

This rule was filed as 19 NMAC 35.5.

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 35   CAPTIVE WILDLIFE USES**  
**PART 5        WILDLIFE REHABILITATION PERMITS**

**19.35.5.1      ISSUING AUTHORITY:** New Mexico Department of Game and Fish.  
[10/19/94; Recompiled 12/31/01]

**19.35.5.2      SCOPE:** People involved with the rehabilitation of wildlife.  
[10/19/94; Recompiled 12/31/01]

**19.35.5.3      STATUTORY AUTHORITY:** Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the NM state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammal, birds and fish.  
[10/19/94; Recompiled 12/31/01]

**19.35.5.4      DURATION:** Permanent.  
[10/19/94; Recompiled 12/31/01]

**19.35.5.5      EFFECTIVE DATE:** September 15, 1994 [unless a later date is cited at the end of a section]  
[10/19/94; Recompiled 12/31/01]

**19.35.5.6      OBJECTIVE:** Establish and implement a system for the issuance and use of permits for the rehabilitation of sick, injured, orphaned or otherwise incapacitated wildlife for return to the wild or other authorized disposition in New Mexico.  
[10/19/94; Recompiled 12/31/01]

**19.35.5.7      DEFINITIONS:**

A.     "Agent": A person authorized to assist a permittee in performing rehabilitation functions, including transport or rehabilitation of wildlife, provided there is an employment or direct supervisory relationship between the permittee and the agent.

B.     "Apprentice": A person in training who assists in all rehabilitation functions including, but not limited to, maintenance, transport and record keeping under the direct supervision of the permittee or co-permittee.

C.     "Captive releases": Release of wildlife to an enclosed area from which the animal is not likely to be able to leave at will.

D.     "Co-Permittee (sub-permittee)": A person holding all rights and responsibilities under a permit with another person.

E.     "Department": The New Mexico department of game and fish.

F.     "Director": The chief administrator for the department of game and fish.

G.     "Endangered species": Any species listed or described by the department pursuant to the New Mexico department of game and fish statutes or regulations.

H.     "Holding": Retaining in captivity.

I.     "Human imprinting or human bonding": An abnormal dependency or fixation upon humans as parent substitutes or as companions resulting from too much association with humans at an early age.

J.     "Migratory birds": A bird listed under or pursuant to the Migratory Bird Treaty Act (16 United States Code 703-712).

K.     "Non-releasable animal": An injured animal, which after rehabilitation is determined to be unlikely to survive in the wild if released.

L.     "Permit": The document issued under this regulation for a person(s) to conduct activities as authorized by the department of game and fish.

M.     "Permitted rehabilitator": The person who holds a valid current permit from any state and a federal permit.

N.     "Permittee responsibility": The responsibility that a permit holder or co-permit holder has to direct the actions of an individual under his or her control, and for which that supervisor accepted legal responsibility.

O. "Protected wildlife": A species, the possession or taking of which is controlled, regulated or prohibited by state or federal law or regulation. Specifically excluded from this definition are rock doves, European starlings, house sparrows, and domestic animals occurring in the wild.

P. "Rehabilitation": The temporary caring for injured, orphaned, sick or otherwise incapacitated wildlife until such animals can be released to the wild.

Q. "Release to the wild": Release of wildlife to an area where it is capable of leaving at will.

R. "Taking": The act of hooking, netting, snaring, trapping, pursuing, shooting, killing or capturing by any means or device and includes the attempt to take by the use of any method.

S. "Transportation": The transfer of captive protected wildlife by an individual(s) to a permit holder.  
[10/19/94; Recompiled 12/31/01]

#### **19.35.5.8 APPLICATIONS AND PERMITS:**

A. Applications shall be filed on forms supplied by the department.

B. Applications shall contain a verified or sworn statement by the applicant attesting to the truth of the facts stated in the application.

C. Applications shall be made in the name of an adult person (18 years and older).

D. Permits shall be issued under the authority of the director or his/her designee.

E. Applications for permits, renewals and amendments shall provide the following information:

(1) Personal information which allows the identification of the applicant including full name, date of birth, home address and facility address;

(2) Each new application shall be supported by references from two verifiable, acknowledged, and permitted animal rehabilitation authorities who have known the applicant for at least 2 years and who attest to the applicant's ability to handle and care for protected wildlife in a humane and effective manner;

(3) A verified or sworn statement attesting to the truth of the facts stated in the application;

(4) Any other information determined by the department to be necessary to review the application.

F. Permits may not be issued until the applicant's facilities have satisfactorily passed an inspection conducted by a representative of the director.

G. Any person holding a permit which authorizes holding of live protected wildlife shall provide for appropriate humanitarian care.

H. Permits for the taking or holding of migratory bird species shall not be valid unless the permit holder also simultaneously applies for, obtains and maintains a valid federal permit.

I. Permits will only be issued to applicants that have demonstrated the ability and intent to correctly identify, properly record and humanely and knowledgeably care for and treat wildlife for the purpose of returning it to the wild or properly disposing of non-releasable animals. The applicant must demonstrate formal education, training and/or actual experience in wildlife rehabilitation for which permit authority is sought. A written or practical exam will be given to applicants in addition to requirements for references as one method of determining abilities.

J. All protected wildlife, their offspring and their parts taken or held under the authority of a permit remain the property of the state of New Mexico. The department retains the authority to seize or direct the disposition of such specimens.

K. Protected wildlife held under the authority of a rehabilitation permit may not be sold, bartered or exchanged. They may only be disposed of or released as prescribed by permit provision. Disposition or release shall be reported to the department in a manner prescribed by this regulation or by permit.

L. An initial permit shall be issued for one (1) year. Renewal of permit may be issued for any period of time not exceeding three (3) years from date of issuance.

M. Permits will be authorized to handle specific classes of wild animals for rehabilitation purposes. Handling any class of wildlife not authorized by the permit for longer than 48 hours while searching for appropriate placement is a violation.

[10/19/94; Recompiled 12/31/01]

#### **19.35.5.9 PERMIT RENEWALS:**

A. Permits shall be renewed in accordance with this regulation subject to its requirements unless issued as non-renewable permits.

B. Renewal applications shall be filed in writing on an application form provided by the department.

C. All terms of the permit, including the filing of complete annual reports, must be fully complied with before a renewal will be considered.

D. Applications for rehabilitating migratory birds shall contain a current corresponding federal permit number.

E. Denial and/or revocation of a permit may occur if the permit holder fails to meet any of the requirements for holding the permit.

F. Applications for renewal will not be considered while unresolved criminal charges are pending for alleged violation of state or federal wildlife laws or animal cruelty laws.

[10/19/94; Recompiled 12/31/01]

**19.35.5.10 VIOLATIONS AND ENFORCEMENT:**

A. Any violation of the New Mexico department of game and fish statutes, rules and regulations of the commission, or any provision in the permit, including amendments, may result in suspension, probation or revocation of a permit in addition to any applicable civil, criminal or administrative penalties.

B. Any misrepresentation of material fact in an application or annual report is a violation of this regulation.

[10/19/94; Recompiled 12/31/01]

**19.35.5.11 HEARINGS:**

A. An opportunity for hearing may be provided to any applicant or permit holder for any denial of a permit, probationary terms of a permit, denial of a permit renewal, or issuance of a permit where the terms of issuance are materially different from those requested by the applicant and adversely affect the applicant's interests.

B. Such procedures shall be consistent with state game commission Regulation 677.

[10/19/94; Recompiled 12/31/01]

**19.35.5.12 PERMIT REQUIREMENTS:**

A. A permit holder shall carry out all rehabilitation in a manner consistent with the goal of returning wildlife to its native range and habitat and in conformity with its seasonal occurrence in New Mexico.

B. A permit holder may designate an agent to transport wildlife associated with rehabilitation efforts.

C. A permit holder shall carry out all rehabilitation in a humane manner and plan activities to return the injured animals to a condition which will allow them to survive in the wild.

D. Apprentices shall handle wildlife only under supervision of the permittee or co-permittee.

E. A permit holder shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting.

F. Animals in rehabilitation shall not be used for display or public programs. One way windows or video observation is permissible.

G. Non-releasable protected wildlife may only be retained for approved fostering or socialization purposes incident to wildlife rehabilitation or transferred to other permitted rehabilitators, zoo permit holders, licensed falconers and licensed raptor breeders or educational permit holders in accordance with requirements of this regulation and only after a written request for such retention or transfer has been made to and approved in writing by the department.

H. Permittee's facilities shall be subject to unannounced inspections by authorized representatives of the director at reasonable times.

I. Permittees shall maintain detailed and complete records on each animal received under the permit.

J. Releases of Rehabilitated Wildlife:

(1) A permit holder shall not release wildlife in such a manner or at such a location so that the released animals are likely to become a nuisance or threat to humans or their property.

(2) Wildlife releases which are made to fenced or enclosed areas without a reasonable expectation that the individuals will be able to leave at will may be considered as captive releases.

(3) Captive releases may subject the landowner or person in control of the premises to additional licensing requirements for holding protected wildlife in captivity or stocking protected wildlife.

(4) Protected wildlife shall be released only to place and habitat by seasonal occurrence appropriate for the species.

(5) Terrestrial animals shall only be released in the county where they were acquired or found, or in an adjacent county unless specific written permission for release elsewhere is granted by the department. Release locations should consider gene pools and population dynamics including availability of appropriate food base. Release locations shall be included in annual report.

(6) Protected wildlife may not be imported from another state or another country without meeting importation permit provision allowing such activity.

(7) Rehabilitated wildlife shall be released into species appropriate habitat at a suitable time (with considerations for the season, weather conditions and time of day) which shall enhance the animal's continued survival.

K. The department may make special conditions in individual permits which are consistent with this regulation and which are necessary to carry out the intent of this regulation or New Mexico statutes.

L. A copy of the approved permit or written authorization by the permittee shall accompany any shipment or transport of wildlife and shall be available for inspection at each of the premises authorized by the permit.

M. Wildlife shall not be possessed for longer than 180 days. Any request to hold wildlife in excess of this period shall be submitted to the department in writing.

[10/19/94; Recompiled 12/31/01]

**19.35.5.13 RECORD KEEPING REQUIREMENTS:**

A. Permit holders shall file annual reports by January 30 of each permit year unless permission is granted for a later filing.

B. Annual reports shall be completed and submitted on a form provided by or approved by the department. Rehabilitation records on each animal shall be maintained concurrent with its treatment and should include unique identification (case number), species name, sex (if known), place and date of origin, source (person or agency), probable reason for incapacitation, condition on receipt, treatment and disposition (date and location). All records shall be available for department review upon request.

[10/19/94; Recompiled 12/31/01]

**19.35.5.14 GENERAL FACILITIES STANDARDS:**

A. Rehabilitation permit holders shall comply with the applicable facilities standards of this regulation in addition to any specific requirements placed in their permits.

B. Permit holders shall provide confinement areas and cages for rehabilitation purposes appropriately sized, constructed and maintained so as to provide a humane and safe environment for animals held under the authority of a permit issued pursuant to this regulation and should conform to accepted national standards.

C. The department may specify individual caging requirements in each permit on a case-by-case basis depending upon the species, number, size, type and length of care required. In imposing individual standards, the department may be guided by similar requirements imposed by state and federal agencies regulating comparable activities.

E. Treatment records shall be maintained on currently held wildlife at the facility.

[10/19/94; Recompiled 12/31/01]

**HISTORY OF 19.35.5 NMAC: [RESERVED]**