



## NEW MEXICO PROPOSES ANTI-PET REGULATION

**\*\* MOST CITIES APPENDIX I, II AND III  
ANIMALS TO BE BANNED OR REQUIRE PERMIT \*\***

**\*\* SPECIAL PERMITS REQUIRED FOR  
MANY NON-NATIVE SPECIES \*\***

**\*\* COMMENT DEADLINE JUNE 4<sup>th</sup> \*\***

### **The Issue.**

The New Mexico Department of Game and Fish has proposed a rulemaking amending existing regulations regarding the importation of non-native species. The proposed rule creates a “**species importation list**” that would require permits for importation of listed species— regardless of whether the animals were wild caught or captive bred. Ownership of these species as pets without a permit would be banned. The proposal does not clarify the status of banned species already within New Mexico as pets or those that are being propagated in the state. All comments on this proposal should be received by the Department no later than June 4<sup>th</sup>. The Department will also be holding a public Commission meeting on June 3<sup>rd</sup>.

### **The Impact.**

#### **Importation of Live Non-Domesticated Animals (Section 19.35.7.8)**

This proposed rule would make it illegal to import any live non-domesticated animal into New Mexico without an appropriate permit(s). The proposal provides the following definitions:

- “Domesticated animal” for the purposes of this rule include any species the Department of Game and Fish designates as domesticated “in those instances where individual members of such species are commonly tamed, raised, bred, or sold in captivity”. NOTE: The proposal provides no definition for “non-domesticated animal”.
- “Importer” is defined as “any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties”.
- “Dangerous animal” is any animal “due to its nature, biology or its behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.”
- An “invasive animal” is “any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment protected wildlife, human health or safety.”

### **Species Importation List (Section 19.35.7.10)**

The Director will be responsible for establishing the species importation list. Listed species will be grouped into “importation groups” based on the following criteria:

- Species importation list Group I are designated “domesticated animals” and **do not require an importation permit.**
- Species importation list Group II may be for “live non-domesticated animals” that are **not known to be either invasive or dangerous and do not present a known risk to the health, safety or well-being** of the public, domestic livestock or to native wildlife and their habitats.
- Species importation list Group III may be for “live non-domesticated animals” that **present minimal or manageable concerns that will require specific provisions that must be met prior to issuance of an importation permit** to address health, safety or well-being of the public, domestic livestock or native wildlife and their habitats.
- Species importation list Group IV may be for “live non-domesticated animals” that are considered **dangerous, invasive, undesirable, state or federal listed threatened, endangered, C.I.T.E.S. Appendix 1 or a furbearer.** The importation of these species is **prohibited for the general public** but may be allowed for scientific study, department approved restoration and recovery plans, zoological display, temporary events/entertainment, use as a service animal or by a qualified expert.
- Any species of live non-domesticated animal not currently on the species importation list will be designated group IV until such time as another determination is made by the director.

### **Eligibility Requirements for Importation and Fees (Section 19.35.7.10(D), (E) and (H))**

The Director shall determine the form for making applications, permit conditions and requirements and shall establish a process for expediting applications and permits.

The Director may declare those who fail to comply with any importation conditions or provisions as “ineligible” until in compliance AND may require a “Certificate of Compliance Fee” not to exceed \$500 per violation. (See Subparagraphs D, E, and F)

### **Application for Importation (Section 19.35.7.12)**

Anyone wishing to import a protected or non-domesticated animal into New Mexico must apply for an importation permit. Any applicant requesting a permit must submit the following information with the application:

- a containment or confinement plan indicating where and how the species will be maintained;
- a current and valid certificate from an accredited veterinarian certifying that each animal or rearing facility of origin has been inspected and is in good general health, disease free or that each animal or rearing facility of origin tests disease free for any specific disease(s) following the testing requirements and procedures as identified by the department during the application process (Exceptions include animal suppliers that are currently enrolled in an accredited animal breeding program or facility health monitoring standards such as NPIP, AZA, or other government sanctioned program);
- proof from the county and city into which the animal will be imported and held that possession of the animal is allowed;
- proof that all necessary federal permits have been obtained;
- proof that the requested species does not possess or have the immediate potential to carry infectious or contagious diseases and;
- confirmation by the applicant or person in authority representing the applicant agreeing to any conditions and provisions listed on the respective permit, and;

- any importing person or entity must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals.

Additional requirements apply to anyone applying for an importation permit for a dangerous animal. The definition of a “dangerous animal” includes “an animal that due to its nature, biology or its behavior, including predatory or venomous animals, may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock”. This applicant must comply with the following before receiving an importation permit:

- Enter into a department approved written agreement releasing the department from liability;
- Agree to meet all department approved posted warning requirements; and
- Agree to provide a department approved written warning to any person receiving such animal.

**Importation of Fish/Fish Eggs (Section 19.35.7.14 and 19.35.7.15)**

As for the importation of certain fish or fish eggs, the rulemaking provides a list of permitted species and eggs, and additional application criteria. The Department will establish a list of approved fish suppliers that may import into the State.

**Release of Imported Animals (Section 19.35.7.19)**

New Mexico explicitly prohibits the release from captivity of any imported animal without a release permit from the Director

**Fees for Non-Domesticated Animals**

Class 1 – Importation of 1 to 5 animals	\$25.00
Class 2 – Importation of 6 to 99 animals	\$75.00
Class 3 – Importation of greater than 100 animals	\$300.00

**Fees for Fish**

Annual Application Processing Fee	\$25.00
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**Director’s Species Importation List**

The Director’s Importation List is 61 pages long and places species under one of the four Groups. The list also indicates which restrictions (or rationale for falling into one of the four groups) apply. (See link to list on last page of this PetAlert)

**PIJAC Position.**

PIJAC recognizes the State’s desire to manage the importation of certain species that are owned as pets. The current, as well as the proposed, importation process is, however, overly restrictive, cumbersome and costly. It is “pet prohibitive” and may be the most “pet unfriendly” regulation in the United States.

PIJAC supports the New Mexico Game and Fish Department’s underlying objective to protect native species and ecosystems, but questions why permits would be required for every shipment of species routinely imported by the same importer. It would be more cost-effective to provide for an annual permit accompanied by an appropriate record-keeping requirement. The paperwork burden and cost of compliance with the proposed rule will put the price of commonly-owned animals out-of-reach to the public and would be detrimental to retail pet businesses.

The proposal fails to indicate what the status would be for restricted animals already in private hands. Are those people going to be compelled/forced to export their listed animals or euthanize them?

PIJAC supports the Department's initiative to seek immediate amendments to the rules due to the fact that recent interpretations of existing regulations compelled the Department to instruct retail pet stores to remove thousands of animals from the State. The proposed regulatory mechanism, however, still suffers from a number of issues. Therefore, PIJAC urges the Department to adopt any revised rule as an interim rule and hold meetings with impacted stakeholders to further evaluate mechanisms to facilitate an efficient and cost effective importation process and to revise the lists to reflect a more realistic list of regulated species.

The motivation for placing species on the Director's List is questionable. If a species falls under Group II because none of those species "are known to be either invasive or dangerous and do not present a known risk..." one can only wonder why a permit would be required other than for revenue generation purposes.

For those species falling under Group III, there is no indication of what types of "specific provisions" must be met as a condition for importation. Will each importer be faced with changing pre-import protocols or will they be consistent for a given species, and how does one know what conditions to meet without incurring long delays while the Department evaluates which conditions need to be met? When a species is listed because it is on CITES Appendix II, what is the public health and safety or invasive justification, other than it happens to be listed under CITES? CITES APPENDIX II species may be freely traded internationally whether wild caught or captive bred provided that the specimens were imported into the United States in conformance with the United States Fish and Wildlife, United States Department of Agriculture and Centers for Disease Control regulations as appropriate for the species. Once cleared into the United States, ownership is not affected.

Justifying listing a species under New Mexico law simply due to its listing under CITES is loaded with issues when a state imposes its characterization of the status of foreign species in the wild. If, as rumored, certain officials within the Department believe that a listing on CITES means that trade should be banned, especially for species listed under Appendix II and III, such a conclusion is ludicrous. It clearly reflects the State's misunderstanding of CITES. Appendix III listings are to assist specific countries in controlling their exports of species they decide to list – species that are not subject to any scientific or other scrutiny prior to listing. At least for Appendix I and II species, CITES has detailed listing criteria which are supposed to be met prior to listing. Therefore, a CITES listing has absolutely NO bearing on whether those species could be invasive, dangerous, or adversely impact public health and safety in New Mexico.

For example, requiring import permits for cockatiels, budgies, hundreds of marine ornamental fish, and CITES-listed species which are allowed in trade pursuant to an international treaty and Federal law is excessive. The mere fact a species is listed under CITES Appendix I does not ban private ownership of such species, especially captive-bred offspring which the Treaty explicitly states are to be treated as Appendix II specimens. Moreover, many of the aquatic, avian, and reptilian species have been captive bred for many years in the United States in substantial numbers in both the United States and in foreign markets, yet New Mexico would ban these species.

Also, the proposal would dramatically impact pet owners who use certain feeder animals; crickets, mealworms, waxworms, brine shrimp and other feeder animals are not included in the Directors List and would therefore be banned as if in Group IV.

The bottom line – the Director's List requires substantial revision and needs to be based on scientific evidence rather than premised on personal prejudices against the trade in non-native wildlife, especially CITES- listed Species. For those that legally possess species listed under the Federal Endangered Species List – beware because private ownership in New Mexico (despite your Federal status) would be illegal!

## **Recommended Action.**

The Department will present this proposed rule at a Commission meeting on June 3<sup>rd</sup> in Gallop, NM. This will be an “update only item” for the Commission with the Department seeking final action by the July Commission Meeting. We encourage a show of concern by affected New Mexicans and even though you will not likely be able to address the Commission, your presence will be noted! Please take the time to introduce yourselves to the Commissioners over the next few weeks so they are aware of both your concerns and your willingness to work with the Department to craft a workable regulatory mechanism that will achieve a common goal.

Every member of the New Mexico pet industry should read the proposal (including the Director’s Species Importation List) very carefully and review the proposed revised fee structure. Immediately contact not only your customers, suppliers and friends, but also your competitors, local aquarium societies, bird clubs, reptile societies and other hobby groups, and anyone else you think of who may be impacted by this proposal. It is also important to alert your out-of-state suppliers since they will be impacted. Make sure they are aware of the scope of this proposed rule and the need to act by June 4<sup>th</sup>. **NOTE: Obtaining a state permit (such as the proposed importation permit) would require forms and permissions from local governments as well, which may be difficult to obtain.** If this rulemaking is adopted the efficiency or lack thereof of local governments could play a vital role in determining the viability of pet businesses and pet ownership.

Written comments must be submitted by the Friday, June 4, 2010 deadline and can be sent on-line or in writing. Online submissions may be sent via email to: [Letitia.Mee@state.nm.us](mailto:Letitia.Mee@state.nm.us)

Written comments (or any questions) should be sent to:

Letitia Mee  
NMDGF – Law Enforcement Division  
Special Use Permits Program  
P.O. Box 25112  
Santa Fe, NM 87504  
Tel: 505-476-8064

For general background information on the proposal:  
<http://www.wildlife.state.nm.us/documents/ProposedImportationrule2010.htm>

The Proposed Rule may be found at:  
<http://www.wildlife.state.nm.us/documents/documents/19357ImportationofLiveNondomesticAnimalsBirdsandFish.pdf>

The Director’s Species List may be found at:  
<http://www.wildlife.state.nm.us/documents/documents/DIRECTORSIMPORTLISTMay62010.pdf>

The Proposed Fee Schedule may be found at:  
<http://www.wildlife.state.nm.us/documents/documents/19.30.9EstablishingLicensesPermitsCertificatesandFees.pdf>

Those who need additional information about this proposal should contact PIJAC’s Marshall Meyers via email at [Marshall@pijac.org](mailto:Marshall@pijac.org) or by phone at 800-553-7387.