

ISSUES SUBMITTAL FORM

Date: 01/06/2023

ISSUE:	Should CPW amend our Chapter 13 Scientific Collection regulations to authorize aquatic management?
DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):	
<p>Chapter 13 currently allows CPW to issue a scientific collecting license for the purpose of importing, marking, or banding or temporary or permanent possession of wildlife and collection of wildlife specimens for the purpose of scientific collections or bona fide scientific research, or educational purposes.</p> <p>Chapter 13 defines “bona fide scientific research” as “systematic investigative or experimental activities which are carried out for the purpose of acquiring new and relevant knowledge pertaining to wildlife biology, ecology or management, or the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, and which are conducted in a humane fashion by qualified personnel, and the results of which would meet the accepted standards for publication in a refereed scientific journal.” 2 CCR 406-13:1300.A.</p> <p>Landowners often want to manipulate the species composition in water bodies on their property. For example, they may want to reduce the number of forage or non-game fish. Because taking or possessing wildlife is prohibited unless authorized by statute or CPW rule, landowners and any private consultants they hire generally need CPW’s approval to manage aquatic wildlife on their property. But no existing rule specifically allows CPW to authorize aquatic management. Historically, landowners and their consultants have used scientific collecting licenses to conduct aquatic management. But scientific collecting licenses are a poor fit because, under current rules, these licenses are generally restricted to circumstances involving scientific research or education.</p>	
STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:	
IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED.	
CPW Fish Health Board – Approved the draft changes to Chapter 13 during the Fish Health Board meeting on 10/17/2022 Fish Management Consultants CPW Staff (Aquatic & Terrestrial Sections and Regional Staff)	
ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):	
<p>1. *Preferred Alternative*:</p> <p>Amend Chapter 13 to (1) define “aquatic management” as “taking or possessing fish, amphibians, crustaceans, or mollusks for the purpose of temporarily or permanently altering the composition of a species in a body of water,” (2) specifically allow CPW to issue scientific collecting licenses for the purpose of conducting aquatic management if certain criteria are satisfied, and (3) reorganize and clarify certain provisions in the chapter.</p> <p>Amend Chapter 0, #010 to allow aquatic wildlife to be transported pursuant to a scientific collecting license.</p> <p>A redline of this alternative is attached.</p> <p>2. Status quo</p>	

Issue Raised by:	CPW Fish Health Board and CPW Aquatic Staff	
Author of the issue paper (if different than person raising the issue):	Josh Nehring – Assistant Aquatic Section Manager	
CC:		
APPROVED FOR FURTHER CONSIDERATION BY:	Matt Nicholl	
REQUIRES NEW SPACE IN THE BROCHURE?	YES X NO	
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	X YES NO	
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	Aquatic Section	
RECOMMENDED FOR CONSENT AGENDA?	YES X NO	

DRAFT REGULATIONS - CHAPTER W-0 - GENERAL PROVISIONS

ARTICLE VII - AQUATIC WILDLIFE

#010 – TRANSPORTATION OF AQUATIC WILDLIFE

- A. Transportation of Approved Aquatic Wildlife: Only the aquatic wildlife approved under #012 of this regulation may be transported within the State of Colorado. It shall be unlawful for any person to transport any live aquatic wildlife not approved under #012 of this regulation.
- B. Requirements for Transportation:
 - 1. All Aquatic Wildlife: All aquatic wildlife being transported within Colorado must at all times be accompanied by, and may only be transported within Colorado pursuant to:
 - a. A personal fishing license (including the regulations pertaining to live fish as bait set forth in other provisions of CPW regulations, including #104.H),
 - b. A commercial fishing license,
 - c. A donation certificate,
 - d. A receipt from a commercial or private lake licensee, permitted aquaculture facility or permitted pet animal facility,
 - e. An aquaculture facility permit,
 - f. A pet animal facility permit,
 - g. An importation permit, ~~or~~
 - h. A scientific collecting license, or
 - i. A bill of lading or other similar documentation evidencing that the wildlife is being transported through Colorado for delivery in another state and containing the name, address and phone number of both the source and receiving person or facility.

Original documentation is only required when transporting aquatic wildlife pursuant to a personal or commercial fishing license, a donation certificate or any kind of receipt. In all other cases, legible copies of the required documents will suffice.

- 2. Unless otherwise specified under these regulation or under Title 33, all live fish transported within Colorado must be accompanied by a copy of the fish health certificate for the source facility evidencing its compliance with #014 Aquatic Wildlife Health Management, unless the bill of lading or other similar documentation shows that the shipment is being transported through Colorado for delivery in another state. At the Division's discretion, the Division may waive the requirement that a fish health certificate accompany live fish transported in Colorado when transportation occurs from one Food Production Facility to another Food Production Facility.

MAILING 01/06/2023
Basis and Purpose
Chapter W-0 - General Provisions

Basis and Purpose:

Modification to Chapter W-0 expands regulations for transporting aquatic wildlife to include transportation under a scientific collecting license.

The statements of basis and purpose for these regulations can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing dnr_cpw_planning@state.co.us or by visiting the Division of Parks and Wildlife headquarters at 6060 Broadway, Denver, CO, 80216.

The statutory authority for these regulations includes, but is not limited to:

- § 24-4-103, C.R.S.
- § 33-1-105(1)(c), C.R.S. (Commission has the power to “Construct or otherwise establish public facilities and conveniences at any site or on any land in which the commission holds an interest ... and, when appropriate, make reasonable fees or charges for their use....”).
- §§ 33-1-101 to 33-6-209, C.R.S., particularly §§ 33-1-105, -106, -107, and 33-4-102, C.R.S.
- § 33-9-102, C.R.S.

EFFECTIVE DATE - THESE REGULATIONS SHALL BECOME EFFECTIVE MAY 1, 2023, AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED, OR SUPERSEDED.

APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO ON THIS 15TH DAY OF MARCH 2023.

APPROVED:
Carrie Besnette Hauser
Chair

ATTEST:
Marie Haskett
Secretary

DRAFT REGULATIONS - CHAPTER W-13 – POSSESSION OF WILDLIFE, SCIENTIFIC COLLECTING AND SPECIAL LICENSES

ARTICLE I - GENERAL PROVISIONS

#1300 - DEFINITIONS

- A. “Aquatic management” means taking or possessing fish, amphibians, crustaceans, or mollusks for the purpose of temporarily or permanently altering the composition of species in a body of water.
- B. “Bona fide scientific research” means: systematic investigative or experimental activities which are carried out for the purpose of acquiring new and relevant knowledge pertaining to wildlife biology, ecology or management, or the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, and which are conducted in a humane fashion by qualified personnel, and the results of which would meet the accepted standards for publication in a refereed scientific journal.
- BC. “Scientific ~~Collections~~collection” means: ~~temporary or permanent take or~~ possession of wildlife for inventory purposes, to estimate population size or ascertain distribution, taxonomic classification or for environmental assessment.

#1301 - POSSESSION

- A. No person shall, at any time, have in possession or under control any wildlife caught, taken or killed outside of this state which were caught, taken or killed at a time, in a manner, or for a purpose, or in any other respect which is prohibited by the laws of the state, territory or country in which the same were caught, taken or killed; or which were shipped out of said state, territory or country in violation of the laws thereof.

ARTICLE II - SCIENTIFIC COLLECTING LICENSE

#1315 - PURPOSE

- A. A ~~Scientific scientific Collecting collecting License license~~ may be issued for the purpose of importing, marking, or banding, or ~~temporary or permanent possession of wildlife and collection of wildlife specimens for the purpose of scientific collections or bona fide scientific research.~~
- B. A scientific collecting license may be issued for the purpose of bird banding for educational purposes or for the possession of fish, mollusks, and crustaceans for educational purposes.
- C. A ~~Scientific scientific Collecting collecting License license~~ may be issued for the purpose of conducting bona fide scientific research ~~consistent with the definition of bona fide scientific research in #1300(A).~~
- D. A scientific collecting license may be issued for the purpose of teaching survey techniques in a post-secondary educational setting. ~~Permits Licenses~~ granted under this ~~subpart B subsection~~ are valid only for Rodentia, Insectivora, Chiroptera, long-tailed weasel (Mustela frenata), short-tailed weasel or ermine (Mustela erminea), fish, or amphibians. Animals captured under this ~~subpart B subsection~~ must be released immediately at the capture site after identification and necessary handling and/or marking has taken place.
- E. ~~Any trapped mortalities resulting from activities authorized by this section shall be prepared and deposited in an established collection at a recognized museum, contingent on Division~~

~~approval~~A scientific collecting license may be issued for the purpose of conducting aquatic management.

~~F. At least thirty (30) days prior to the anticipated need for such a license, applicants must apply on forms provided by the Division. Such application shall be accompanied by a certified check or money order in the amount of the license fee established in 33-4-102(1) C.R.S.~~

~~G. Manner of take will be specified in the license. Only licenses authorizing bona fide scientific research may be authorized to use the methods of take set forth in 33-6-206(1) C.R.S.~~

#1316 - LICENSE REQUIREMENTS

A. Application Procedures

1. At least thirty (30) days prior to the anticipated need for a license, applicants must apply on forms provided by the Division. The application must include payment in the amount of the license fee established in § 33-4-102, C.R.S., as specified in 2 CCR 406-0: Appendix F.

~~1.2. Applications for scientific collections, educational purposes or for teaching survey techniques will~~must include a detailed description of: project objectives, sampling methodologies, ~~detailed~~ sampling sites (with a map upon the Division's request), species and quantity of wildlife to be taken or possessed, reasons why the collection is not possible during an open season or why collections would exceed the established bag limits, ~~and~~ a description of the ultimate proposed disposition of ~~the~~ collected wildlife and any other information the Division finds relevant to its decision whether to approve an application.

~~2.3. Applications for the purpose of conducting bona fide scientific research must include a detailed study plan which contains the following elements: a statement of the need for the study and expected management application and benefit to the state; a description of study area(s), data collection and analytical methodologies which demonstrate ability to meet study objectives; and a description of financial and other resources which demonstrate ability to meet study objectives.~~

~~3.4. All applications shall be approved by the appropriate Regional Manager(s), or their designee, with consideration given for potential impacts on state wildlife resources. Applications for the purpose of conducting bona fide scientific research must also be approved by the appropriate and Terrestrial or Aquatic Section manager or their designees. The decision whether to approve an application will be based on the activity's potential impact on state wildlife resources. When approving an application, the Division may include any license terms it finds reasonably necessary to further the purposes of articles 1 to 6 of title 33, C.R.S.~~

~~4.5. Employees of the Division, f~~Federal or state agencies applying for a job-related Scientific scientific Collecting-collecting License-license shall be exempt from remitting the license fee but must comply with all other provisions of this chapter. The license fee will be required for projects outside normal agency duties. Temporary employees of the Division who are working under the supervision of a permanent employee who are in possession of a Scientific Collecting License shall not be required to obtain a Scientific Collecting License.

6. Applications must state whether any proposed activity will occur within one mile of designated critical habitat for any species listed as threatened or endangered under the federal Endangered Species Act, 16 U.S.C. § 1531, et seq.

~~5. Persons applying for a scientific collecting license to band migratory birds must have a valid bird banding permit issued by the U.S. Fish and Wildlife Service prior to submitting an application to the Division.~~

67. If an application is denied the applicant shall be notified in writing of the reasons therefore. Applications may be denied for the following reasons:
- a. ~~The collections are not for a scientific or educational purpose, or it is determined by the Division that determines the proposed collection is not for a purpose identified in #1315, research does not constitute bona fide scientific research.~~
 - b. The collecting could be conducted during an established season with an appropriate hunting, fishing, or trapping license.
 - c. ~~It is determined by the Division that collecting the requested species would be detrimental to the species or its habitat. The Division determines the proposed activity may adversely affect (i) any wildlife that is the property of the state under 33-1-101(2), C.R.S., including but not limited to species protected by the Colorado Nongame, Endangered, or Threatened Species Conservation Act, § 33-2-101, C.R.S., et seq., or the federal Endangered Species Act, 16 U.S.C. § 1531, et seq., or (ii) any wildlife habitat.~~
 - d. The application is incomplete.
 - e. The application fee is not included.
 - f. Information being sought by the study is already available, as determined by the Division.
 - g. Reporting and notification requirements for a current or previous permits-license issued to the applicant have not been met.
 - h. Applicant has failed to show compliance with all any other applicable local, state, or federal, or tribal law, including other applicable permitting or licensing requirements.
- ~~7. Applicants must comply with all other applicable local, state and federal laws, including but not limited to requirements set forth in the federal Animal Welfare Act.~~
- ~~8. Applicants denied a license may reapply by re-submitting a corrected or new application or providing additional evidence that addresses the reasons for denial.~~
- ~~9. The license may be suspended for any of the reasons stated in paragraph 6 above or for violation of conditions of the license or of any applicable wildlife statutes or regulations.~~
- ~~10. Licenses issued for educational purposes shall not allow the take of live wildlife from the wild.~~

B. Licensing

1. The license will expire on the date specified in the license, which will be issued for the minimum time the Division determines is necessary to accomplish the desired study objectives as determined by the Division purpose of the license or 12 months after the license is issued, whichever is sooner.
2. The Licensee shall notify the local District Wildlife Manager(s) of his anticipated activity in the area(s) he intends to collect specimens Division personnel specified in the license prior to any collecting or banding engaging in any activity authorized by the license.
3. If a license has been suspended for any reason the licensee may apply for reinstatement by submitting a new application. The license will specify the methods of take authorized. Only a license for a bona fide scientific research may authorize the methods described in § 33-6-206(1), C.R.S.

4. A license for educational purposes will not authorize removing live wildlife from the wild.

5. The Division may revoke, suspend, annul, limit, or modify a license if:

a. the Licensee violates any provision of the license;

b. the Licensee violates any local, state, or federal law;

c. the Licensee supplied false information in its application;

d. the Division finds revocation, suspension, annulment, limitation, or modification necessary to avoid substantial danger to public health and safety; or

e. the Division finds revocation, suspension, annulment, limitation, or modification necessary to further the purposes of articles 1 to 6 of title 33, C.R.S.

C. Reporting

1. The Licensee shall provide the Division with a report within thirty (30) days of the expiration date of ~~his~~the license or upon request by the Division. Such report shall include all information and findings as required by the Division using appropriate forms supplied by the Division.

2. Failure to submit a complete report within thirty (30) days of license expiration or upon request by the Division, shall result in denial of future licenses for up to three (3) years.

#1317 - SPECIAL PROVISIONS

A. The Licensee must carry the license when engaging in any activity authorized in the license.

B. ~~Students enrolled in a university or college and under the supervision of an instructor who is in possession of a valid scientific collecting license shall not be required to obtain a scientific collecting license provided such license authorizes the holder thereof to utilize such assistants, and describes the collecting activities to be performed. SA scientific collection license may allow employees, agents, or students under the supervision of the licensee to assist the licensee in performing activities authorized in the license. Any such employees, agents or students shall carry a copy of the license while engaged in field work.~~

A-C. Division employees acting within the scope of their employment are not required to obtain a scientific collecting license.

MAILING 01/06/2023

Basis and Purpose

Chapter W-13 - Scientific Collecting and Special Licenses

Basis and Purpose:

These changes have two purposes. First, they specifically authorize CPW to issue scientific collecting licenses to qualifying landowners (or their contractors) who wish to alter the species composition in water bodies on their property. Second, they clarify the procedural requirements of Chapter 13.

The statements of basis and purpose for these regulations can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing dnr_cpw_planning@state.co.us or by visiting the Division of Parks and Wildlife headquarters at 6060 Broadway, Denver, CO, 80216.

The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-106, C.R.S.

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