (all members of the genus *Herpestes*).

(ii) In the family Suidae, the wild boar (*Sus scrofa* and all wild hybrids).

(iii) In the family Tayassuidae, the collared peccary (javelina) (*Tayassu tajacu*).

(iv) In the family Bovidae, all members and hybrids of the following genera: *Rupicapra* (Chamois); *Hemitragus* (Tahr); *Capra* (goats, ibexes except domestic goat *Capra hircus*); *Ammotragus* (Barbary sheep or Aoudad); *Ovis* (sheep), except domestic sheep *Ovis aries*; *Damaliscus* (Sassabies); *Alcelaphus buselaphus* (Hartebeest); and *Connochaetes* (Wildebeests).

(v) In the family Cervidae, the European red deer (*Cervus elaphus elaphus*), all nonnative subspecies of *Cervus elaphus*, and all hybrids with North American elk; Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*), Sika deer (*Cervus nippon*), Reindeer (all members of the genus *Rangifer* except *Rangifer tarandus caribou*), and Roedeer (all members of the genus *Capreolus*).

(2) It is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of deleterious exotic wildlife, their gametes and/or embryo, except as provided under subsection (3), (4), (5), (6), or (7) of this section, and as provided in WAC 220-640-020.

(3) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess, and propagate live specimens of deleterious exotic wildlife for scientific research or for display by zoos or aquariums who are accredited institutional members of the association of zoos and aquariums (AZA), provided:

(a) The specimens are confined to a secure facility;

(b) The specimens will not be transferred to any other location within the state, except to other AZA-accredited facilities with written director approval or as otherwise authorized in writing by the director;

(c) The specimens will be euthanized and all parts incinerated at the end of the project, except for federally listed endangered or threatened species, which may be retained or transferred where in compliance with federal law;

(d) The person will keep such records on the specimens and make such reports as the director may require; and

(e) The person complies with other requirements of this section.

(4) Retention or disposal of existing specimens lawfully in captivity:

(a) Specimens lawfully in captivity prior to January 18, 1991: A person holding exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife on or before January 18, 1991, may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to January 18, 1991, provided such person complies with (c) through (h)

of this subsection hereunder and the other requirements of this section;

(b) Specimens lawfully in captivity prior to June 20, 1992: A person holding the following deleterious exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife by operation of emergency rule filed June 19, 1992, (in the family Bovidae, Sassafras (all members of the genus *Damaliscus*), Hartebeest (*Alcelaphus buselaphus*), Wildebeests (all members of the genus *Connochaetes*), Markhor (*Capra falconeri*), and Marco-polo sheep (*Ovis ammon*); and in the family Cervidae, Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Sika deer (*Cervus nippon*), and Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with (c) through (h) of this subsection and the other requirements of this section and except as provided under subsection (7) of this section;

(c) The person reported to the director, in writing, the species, number, and location of the specimens, as required;

(d) The specimens are confined to a secure facility at the location reported;

(e) Live specimens are not propagated, except at AZA-accredited facilities with the written permission of the director or as otherwise authorized in writing by the director;

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at AZA-accredited facilities with the written permission of the director;

(g) Live specimens are not released; and

(h) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession may be permanently removed from the state of Washington or transported directly to slaughter where in accordance with other applicable law;

(ii) Federally listed endangered or threatened species may be transferred to AZA-accredited facilities where in compliance with federal law;

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided that all other requirements are satisfied and the total number of locations where animals are held is not increased; and

(iv) AZA facilities may sell and/or transfer live specimens within the state with the written permission of the director.

(5) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding exotic wildlife specimens in captivity that are newly classified by the fish and wildlife commission as deleterious exotic wildlife by operation of this section (Reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*), and Roedeer (all members of the genus *Capreolus*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens; and

(b) The person complies with subsection (4)(d) through (h) of this section and the other requirements of this section.

(6) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live

specimens of federally listed threatened or endangered species, their gametes and/or embryo, where in compliance with federal law.

(7) Notwithstanding the provisions of subsection (2) of this section, Fallow deer (*Dama dama*) and reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*) may be imported into the state, held, possessed, propagated, offered for sale, sold, and/or transferred, provided:

(a) The person complies with subsection (4)(c) through (g) of this section and the other requirements of this section, except for subsection (4)(e), (f), and (h) of this section; and

(b) The person complies with the department of agriculture per WAC 16-54-180 as now or hereafter amended, except: Animals that have resided at any time east of a line drawn through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and the 100th Meridian where it passes through Texas, or that have had contact with or shared common ground with animals which have resided at any time east of such line, shall not be imported into the state of Washington unless specifically authorized in writing by the director of the department of agriculture and the department of fish and wildlife;

(c) No specimens affected with any infectious or communicable disease shall be imported into the state unless in compliance with all applicable laws and regulations and unless written permission is obtained from the directors of the department of agriculture and the department of fish and wildlife;

(d) The specimens are confined to a secure facility; and

(e) Reindeer may not be imported into, held, or possessed in Ferry, Stevens, or Pend Oreille counties or that portion of Spokane County north of Spokane River.

(8) Escaped animals:

(a) Escaped deleterious exotic wildlife, including Fallow deer (*Dama dama*) and reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*) will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy deleterious exotic wildlife that have escaped the possessor's control. The former possessor shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of deleterious exotic wildlife must be reported immediately to the department.

(c) The recapture or death of escaped deleterious exotic wildlife must be reported immediately to the department.

(9) Secure facility:

(a) All deleterious exotic wildlife will be held in a secure facility. For the purpose of this section, a secure facility is an enclosure so constructed as to prevent danger to the environment or wildlife of the state, including escape of deleterious exotic wildlife specimens or ingress of resident wildlife ungulates (hoofed animals). The adequacy of the facility shall be determined by the director or agents of the director.

(b) For deleterious exotic wildlife listed in subsection (1)(b)(iv) and (v) of this section, the "secure facility" must comply with the fencing requirements in subsection (10) of this section, unless otherwise authorized by the director in writing.

(10) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh

of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and deleterious exotic wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least twelve and one-half gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least twelve and one-half gauge woven wire, fourteen and one-half gauge high-tensile woven wire, chain link, nonclimbable woven fence, or other fence approved by the director. If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of deleterious exotic wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent deleterious exotic wildlife from escaping or resident wildlife ungulates (hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the person possessing deleterious exotic wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(11) Marking requirements:

(a) All live specimens of deleterious exotic wildlife, except those listed in subsection (1)(a) and (b) of this section, shall be permanently and individually identified by methods approved by the director.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(c) All specimens of deleterious exotic wildlife identified in subsection (1)(b)(iv) and (v) of this section must be individually identified by the methods specified below:

(i) All live specimens of such deleterious exotic wildlife shall be marked with USDA official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order; and

(ii) All live specimens of such deleterious exotic wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(d) All lawful progeny of deleterious exotic wildlife must be tagged and tattooed by December 31st of the year of birth or upon leaving the holding facility, whichever is earlier.

(e) Where allowed, if an animal is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(f) Where allowed, live specimens of deleterious exotic wildlife shall be marked prior to importation.

(g) No unmarked deleterious exotic wildlife may be sold or otherwise transferred from the holding facility.

(12) Testing of specimens:

(a) Where allowed, prior to entry into the state of Washington, a person importing any member of the genus *Cervus*, which is identified in subsection (1)(b)(v) of this section, must submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals that are deemed by the department of wildlife biologists upon examination to exhibit either: Behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) The director may require a person currently possessing any member of the genus *Cervus* that are identified in subsection (1)(b)(v) of this section to submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Washington) for each individual cervid to the department. Such testing shall be at the possessor's expense. The director may require that any animal identified as a red deer or having nonindigenous genetic influence be destroyed, removed from the state, or neutered.

(c) The director may require that all specimens of deleterious exotic wildlife lawfully in captivity be tested for brucellosis (*Brucella abortus*), tuberculosis (*Mycobacterium bovis* and *Mycobacterium tuberculosis*), meningeal worm (*Paralophostrongylus tenuis*), and muscle worm (*Elaphostrongylus cervis*) in accordance with the procedures specified in the department of agriculture per WAC 16-54-180 as now or hereafter amended and/or for other disease or parasites determined to pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(13) Reporting:

(a) A person holding deleterious exotic wildlife in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31st of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing deleterious exotic wildlife must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(14) Inspection:

(a) All holding facilities for deleterious exotic wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections shall be conducted at reasonable times.

(15) Notification and disposition of diseased animals:

(a) Any person who has reason to believe that deleterious exotic wildlife being held pursuant to this section have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that deleterious exotic wildlife held pursuant to this section have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of animals, quarantine, or disinfection is required at any facility holding deleterious exotic wildlife, pursuant to this section. If the director determines that destruction, quarantine, or disinfection is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(16) Quarantine area:

(a) Any facility holding deleterious exotic wildlife must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington:

(i) An approved quarantine facility is one that meets criteria set by the Washington state department of agriculture;

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor must provide an on-site quarantine facility or make arrangements at such possessor's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

(17) Seizure:

(a) The department of wildlife may seize any unlawfully possessed deleterious exotic wildlife.

(b) The cost of any seizure and/or holding of deleterious exotic wildlife may be charged to the possessor of such animals.