

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 35 CAPTIVE WILDLIFE USES
PART 6 AUTHORIZED USES OF WILDLIFE FOR EDUCATION, LAW ENFORCEMENT,
RESEARCH AND SCIENTIFIC PURPOSES

19.35.6.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.35.6.1 NMAC - Rp, 19 NMAC 35.6.1 & 19 NMAC 36.2.1, 12/30/2013]

19.35.6.2 SCOPE: The department of game and fish and persons seeking authorization for the taking of protected wildlife for educational, law enforcement, scientific or research purposes.
[19.35.6.2 NMAC - Rp, 19 NMAC 35.6.2 & 19 NMAC 36.2.2, 12/30/2013]

19.35.6.3 STATUTORY AUTHORITY: Sections 17-1-14, 17-1-26, NMSA 1978 and 17-2-37 through 17-2-46, and 17-3-1, NMSA 1978 provide that the New Mexico 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 species.
[19.35.6.3 NMAC - Rp, 19 NMAC 35.6.3 & 19 NMAC 36.2.3, 12/30/2013]

19.35.6.4 DURATION: Permanent.
[19.35.6.4 NMAC - Rp, 19 NMAC 35.6.4 & 19 NMAC 36.2.4, 12/30/2013]

19.35.6.5 EFFECTIVE DATE: December 30, 2013, unless a later date is cited at the end of a section.
[19.35.6.5 NMAC - Rp, 19 NMAC 35.6.5 & 19 NMAC 36.2.5, 12/30/2013]

19.35.6.6 OBJECTIVE: To provide consistent criteria for application and permit issuance for the take, possession and use of protected wildlife for educational, law enforcement, research or scientific purposes.
[19.35.6.6 NMAC - Rp, 19 NMAC 35.6.6 & 19 NMAC 36.2.6, 12/30/2013]

19.35.6.7 DEFINITIONS:

- A. "Applicant":** A person who has submitted an application for a permit pursuant to this rule.
 - B. "Apprentice":** A person who is over the age of 14 and is in training under the direct supervision of a permittee or sub-permittee, who assists in the use of wildlife for scientific and educational purposes.
 - C. "Carnivore":** Any animal within the order carnivora
 - D. "Department":** The New Mexico department of game and fish.
 - E. "Director":** Shall mean the director of the department of game and fish.
 - F. "Designated cooperator":** Shall mean a person designated in writing by the director of the department of game and fish, as an official cooperator of the agency.
 - G. "Educational purposes":** Shall mean the possession or take of protected wildlife as specimens for educational programs and instructional display as approved by the department.
 - H. "Permit":** A document issued pursuant to this rule that authorizes a person to conduct specific activities involving protected wildlife.
 - I. "Protected wildlife":** Shall mean those taxonomic groups listed in Chapter 17, NMSA 1978, including any species that are listed as either state or federally threatened or endangered.
 - J. "Scientific purposes":** Shall mean the possession or take of protected wildlife for conducting research or monitoring for management purposes, as approved by the department.
 - K. "Sub-permittee":** Shall mean a person authorized by a permit to conduct specified activities in the absence of a permit holder.
 - L. "Take":** Shall mean the act of killing, capturing, pursuing, harassing, salvaging, retaining, or sacrificing protected wildlife by any means or device including attempting to take by the use of any method.
- [19.35.6.7 NMAC - Rp, 19 NMAC 35.6.7 & 19 NMAC 36.2.7, 12/30/2013; A, 12/15/2014]

19.35.6.8 APPLICATION REQUIREMENTS:

- A. The following requirements must be met for an application to be considered:**
 - (1) A completed application form and the non-refundable application fee must be submitted to the department.**

- (2) Applicant must be 18 years of age or older and provide their full name, date of birth, home address and facility address; unless they are an apprentice who must be at least 14 years of age.
- (3) Applicant must provide two references able to verify the applicant's ability to conduct activities relevant to the species and purpose requested.
- (4) Application must include a containment or confinement plan describing where and how permitted species will be maintained, if applicable.
- (5) Application must include copies of all applicable municipal, state or federal permits.
- (6) Supplemental information must be supplied as requested by the department.
- (7) Each application must include the applicant's signature as well as signatures of all sub-permittees being requested on the permit.

B. Additional requirements for educational use applications:

- (1) Applicant must provide verifiable experience of at least 240 hours in handling, caring for and training live non-releasable wildlife of the same or similar species as those identified in the application. If this requirement cannot be met, an apprenticeship with a permitted individual or approved organization is required.
- (2) Letters must be supplied from at least five separate and legitimate organizations or entities requesting wildlife related educational programs.
- (3) Wildlife proposed for educational use must be obtained from a department approved source.
- (4) Applicant must provide a detailed educational class or program curriculum or lesson plan which is subject to department approval prior to permit issuance.

C. Additional requirements for scientific use applications:

- (1) Applicant must identify the specific wildlife being requested and provide details for disposition.
- (2) Applicant must provide detailed justification for all activities, methods and locations.
- (3) Applicant must provide requested take amounts, locations and specific take time frame.
- (4) Applicant must provide detailed explanation of the scientific benefits to the species and the state of New Mexico. Scientific benefits will be subject to department review and approval.
- (5) Applicant must provide evidence of education or experience supporting qualifications to conduct wildlife related research or monitoring activities.

[19.35.6.8 NMAC - Rp, 19 NMAC 35.6.8 & 19 NMAC 36.2.8, 12/30/2013]

19.35.6.9 PERMIT ISSUANCE:

- A.** Permits may be issued or denied under the authority of the director or his/her designee.
- B.** Authorizations and permits shall only be issued to individuals and not to parties or organizations.
- C.** Only those individuals that the applicant intends to utilize to take or possess protected wildlife when outside the immediate oversight and supervision of the permittee will be listed as sub-permittees.
- D.** A permit shall not be issued to applicants who cannot demonstrate sufficient wildlife handling qualifications and containment and confinement facilities to ensure the humane care of captive wildlife.
- E.** Applicant must obtain a permit prior to conducting requested activities.
- F.** Upon issuance of a permit, containment and confinement facilities shall be subject to random inspection by department employees.
- G.** Initial permits shall be issued for one year. Permit renewals may be approved for up to three years subject to director approval.
- H.** Each permit shall specify the number and species of protected wildlife the permittee shall be authorized to collect, possess, or handle for scientific or educational purposes.
- I.** Applications for permits or permit renewals shall not be considered if the applicant is subject to pending criminal charges or violations of any municipal, state or federal law relating to wildlife or other animal violations.
- J.** The state game commission must review any permit application for the possession or use of any carnivore that is held, possessed or released on private property for the purpose of recovery, reintroduction, conditioning, establishment or reestablishment in New Mexico. The director shall only issue a department permit in accordance with commission direction following their review of an application submitted under this section of rule.

[19.35.6.9 NMAC - Rp, 19.35.6.8 NMAC, 12/30/2013; A, 12/15/2014]

19.35.6.10 PERMIT PROVISIONS:

- A.** General permit provisions:

(1) All protected wildlife, their offspring, and any parts held under the authority of a permit shall remain property of the state of New Mexico. The director shall have the authority to require that any permitted wildlife be returned to the department or to direct the disposition of such wildlife.

(2) A permit issued pursuant to this rule does not authorize propagation of wildlife unless specifically allowed in writing by the director.

(3) Protected wildlife held under the authority of a permit may not be sold, bartered, or exchanged unless specially allowed in writing by the director.

(4) Protected wildlife may not be disposed of, released as prescribed by permit provisions, or transferred to another permittee, unless specially allowed in writing by the director.

(5) Protected wildlife may not be imported from another state or another country without first obtaining an importation permit from the department.

(6) The director may apply specific provisions on individual permits to carry out the intent of this rule and applicable statutes.

(7) A copy of a valid permit must be in the possession of permittees and sub-permittees at all times when conducting permitted activities and must be available upon request by department officials.

(8) A permit holder shall carry out all educational activities in a humane manner.

B. Amendment and renewal requirements:

(1) Amendments to permits must be requested in writing, include justification, and be signed by permittee and any proposed additional sub-permittees;

(2) Payment of a fee approved by the director shall be required for each permit amendment.

(3) Annual reports must be filed and received by the department prior to renewal or reissuance of any permit.

(4) Permits must be amended prior to any changes in activities, including the addition of sub-permittees, type and numbers of wildlife to be collected, and collection locations and time frames.

C. Education permit requirements:

(1) Only a permit holder shall be permitted to possess wildlife specimens and no sharing of permitted wildlife shall be allowed between other permit holders.

(2) A permit holder must conduct a minimum of 12 educational programs per year or have the permitted animals available on static display to the public a minimum of 100 days per year.

(3) A permit holder shall carry out all educational activities in a manner which will benefit the species represented and wildlife in general.

(4) A permit holder shall not allow public contact with permitted wildlife. Applicants may request a waiver to this restriction. Waiver requests must be submitted to the department in writing and include justification for the request, and a signed waiver of liability and indemnification shall be required from the permit holder.

(5) All protected wildlife displayed must be controlled at all times and be presented in a professional manner.

(6) The loss or escape of any permitted wildlife shall be reported to the department within five business days.

(7) Health records shall be maintained at the housing facility approved for the permitted wildlife.

D. Scientific permit provisions:

(1) Specimens may not be donated, sold, exchanged, or otherwise processed except as allowed by permit provisions and in accordance with municipal, state or federal law.

(2) The disposition of progeny of wildlife taken or possessed shall be defined by permit provisions.

[19.35.6.10 NMAC - Rp, 19 NMAC 35.6.12 & 19 NMAC 36.2.8 & 10, 12/30/2013]

19.35.6.11 ANNUAL REPORTS:

A. A permit holder must submit an annual report by the deadline specified by the director.

B. Annual reports must be submitted, received, and approved by the department prior to renewal or reissuance of any permit.

C. The annual report shall include the disposition of all wildlife taken pursuant to the permit and any additional information required by the permit.

D. Annual reports shall be completed in a format as determined by the department. All data submitted shall become property of the department.

- E.** Educational permit annual reports shall include:
- (1) dates of all presentations;
 - (2) names of organizations and schools at which presentations were given;
 - (3) number and age group of attendees;
 - (4) subject matter covered;
 - (5) specific wildlife or wildlife parts used in each program; and
 - (6) number of persons viewing wildlife on permanent display.

[19.35.6.11 NMAC - Rp, 19 NMAC 35.6.13 & 19 NMAC 36.2.11, 12/30/2013]

19.35.6.12 FACILITY STANDARDS:

A. Permit holders shall adhere to department guidelines for reasonable and humane care of captive wildlife. Requests for variations on facility guidelines must be submitted to the department in writing and include justification. All facility variation requests are subject to department review and approval prior to making any facility changes.

B. Permit holders must comply with all provisions, guidelines and specific requirements listed on their permit.

C. Permitted wildlife must be housed separately from human living areas and domestic pets.

D. Permit holders shall utilize travel containers that are appropriately sized, constructed, and maintained to ensure a humane and safe environment for wildlife in transit.

E. All permittee and sub-permittee facilities shall be subject to random inspections by department personnel.

[19.35.6.12 NMAC - Rp, 19.35.6.14 NMAC, 12/30/2013]

19.35.6.13 DIRECTOR'S AUTHORITY:

A. The director shall have the authority to:

- (1) establish and approve any forms, applications and documents necessary to carry out the provisions of this rule;
- (2) establish and approve all notice and posting provisions for public displays of wildlife;
- (3) impose corrective measures to ensure the safety and welfare of humans and wildlife;
- (4) require an applicant to purchase the appropriate hunting, fishing or trapping license when applicable;
- (5) establish collection limits for protected wildlife;
- (6) deny any application if it is determined that the applicant has provided false or incomplete information;
- (7) deny any application that conflicts with current conservation measures, negatively affects local or regional species numbers, or is contrary to angling, hunting or trapping objectives;
- (8) deny any application that does not represent a valid scientific or educational benefit; and
- (9) declare any applicant or permittee who fails to comply with all of the application requirements, director's conditions, permit provisions, or rule requirements as non-compliant; upon a declaration of non-compliance, the director may deny any subsequent application and requests for amendments until all permit violations are corrected and the appropriate certificate of compliance is issued and fees are paid in full.

B. Certificate of compliance fee: The director shall determine the appropriate certificate of compliance fee per violation, not to exceed \$500.00 based on the following criteria:

- (1) department expenses including staff time and travel costs associated with inspection and compliance monitoring;
- (2) department office expenses including mailing, shipping, and certificate issuance;
- (3) animal care, treatment, housing and feeding; and
- (4) other miscellaneous expenses.

[19.35.6.13 NMAC - N, 12/30/2013]

19.35.6.14 VIOLATIONS AND ENFORCEMENT:

A. Any violation of state statutes, rules, or permit provisions, including amendments, may result in cooperative compliance or denial of a permit in addition to any applicable civil, criminal or administrative remedies and penalties.

B. The signature of an applicant, permittee, or sub-permittee on any application, annual report, permit, or any other department document, shall obligate the signatory to adhere to all applicable statutes, rules, and permit provisions. Violations of this rule shall include but not be limited to:

- (1) providing false or fraudulent information on any application or annual report;
- (2) late submission of an annual report;
- (3) exceeding authorized take limits of wildlife;
- (4) take of protected wildlife in an unauthorized locality or manner;
- (5) take of protected wildlife during an unauthorized time frame; or
- (6) take or possession of any wildlife not authorized by the permit.

C. The director may declare any permittee who fails to comply with all requirements or provisions as ineligible for future permits until all violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may deny any subsequent applications or amendments submitted by a permittee or sub-permittee that has failed to implement corrective measures or has committed repeated violations. [19.35.6.14 NMAC - Rp, 19 NMAC 35.6.10 & 19 NMAC 36.2.12, 12/30/2013]

19.35.6.15 APPEAL PROCESS: A permit applicant may appeal a denial by the director in accordance with the following procedures:

A. Commission appeal:

(1) The applicant must submit, by certified mail, a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The written appeal must include the reason for the objection.

B. Commission decision: The commission may reverse the director's decision if:

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation; or

(3) the appellant provides additional data or evidence that contradicts the data or evidence used by the department to deny the permit.

(4) The decision of the commission shall be final.

C. Schedule of appeal: Appeals filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.6.15 NMAC - Rp, 19 NMAC 35.6.11, 12/30/2013]

19.35.6.16 EXEMPTIONS: The following are exempt from applying for or holding permits for conducting activities under this rule:

A. employees of the New Mexico department of game and fish and other government agencies acting in the course of their official duties as determined by the director;

B. persons that salvage or aid in salvaging dead, injured or otherwise incapacitated wildlife at the direction of the department or others authorized for such possession; and

C. designated cooperators and department contractors provided the activities are consistent with their contractual or cooperative duties.

[19.35.6.16 NMAC - Rp, 19 NMAC 36.2.9, 12/30/2013]

19.35.6.17 COMPLIANCE AND ENFORCEMENT ALLOWANCE: A law enforcement officer operating in a director approved covert operation may take protected wildlife pursuant to a license issued to a covert identity or pursuant to a permit or written authorization issued by the director or his designee.

[19.35.6.17 NMAC - N, 12/30/2013]

HISTORY OF 19.35.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: Regulation No. 705, Regulation for the Taking and Possession of Protected Wildlife for Scientific and Educational Purposes, filed 3/11/93.

History of Repealed Material:

19 NMAC 35.6, Educational Use of Wildlife, filed 10/19/94.

19 NMAC 36.2, Taking and Possession of Protected Wildlife for Scientific and Educational Purposes, filed 1/18/96.