

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 35 CAPTIVE WILDLIFE USES
PART 9 CLASS A PARK AND LAKES

19.35.9.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.35.9.1 NMAC - Rp, 19.35.9.1 NMAC, 3-14-14]

19.35.9.2 SCOPE: Persons who desire to hold wildlife species in the state of New Mexico. This will include holders of class “A” park and lake licenses.
[19.35.9.2 NMAC - Rp, 19.35.9.2 NMAC, 3-14-14]

19.35.9.3 STATUTORY AUTHORITY: 17-1-14, 17-1-26, 17-2-3, 17-2-7, 17-2-10, 17-4-8, 17-4-9, 17-4-10, 17-4-11, 17-4-12, 17-4-13, 17-4-14, 17-4-15, 17-4-16, 17-4-17, 17-4-18, 17-4-19, 17-4-20, 17-4-21, 17-4-22, 17-4-23, 17-4-24, 17-4-25, 17-4-26, 17-4-27, and 17-4-28 NMSA 1978.
[19.35.9.3 NMAC - Rp, 19.35.9.3 NMAC, 3-14-14]

19.35.9.4 DURATION: Permanent.
[19.35.9.4 NMAC - Rp, 19.35.9.4 NMAC, 3-14-14]

19.35.9.5 EFFECTIVE DATE: March 14, 2014, unless a later date is cited at the end of a section.
[19.35.9.5 NMAC - Rp, 19.35.9.5 NMAC, 3-14-14]

19.35.9.6 OBJECTIVE: To provide consistent criteria for the possession and sale of privately owned wildlife held in New Mexico. To provide disease testing and general requirements to protect native wildlife and address human health and safety issues.
[19.35.9.6 NMAC - Rp, 19.35.9.6 NMAC, 3-14-14]

19.35.9.7 DEFINITIONS:

- A.** “Animal health emergency” A situation in which people or animals are at risk of exposure to infectious or contagious diseases.
- B.** “Aquaculture/recirculating water systems” is a facility designed for the culture, rearing, and propagation of protected species of fish.
- C.** “Chronic wasting disease” or “CWD” is a transmissible spongiform encephalopathy of cervids.
- D.** “CWD-exposed animal” is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD positive animal or contaminated premise within the previous 60 months.
- E.** “CWD-exposed herd” is a herd in which a CWD-positive animal resided within 60 months prior to that animal’s diagnosis as CWD-positive.
- F.** “CWD-positive herd” is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.
- G.** “CWD profile” is a deer or elk at least 12 months of age that is emaciated and exhibits some combination of clinical signs associated with CWD including increased salivation, tremors, stumbling, incoordination, difficulty swallowing, excessive thirst, and excessive urination.
- H.** “CWD-response committee” is the group of persons who will develop a herd plan for any facility in which CWD is confirmed or in which is identified a trace-back or a trace-forward herd. This group will be comprised of at least the owner or designee of the facility, a representative from the department, from USDA veterinary services, and from the New Mexico livestock board. The committee must contain a qualified epidemiologist designated for the event.
- I.** “CWD-suspect animal” is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.
- J.** “CWD-suspect herd” is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.
- K.** “CWD-trace-back herd” is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.
- L.** “CWD-trace-forward herd” is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

- M.** “Department” shall mean the New Mexico department of game and fish.
- N.** “Director” is the director of the New Mexico department of game and fish.
- O.** “Double fenced” means a park surrounded by two (2) fences, each continuous, with one fence surrounding the other and a separation of at least 30 feet between the fences.
- P.** “Facility” is the area of a class A park surrounded by a fence meeting specifications defined herein, and all buildings, isolation pens, loading chutes, gates, waters, and other structures and equipment used in the class A park operation.
- Q.** “Feed” is all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.
- R.** “Herd plan” is a written facility management agreement that sets forth the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.
- S.** “Official animal identification” is a device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:
- (1) national uniform ear tagging system;
 - (2) animal identification number (AIN);
 - (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system; or
 - (4) any other numbering system approved by USDA for the identification of animals in commerce.
- T.** “Permit owner” is that person or persons to whom the class A park or lake permit is issued. This person(s) may be a lessee on the land designated for the class A park or lake.
- U.** “Quarantine” is an order issued to any class A park or lake prohibiting all animal ingress or egress. The director shall declare the end of the quarantine.
- V.** “Quarantine fence” is a fence, inside a facility, constructed to ensure isolation within the facility.
- W.** “Record” shall mean all vital documents and electronic data kept for each animal. These documents include, but are not limited to, breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, etc.
- X.** “Single fenced” is a park surrounded by one (1) continuous fence.
- Y.** “Shooter animals” are animals designated by a permit owner or his designee for hunting or harvesting in the facility.
- Z.** “Water” is the system for delivering water to animals in a facility including but not limited to wells, streams, ponds, troughs, and water catchments.
- AA.** “USDA” is the United States department of agriculture.
[19.35.9.7 NMAC - Rp, 19.35.9.7 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.8 POSSESSION AND RETENTION OF PROTECTED SPECIES LIVE ANIMALS, BIRDS AND FISH: It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued by the director. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and appeal processes, if any, listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

A. Only members of the following families of fish will be considered for retention in New Mexico class A lakes or class A - aquaculture/recirculating water systems:

- (1) salmonidae;
- (2) esocidae;
- (3) percichthyidae;
- (4) ictaluridae;
- (5) centrarchidae; and
- (6) percidae

B. Live oreochromis niloticus and oreochromis mossambicus capable of reproducing and/or propagation may be considered for retention in New Mexico only by a department approved qualified expert as defined in 19.35.7 NMAC.

C. Live oreochromis niloticus and oreochromis mossambicus incapable of reproducing (hybrid and sterile or triploid of the same sex) shall be considered for retention in New Mexico for the purposes of aquaculture.

D. Only members of the following families of mammals and birds will be considered for retention in New Mexico class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

E. Permission may be granted by the state game commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, or upon requiring that certain additional conditions are met by the applicant, and does not conflict with any other law, rule or ordinance.

[19.35.9.8 NMAC - Rp, 19.35.9.8 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION: All live protected species of the families' bovidae, antilocapridae, and cervidae retained in the state of New Mexico shall meet the following criteria:

A. All class A parks with cervids must develop and follow a herd plan if any animal is identified to come from a CWD-positive herd, CWD-suspect herd, CWD-exposed herd, CWD-trace-back or CWD-trace-forward herd. The herd plan will be developed by the CWD response committee:

(1) tissues from all CWD-exposed or CWD-suspect animals that die or are depopulated or otherwise killed must be collected and tested for CWD as specified in the herd plan. Carcasses and tissues of such animals should be disposed of as specified in the herd plan.

(2) CWD testing specified by the herd plan must be done at the expense of the class A park;

(3) CWD testing shall be done only at a laboratory approved by USDA and the department;

(4) laboratory results must be retained by the class A park and presented to the department with the annual inventory inspection; and

(5) the director may require CWD testing of cervids from class A parks not enrolled in the CWD herd certification program.

B. Any live cervid leaving a park must be accompanied by a health certificate by an accredited veterinarian.

C. Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

D. All class A game parks must maintain herd records that include at least:

(1) bills of sale or donation receipts, that is, the source of all animals moved into the herd from an outside source;

(2) importation permit if the animal was imported into New Mexico from a source outside of the state;

(3) all health certificates associated with importation or other activities;

(4) age or date of birth, species, gender; and location of birth, that is, born at the facility or introduced from a location outside of the facility;

(5) registration documents if applicable;

(6) all health and medical records including details of veterinary care and consultation;

(7) all laboratory results and reports from disease testing and any necropsies performed;

(8) all documents associated with movement of live animals from the facility including movement to slaughter, and final destination of all movements; and

(9) all individual animal identification data.

E. Feed containing animal products or by-products shall not be administered to cervids.

F. Any positive test for CWD shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis by the class A park owner or owner's designee. This notification requirement will only be considered met if the owner or designee talks directly or by telephone to the department or sends a verifiable email to appropriate representatives of the department:

(1) the park shall be under immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense

(2) the director shall assemble the CWD response committee to determine immediate actions to:

(a) contain, control, and prevent further transmission

(b) develop and write a herd plan. If the CWD-positive herd is enrolled or certified in the CWD herd certification program, the herd plan will follow the guidelines contained in the publication, *USDA Chronic Wasting Disease Program Standards*; and

(c) determine all trace-back and all trace-forward facilities;
(3) class A park owners or designees shall notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 96 hours of the diagnosis.

G. Domestic sheep shall not be kept within the boundaries of the park unless the domestic sheep herd is enrolled and participating in the USDA scrapie program.

H. All live protected species of fish retained in an aquaculture/recirculating water system operated by a qualified expert or live protected species for sale outside of the class A lake shall meet the following criteria:

(1) test annually meeting the same requirements as specified as 19.35.7 NMAC;
(2) any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person:

(a) the lake or aquaculture/recirculating water system shall be under immediate indefinite quarantine; and

(b) owners shall submit factual copies of all records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - Rp, 19.35.9.9 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.10 ANIMAL HEALTH EMERGENCIES: Upon identification of an animal health emergency, the department shall determine immediate actions to contain, control, and prevent spread of the animal health emergency giving due consideration for public safety. The department will plan for quarantine, isolation, treatment, disinfection, including destruction and disposal. The director will notify and update appropriate public and private entities as needed.

A. Escaped animals: if, in the opinion of the director, any escaped animal poses an animal health emergency or a risk to animal or public health, the director may employ any and all available means to capture and return or to destroy the escaped animals.

B. Reportable diseases and conditions: the following diseases are considered to be of significant economic and biological risk to humans, wildlife, and domestic animals that, if detected and confirmed in wildlife species, are to be immediately reported to the department:

(1) anthrax
(2) arboviruses
(3) brucellosis
(4) chronic wasting disease
(5) epizootic hemorrhagic disease/bluetongue virus
(6) foot and mouth disease
(7) malignant catarrhal fever
(8) mange
(9) plague
(10) rabies
(11) tuberculosis
(12) tularemia
(13) vesicular stomatitis
(14) any other disease outbreak of significant threat to wildlife populations, livestock health, or human public health.

[19.35.9.10 NMAC - Rp, 19.35.9.10 NMAC, 3-14-14]

19.35.9.11 INTRASTATE TRANSPORTATION:

A. All live captive ungulates transported within the state of New Mexico shall:

(1) be legally possessed;
(2) can be transferred only to other class A park facilities or to processor for slaughter, or sold for immediate consumption;
(3) be shipped following all applicable laws;
(4) all live ungulates including cervids must be permanently identified with any two of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

- (a) implanted electronic identification device;
- (b) ear tag with park identification number;
- (c) tamper-proof ear tag with imprinted national identification number; or
- (d) USDA metal ear tags.

B. Any individual(s) transporting live fish from a class A lake or aquaculture/recirculating water system shall:

- (1) be required to obtain importation and release permits through the process outlined in 19.35.7 NMAC;
- (2) legally possess the fish;
- (3) only transfer or ship to another individual with a valid permit or by means or to destinations previously approved in the permit issued by the department; and
- (4) ship following all applicable laws.

[19.35.9.11 NMAC - Rp, 19.35.9.11 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.12 CLASS A PARK AND LAKE AND CLASS A - AQUACULTURE/RECIRCULATING WATER SYSTEM APPLICATION AND PERMITTING OF NEW PARKS:

New class A park and lake applications will be accepted anytime during the license year. All park and lake licenses will expire March 31 and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

- A.** Name of owner, address, telephone number, name of contact person;
- B.** Complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acres-lake or water; major use of water; a map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;
- C.** Species, size, pounds, and number of wildlife to be retained will be specified;
- D.** Purpose of park or lake will be specified;
- E.** Each park or lake facility shall meet all the specifications listed on the application prior to final approval and no permit will be approved until all conditions and inspections have been completed by a department designee; and

F. Inclusion of annual fee for processing of application as per 19.30.9 NMAC.
[19.35.9.12 NMAC - Rp, 19.35.9.12 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES AND CLASS A - AQUACULTURE/RECIRCULATING WATER SYSTEMS:

All applicants renewing their class A license shall apply to the department by May 1 of each year and must be received by the close of the business day. Any renewal application received after May 1 will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any class A park or lake or class A - aquaculture/recirculating water system failing to send in or renew their application by June 1 will be deemed delinquent and revocation action may commence following 19.31.2 NMAC.

[19.35.9.13 NMAC - Rp, 19.35.9.13 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.14 CLASS A PARK AND LAKE AND CLASS A - AQUACULTURE/RECIRCULATING WATER SYSTEM FACILITY DESIGN, INSPECTION AND RECORDS:

A. Park enclosure: each class A park facility shall, at a minimum, conform to all rules listed below and on the application:

- (1) no park shall exceed 3200 acres. Any additional acres will result in another class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to;
- (2) fence height shall be at least eight feet (8') from ground level to the top wire or fence top for all new class A parks and for all parks participating in the state herd certification program. Fence shall be continuous from bottom to top, even if multiple layers must be used. Current class A parks with seven and one half foot (7.5') fences will not have to meet this requirement unless they apply for certification;
- (3) fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven inch (6"X7") openings;
- (4) fence wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire must either be re-stretched or bolstered in some other permanent fashion;

- (5) fence wire must be maintained securely four inches (4") or less to the ground. Any fencing that is found to be greater than four inches (4") above the ground shall not constitute a proper fence and shall be aproned with permanent material;
 - (6) all fences must be securely fastened to the posts;
 - (7) barbed wire may be used on the bottom or top horizontal wires at the owner's discretion;
 - (8) posts shall be metal "T" posts, pipe or wooden (at least three and one half inches (3.5") in diameter; and must be pressure treated with a preservative);
 - (9) posts shall be set firmly in the ground and not subject to dislodging;
 - (10) posts shall be spaced at intervals not to exceed 18 feet (18') with T-posts or wood; or not to exceed 20 feet (20') on metal pipe;
 - (11) perimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than four inches (4") from ground to gate bottom;
 - (12) all water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure;
 - (13) all fence right-of-ways shall be cleared for a distance of eight feet (8') on each side of the fence and all dead timber with a height greater than the distance to the fence shall be felled;
 - (14) class A park fences shall be constantly maintained as described above, if found out of compliance, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein;
 - (15) all working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park; and
 - (16) if the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.
- B. Park design:**
- (1) all feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities;
 - (2) no placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed; and
 - (3) gates shall remain open until the final inspection and approval by a department designee.
- C. Lake enclosure:** each class A lake facility shall conform to all rules listed below and on the application:
- (1) all bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application;
 - (2) list and describe all screens or other appliances that prevent ingress and egress of fish into and out the bodies of water; and
 - (3) a map of the lake facility and surrounding watershed shall be provided by the applicant upon application.
- D. Aquaculture/recirculating water systems rearing fish capable of reproduction operated by a qualified expert:**
- (1) shall provide the department with a comprehensive biosecurity plan detailing preventative actions for disease, safety, escape and expected final disposition of fish. Permit issuance will not be considered until the biosecurity plan is complete and approved by the department;
 - (2) shall submit an annual report with detailed records regarding the operations, preventative measures utilized to maintain healthy fish and any biosecurity plan modifications or updates;
 - (3) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;
 - (4) shall be covered to prevent loss of fish through predation, theft, or other means;
 - (5) no fish shall be removed from the facility alive unless it is being exported outside of New Mexico according to lawful procedures or is moving within the state according to lawful procedures and cannot reproduce.
 - (6) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits.
- E. All other aquaculture/recirculating systems:**
- (1) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;

(2) shall be covered to prevent loss of fish through predation, theft, or other means;
(3) shall maintain detailed records and submit annual reports regarding the operations;
(4) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits; and

(5) live fish shall not be removed from the aquaculture/recirculating system unless they are being transferred to another department permitted individual within the permit provisions.

F. Facility inspections of parks and lakes: once application is made to the department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity. All inspections will be limited to the facility and the animals held therein.

G. Natural disasters: every owner or his designee shall immediately notify the department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

H. Animal escapes: every owner or his designee shall immediately notify the department of any escapes from a park or lake. Species and all identification data shall be reported with time, location, number or quantity, and sex of escaped animals. Owner or designee shall immediately attempt to recapture escaped animals and make every reasonable effort to return the animals to their facility.

I. Park and lake closure or termination: any park or lake failing to renew by May 1 of each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake maintained after May 1 without a license shall be considered in violation of 17-4-9 NMSA 1978. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the department. However disposition must occur immediately as required by all applicable laws.

J. Records:

(1) any animal disposed or sold from a park or lake must be accompanied by an invoice signed by the owner or his designee and state the following:

(a) park or lake name and license number;
(b) date of disposition or sale, and;
(c) species, quantity, sex and identification data of game animals included in disposition or sale; or, if fish, the approximate weight and number;

(2) each owner shall submit a year-end report to the director by May 1 and state the following: species, quantity, sex, and identification data of game animals disposed, sold, or removed in any way; or, if fish, the approximate weight and number for the previous license year;

(3) owner or designee shall maintain all inventory and health records obtained or created for each animal as designated in 19.35.9.9 NMAC herein;

(4) final disposition, if known, shall be documented of every class A park or lake animal; and

(5) all such records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceedings pursuant to 19.31.2 NMAC.

K. Existing parks: parks and lakes permitted prior to January 1, 2014 of this regulation will have five (5) years to bring their facility into compliance with this regulation. However, all possession conditions and health certification requirements are mandatory and must begin immediately, even for existing class A parks and lakes. [19.35.9.14 NMAC - Rp, 19.35.9.14 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.15 DENIAL AND REVOCATION: Each class A park and lake shall be subject to permit denial or revocation if found to be in violation of this rule or Chapter 17 NMSA 1978. No park or lake application will be approved if fencing or other barrier materials were purchased or installed by the department until all costs associated the fencing have been reimbursed back to the department through the appropriate fund. [19.35.9.15 NMAC - Rp, 19.35.9.15 NMAC, 3-14-14]

HISTORY OF 19.35.9 NMAC:

NMAC History:

19.35.9 NMAC, Class A Park and Lakes, filed 9-28-01.

History of Repealed Material:

19.35.9 NMAC, Class A Park and Lakes, filed 9-28-01 - Repealed effective 1-31-14.

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