

Animals Dangerous to Health or Welfare

NY-ADR

9/18/19 N.Y. St. Reg. ENV-38-19-00001-P

NEW YORK STATE REGISTER

VOLUME XLI, ISSUE 38

September 18, 2019

RULE MAKING ACTIVITIES

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

I.D No. ENV-38-19-00001-P

Animals Dangerous to Health or Welfare

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action:

Amendment of section 180.1 of Title 6 NYCRR.

Statutory authority:

Environmental Conservation Law, section 11-0511

Subject:

Animals dangerous to health or welfare.

Purpose:

To expand the list of animals which pose a risk to health or welfare of the people of the state or indigenous fish and wildlife.

Text of proposed rule:

Section 180.1 is renamed, Subdivisions 180.1(a), (b), and (c), (d) are amended, subdivision 180.1(d) is amended and renumbered as subdivision 180.1(e), and a new subdivision 180.1(d) is added, as follows:

180.1 [Wildlife]*Animals* dangerous to health or welfare

(a) Purpose. The purpose of this section is to list species of [wildlife]*animals* which present a danger to the health or welfare of the people of the State, individual residents, or indigenous wildlife populations.

(b) Prohibitions. [No person may possess, release, transport, import or export, or cause to be released, transported, imported or exported, except under permit from the department, any of the following live wildlife: all species of the lion (*Panthera leo*), the raccoon dog, (*Nyctereutes procyonides*), and any animal, the overall appearance of which makes it difficult or impossible to distinguish it from a wolf (*Canis lupus*) or a coyote (*Canis latrans*).] *Notwithstanding any other provision of this Chapter, and except as provided in subdivision (d) of this section, no person shall import, transport, possess, purchase, barter, transfer, sell, offer for sale, exchange, propagate or release or cause to be released within New York State any of the following live native or non-native dangerous animals including those which are captive bred in any of the following orders, families and individual species or subspecies including all subspecies and hybrids thereof:*

(1) *Canines in the Family Canidae (with the exception of domesticated dogs and captive bred fennec foxes (vulpes zerda));*

(2) *Raccoon dog of the Species Nyctereutes procyonoides;*

(3) *Wolverine (Gulo gulo);*

(4) *Badgers in the Genus Taxidea;*

(5) *Raccoons in the Genus Procyon;*

(6) *Skunks in the Family Mephitidae;*

(7) *Bears in the Family Ursidae;*

(8) *Cats in the Family Felidae with the exception of the species Felis catus (domesticated and feral cats, which shall mean domesticated cats that were formerly owned and that have been abandoned and that are no longer socialized, as well as offspring of*

such cats) and hybrids of *Felis catus* that are registered by the American Cat Fanciers Association or the International Cat Association provided that such cats be without any wild felid parentage for a minimum of five generations;

(9) All non-human primates and prosimians in the Order Primates;

(10) Elephants in the Family Elephantidae;

(11) Rhinoceroses in the Family Rhinocerotidae;

(12) Bats in the Order Chiroptera;

(13) Crocodilians in the Order Crocodylia;

(14) The following species in the Family Varanidae:

(i) *Varanus salvator* (Asiatic monitor, Common water monitor)

(ii) *Varanus niloticus* (Nile monitor)

(iii) *Varanus albigularis* (White-throat monitor)

(iv) *Varanus albigularis ionidesi* (Black-throat monitor)

(v) *Varanus salvadori* (Crocodile monitor)

(vi) *Varanus komodensis* (Komodo dragon)

(15) The following species in the Family Boidae:

(i) *Eunectes deschauenseei* (DeSchauensee's anaconda)

(ii) *Eunectes murinus* (Green anaconda)

(iii) *Eunectes notaeus* (Yellow anaconda)

(iv) *Eunectes beniensis* (Beni anaconda)

(16) The following species in the Family Pythonidae:

(i) *Morelia amethystina* (Australian Amethystine python)

(ii) *Python molurus* (Indian python)

(iii) *Python bivittatus* (Burmese python)

(iv) *Python (Broghammerus) reticulatus* (Reticulated python)

(v) *Python sebae* (Northern African python)

(vi) *Python natalensis* (Southern African python)

(17) All reptiles that are venomous by nature, including but not limited to the following species within the Families or sub-families listed:

(i) Family Elapidae:

(a) All species

(ii) Family Viperidae:

(a) All species

(iii) Family Lamprophiidae:

(a) Sub-family Attractaspinae:

(1) *Attractaspis* spp. (Mole vipers or burrowing asps)

(2) *Homoroselaps* spp (African dwarf garter snakes)

(b) Sub-family Aparallactinae:

(1) *Macrelaps microlepidota* (Natal black snake)

(c) Sub-family Psammophiinae:

(1) *Malpolon monspessulanus* (Montpellier snake)

(iv) Family Colubridae:

(a) Sub-family Colubrinae:

(1) *Dispholidus typus* (Boomslang)

(2) *Thelotornis kirtlandii* (Kirtland's bird snake or twig snake)

(3) *Thelotornis capensis* (Cape bird snake or twig snake)

(b) Sub-family Natricinae:

(1) *Rhabdophis tigrinus* (tiger keelback, Yamakagashi)

(2) *Rhabdophis subminiatus* (red-necked keelback)

(v) Family Dipsadidae:

(a) *Philodryas olfersii* (Lichtenstein's racer)

(b) *Philodryas patagoniensis* (Patagonian racer)

(vi) Venomous lizards, beaded lizards and Gila monsters in the Family Helodermatidae:

(c) [Permits]Licenses. [Permits]Licenses issued pursuant to this section may contain terms, conditions and standards designed to protect the public, individual residents, and indigenous wildlife populations of the State, as well as terms and requirements regarding food, shelter, care and caging to ensure humane treatment and safe captive conditions of the listed species. Such [permits]licenses may be issued only for scientific, educational[or], exhibit[ory]ion, zoological, or propagation purposes[,] as defined in 6 NYCRR Part 175, and shall be effective for one year only and shall not be transferable. Applications for, or renewal of, a license must be made on forms provided by the department. Each licensee shall make a report of his or her operations on forms provided by the department upon renewal of and prior to the expiration of the license.[Persons in possession of a listed animal on the effective date of this section will, upon application, be issued a permit authorizing continued possession. The permit fee is \$10.]

(d) Exemptions. The prohibitions of subdivision (b) of this section shall not apply to the following persons or entities with respect to dangerous animals owned or possessed by them:

(1) a person, licensed or permitted by the department to conduct scientific research;

(2) a person, licensed or permitted by the department to temporarily possess New York native wildlife, listed as dangerous animal in this section, who is providing rehabilitative care to the following species:

(i) American Black bear (*Ursus americanus*)

(ii) Bobcat (*Lynx rufus*)

(iii) Coyote (*Canis latrans*)

(iv) Gray fox (*Urocyon cinereoargenteus*)

(v) Red fox (*Vulpes vulpes*)

(vi) Bats, native to New York State, in the Order Chiroptera

(vii) Raccoon (*Procyon lotor*)

(viii) Striped skunk (*Mephitis mephitis*)

(ix) Massasauga (*Sistrurus catenatus*)

(x) Northern copperhead (*Agkistrodon contortrix*)

(xi) Timber rattlesnake (*Crotalus horridus*)

(3) a person currently licensed by the department pursuant to Environmental Conservation Law, subdivision (3) of section 11-0512;

(4) a person currently licensed by the department pursuant to Environmental Conservation Law, section 11-1907;

(5) a person, licensed or permitted by the department to temporarily possess New York native wildlife, who is conducting nuisance wildlife control activities, provided all such live dangerous animals are immediately euthanized or released within 24 hours of capture in compliance with all the provisions of the Environmental Conservation Law and regulations governing the possession of such dangerous animals;

(6) a person taking destructive or menacing New York native wildlife, listed as a dangerous animal in this section, pursuant to Environmental Conservation Law section 11-0523 provided all such live dangerous animals are immediately released or disposed of in compliance with all the provisions of the Environmental Conservation Law and regulations governing the possession of such dangerous animals;

(7) a person engaged in the agricultural pursuit of breeding, raising and production in captivity, and the marketing of live animals, pelts or carcasses of captive bred, domestically raised ranch fox pursuant to Agriculture and Markets Law section 127-a of Article 7A;

(8) a licensed veterinarian, the Humane Society or Society for the Prevention of Cruelty to Animals in temporary possession of a live dangerous animal;

(9) federal research facilities, and research facilities licensed by the United States Department of Agriculture, Animal and Plant Health Inspection service, pursuant to The Federal Animal Welfare Act (Title 7 U.S.C., Chapter 54) in possession of a live dangerous animal;

(10) facilities operating under an Assurance from the National Institutes of Health, Office of Laboratory Animal Welfare pursuant to the Health Research Extension Act of 1985, in possession of non-mammalian, live dangerous animals.

([d]e) Seizure. Environmental conservation officers, forest rangers and members of the State Police may seize listed species of [wildlife] *dangerous animals* possessed without permit or license. No action for damages will lie for such seizure, and the manner of disposition of seized animals shall be at the discretion of the department.

Text of proposed rule and any required statements and analyses may be obtained from:

Joseph Therrien, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8985, email: joseph.therrien@dec.ny.gov

Data, views or arguments may be submitted to:

Same as above.

Public comment will be received until:

60 days after publication of this notice.

Additional matter required by statute:

A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

Section 11-0511 of the Environmental Conservation Law (ECL) authorizes the Department of Environmental Conservation (department) to promulgate regulations for the possession, transport, import or export of animals that the department finds would present a danger to the health or welfare of the people of the state or indigenous fish or wildlife populations.

2. Legislative Objectives

The legislative objective of the statutory provisions listed above is to authorize the department to establish a list of dangerous animals that present a danger to the health or welfare of the people of the state or indigenous fish or wildlife populations and to establish a licensing structure that will ensure that the health and welfare of the people of the state or indigenous fish and wildlife populations are not threatened by possession or release of dangerous animals.

3. Needs and Benefits

This rule making would amend existing 6 NYCRR section 180.1 by expanding the list of animals that the department finds presents a danger to the health or welfare of the people of the state or indigenous fish or wildlife populations. This revision is necessary because the current regulations do not meet the intent of the authorizing statutes. Consequently, the current regulations do not provide adequate safeguards for protecting the health and safety of the people of the state or indigenous fish or wildlife populations nor do they provide a comprehensive list of animals that present a danger to the people of the state or indigenous fish or wildlife populations.

Attacks from dangerous animals held in captivity have resulted in injury and death of humans in the U.S and abroad. In New York State alone, several incidents have occurred resulting in serious injury to individuals.

- Suffolk County 2016 – a 33-year-old man was airlifted to a hospital after being bitten by a viper in his home.
- Putnam Lake, NY 2011 - a woman died after being bitten by an African black mamba snake.
- Washington County 2010 - a seven-year-old girl was bitten by a lemur on display at a facility.
- Catskill, NY 2006 - a woman was attacked by a capuchin monkey leaving her face permanently scarred.
- Saratoga, NY 2006 - a 4-year-old boy was rushed to a hospital after being clawed in the head by a tiger on display at a fair.
- New Brunswick, Canada 2013 - two brothers ages four and six were strangled to death by a python.

- Indiana 2013 - an employee at an exotic cat sanctuary was mauled by a tiger.
- Ohio 2011- police were forced to kill approximately 56 exotic animals including bears, tigers and lions that were released by their owner.
- Connecticut 2009 - a woman was severely injured when a chimpanzee got loose and attacked her.
- Throughout the U.S. cases of attacks, bites and death from python and constrictor snakes are well documented.

Responding to the threat posed by dangerous animals the U. S. Fish and Wildlife Service (USFWS) amended its regulations by adding five python and four anaconda species to its list of injurious wildlife. Additionally, USFWS passed the Captive Wildlife Safety Act which severely restricts the importation, exportation, purchase, sale or receipt in interstate or foreign commerce of live lions, tigers, leopards, jaguars and cougars. Similarly, several states including New York have passed legislation and regulations banning the private possession of exotic animals as pets. The New York State Legislature, in 2004, found that keeping exotic animals as pets poses a serious threat to the health and safety of New York residents. The Legislature further stated that “[A]cross the country, children have been mauled by tigers, asphyxiated by snakes, and bitten by monkeys. Wild animals kept as pets can transmit serious diseases to people, including Herpes B, Salmonella and Ebola virus. Recapture of escaped wild animals is an expensive and perilous endeavor for municipalities. Other states already prohibit private ownership of certain wild animals as pets, a position supported by the United States Department of Agriculture, the Centers for Disease Control, and the American Veterinary Medical Association. New York must take similar steps to ensure the protection of the public and the humane treatment of wild animals.”

The ban on ownership of exotic animals as pets in New York State has not prevented the threat that these animals pose to the public or indigenous fish or wildlife as evidenced by the escape of and, injury from dangerous animals held at facilities licensed by the department under the current regulatory scheme to possess such animals for exhibition. As listed above, the New York incidents involving the mauling of a woman by a capuchin monkey, the clawing of the four-year-old boy by a tiger, and the biting of the seven-year-old girl by a lemur resulted from injuries sustained from animals that were held under licenses issued by the department. In addition, dangerous animals have escaped from licensed facilities in New York including tigers, lynx, primates, wolves, and alligators. Under the current regulations, the department cannot effectively regulate the private possession of dangerous animals in New York State.

In order to meet statutory requirements and ensure the health and safety of the people of the state and indigenous fish or wildlife populations, the department must take steps to prohibit individual ownership of dangerous animals and regulate possession of dangerous animals held for exhibition purposes.

The proposed rule would create a comprehensive list of animals that can cause serious threats to the people of the state or indigenous fish or wildlife populations. The rule would provide the department with the necessary means to allow qualified entities to possess such animals under license issued by the department while ensuring the health and welfare of the people of the state and indigenous fish or wildlife populations.

4. Costs

There are no costs to the department or local governments. The proposed rule would only expand the list of animals that the department has found pose a threat to the health and safety of the people of the state or indigenous fish and wildlife populations. Individuals would follow the same application process already required by the department for possession of listed dangerous animals.

5. Local Government Mandates

These amendments will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rule would require individuals currently licensed by the department for possession of dangerous animals to obtain a license issued pursuant to this part. Additionally, any individuals currently in possession of animals not previously listed as dangerous animals (for example, wolverines and badgers) would be required to obtain a license from the department. The paperwork involved with obtaining such a license from the department is standard and will not impose any undue burden on applicants.

7. Duplication

The Federal Animal Welfare Act (Title 7 U.S. Code, Chapter 54) and Federal Animal Welfare Regulations (Title 9 of the Code of Federal Regulations, Chapter 1) require that any person exhibiting mammals must obtain a U.S. Department of Agriculture (USDA) license. USDA will issue a license following an inspection of a facility evaluating caging and animal handling experience, however, the USDA license does not address issues involving the welfare of the people of the state or indigenous fish or wildlife populations. Additionally, the Animal Welfare Regulations do not apply to reptiles including alligators, crocodiles, large constrictor snakes or venomous reptiles.

8. Alternatives

The department considered several alternatives to the proposed rule.

Alternative 1. Remove all restrictions for possession of dangerous animals in New York State. Under this alternative only USDA licensed facilities exhibiting mammals would be operating under a license. The USDA license would not cover amphibians or reptiles including alligators, crocodiles, large constrictor snakes, and venomous reptiles. This alternative would not meet the intent of the ECL as it would not ensure the welfare of the people of the state or indigenous fish or wildlife populations.

Alternative 2. Prohibit possession of dangerous animals by any person or entity in New York State. Under this alternative, the department would prohibit the possession of any animals listed as dangerous animal for any purpose in NYS including at facilities such as the Bronx Zoo which are accredited by the Association of Zoos and Aquariums (AZA). Although this alternative would arguably meet the intent of the ECL, it would severely impact AZA accredited zoos and other facilities which are capable of safely housing and displaying dangerous animals, from possessing such species for exhibition or for participation in the AZA Species Survival Plan – an integral component in the management of endangered and threatened species. This alternative would require all facilities currently licensed to possess dangerous animals to transfer these animals from their facility. This would impact facilities in New York currently generating revenue from the exhibition of dangerous animals without providing an appreciable improvement in protecting the welfare of the people of the state. The department did not choose this alternative as it would immediately affect facilities in New York State without providing time to adjust their businesses to non-regulated species and would not meet the intent of the ECL.

Alternative 3. Expand the list of animals that the department finds present a danger to the health or welfare of the people of the state or indigenous wildlife populations and require a department issued license to possess these species. This is the department's preferred alternative. By expanding the list of animals that the department finds present a danger to the health or welfare of the people of the state or indigenous wildlife populations the department will be able to regulate possession of these dangerous animals to facilities that can safely house them and ensure that the animals cannot come in contact with the public and provide safeguards that minimize opportunities for animal escapes.

9. Federal Standards

The federal standards appear in Title 7 of U.S. Code, Chapter 54 and Title 9 of the Code of Federal Regulations, Chapter 1. The proposed rule does not exceed any minimum standards of the federal government.

10. Compliance Schedule

These regulations, if adopted, will become effective immediately. Once adopted, currently licensed facilities, and individuals possessing species previously not regulated by the department, will have 180 days to apply for and receive a new license issued pursuant to this part.

Regulatory Flexibility Analysis

The purpose of this rulemaking is to amend the Department of Environmental Conservation's (department) general regulations found in 6 NYCRR Part 180 of the New York State Codes, Rules and Regulations governing the possession of dangerous animals for exhibition by expanding the list of dangerous animals in subdivision (b) of Section 180.1 to include all species listed in Environmental Conservation Law (ECL) § 11-1013(6)(e) which have been found by the legislature to pose a serious threat to the health and safety of New York Residents, and to expand this list by including additional species that are a threat to the health and safety of the public and indigenous fish and wildlife populations of the state. The rule would provide the department the authority to regulate the possession of dangerous animals held for exhibition purposes by requiring that individuals obtain a license to possess any dangerous animal in New York State.

The department has determined that the proposed rule will not impose any significant adverse economic impact or reporting, record keeping, or other compliance requirements on small business or local governments. There will be no impacts on local governments. The regulation expands the list of species which the department has found to be dangerous to the health and safety of the public and indigenous fish and wildlife populations and requires that a license be obtained prior to taking possession of any dangerous animal. Any impacts to small businesses have been minimized. As described in the Job Impact Statement, the proposed rule allows currently licensed individuals to obtain a license to continue possession of licensed dangerous animals.

Because the department's proposed rulemaking will not impose an adverse impact on businesses or local governments, including little effect on current reporting, record-keeping or compliance requirements, the department has concluded that this proposed regulation does not require a Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

The purpose of this rulemaking is to amend the Department of Environmental Conservation's (department) general regulations found in 6 NYCRR Part 180 of the New York State Codes, Rules and Regulations governing the possession of dangerous animals for exhibition by expanding the list of dangerous animals in subdivision (b) of Section 180.1 to include all species listed in Environmental Conservation Law (ECL) § 11-1013(6)(e) which have been found by the legislature to pose a serious threat to the health and safety of New York Residents and, to expand this list by including additional species that are a threat to the health and safety of the public and indigenous fish and wildlife populations of the state. The rule would provide the department the authority to regulate the possession of dangerous animals held for exhibition purposes by requiring that individuals obtain a license to possess any dangerous animal in New York State.

The department has determined that the proposed rule will not impose any adverse impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The regulation expands the list of species which the department has found to be dangerous to the health and safety of the public and indigenous fish and wildlife populations of the state and requires that a license be obtained prior to taking possession of any dangerous animal.

Because the department's proposed rulemaking will not impose an adverse impact on public or private entities in rural areas, including little effect on current reporting, record-keeping or compliance requirements, the department has concluded that this proposed regulation does not require a Rural Area Flexibility Analysis.

Job Impact Statement

1. Nature of impact

The proposed rule would not have a substantial adverse impact on jobs and employment opportunities as the proposed rule only seeks to expand the list of dangerous wildlife in 6 NYCRR section 180.1 which present a danger to the health or welfare of the people of the State, individual residents, or indigenous wildlife populations. A majority of the animals listed in the proposed rule are already regulated by the department and currently require that a license be obtained prior to possessing any of these species. Additionally, a majority of the newer species proposed for inclusion in the list of dangerous animals are possessed by the same individuals or facilities which are already licensed by the department for other, currently regulated species. Therefore, most of these facilities will not see any increased licensing requirements or experience any adverse impact on their current business or employment practices.

Additionally, approximately 30% of the individuals who currently possess a license to possess dangerous animals or who possess dangerous animals not currently licensed by the department, are small-scale exhibitors possessing only one or two dangerous animals, primarily alligators or snakes, and are hobbyist rather than zoo facilities. Many of these individuals maintain these animals at their homes which are not open for public viewing and instead will travel with the animals(s) to display them at a small number of events in their local areas. Any of these individuals currently licensed by the department, or who are in possession of previously non-listed dangerous animals for exhibition purposes, will be allowed to maintain or obtain an exhibitors license from the department.

2. Categories and numbers affected

Currently, there are 137 licenses issued to individuals authorizing possession of dangerous animals. Seventeen of these licenses are issued to zoos which are accredited by the Association of Zoos and Aquariums (AZA); 9 of these AZA zoos are located out-of-state. Of the remaining 120 licenses, 45 are issued to out-of-state facilities and the remaining 75 are issued to facilities located in New York State (NYS).

Thirty-two of the non-AZA accredited facilities in NYS are small to mid-sized facilities employing few individuals. The remaining 43 NYS licenses are issued to individuals who possess a limited number of dangerous animals and are hobbyist rather than businesses. Of these, 18 possess just one alligator or a caiman, and 10 possess either a venomous snake or a python. Some of the remaining individually licensed animals include bobcats, black bear, fox, lynx, wolf hybrids, lemur, and cougar.

3. Regions of adverse impact

Individuals and facilities affected by this proposed rulemaking are distributed throughout New York State and the proposed rule would not impose a disproportionate adverse impact on any specific region.

4. Minimizing adverse impact

The only requirement for currently licensed facilities will be for them to consolidate all dangerous animals currently held under the authority of separate licenses into one license issued pursuant to this section as well as to add any newly regulated species to the same license. Individuals in possession of dangerous animals not currently licensed by the department will need to apply for and receive a license from the department issued pursuant to this section. Following adoption of this rule, all such individuals will receive notification from the department along with an application and instructions on licensing the dangerous animals in their possession.

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