BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I, II, and III and the amendment of ARM 12.6.2205; ARM 12.6.2210, ARM 12.6.2215, and ARM 12..6.2220 pertaining to exotic species.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 16, 2006 at 7 pm, the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the adoption of new rules I, II, and III, and the amendment of ARM 12.6.2205, ARM 12.6.2210, ARM 12.6.2215, and ARM 12.6.2220 pertaining to exotic species.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on August 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Tim Feldner, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4039; fax (406) 444-4952; or e-mail tfeldner@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

(a) exotic waterfowl in the family *Anayidae* that are not classified as prohibited.

(2) A person may possess the controlled fish species listed in (a) and (b) of this section without completion and approval of a department application. However, individuals possessing these species shall submit a completed reporting form to the department upon acquiring the fish and shall follow restrictions established in [NEW RULE III] regarding ponds where fish are held. The following fish are classified as controlled species:

(a) Koi – *Cyprinus carpio* (for use in outdoor ponds); and

(b) Goldfish – *Carassius auaratus* (for use in outdoor ponds).

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE II APPLICATION FOR A PERMIT TO POSSESS A CONTROLLED SPECIES (1) An applicant may be eligible for a controlled species permit if the applicant:

(a) is at least 18 years of age; and

(b) has not been convicted of any violation of exotic wildlife regulations, any offense involving the illegal commercialization of wildlife or any offenses involving cruelty to animals, within three years of the date of application.

(2) To obtain a controlled species permit a person shall make written application to the department on forms provided by the department. The application must specify:

(a) the applicant's name;

(b) the applicants date of birth;

(c) the applicant's address;

(d) the controlled species proposed to be kept or reared at the above address;

(e) the type of facilities the applicant intends to use for confinement of the controlled species, including cage specifications; and

(f) the source from which the applicant intends to acquire the controlled species.

(3) In order for an applicant to receive a permit, the applicant shall agree to comply with all permit conditions.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE III REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other holding device. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, sturdy enough to prevent escape, and provide protection to the public. Food, water, and cover must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition.

(2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements for mammals will be consistent with those under 9 CFR, Ch. 1, Part 3 "Standards for Humane Handling, Care, Treatment and Transportation."

(3) All ponds containing controlled exotic wildlife must be registered with the department. Ponds used to hold controlled exotic wildlife (including koi and goldfish):

(a) must not be larger than 400 square feet;

(b) must not be within the 100 year flood plane;

(c) must be at least 200 yards from any open water;

(d) must not receive diverted surface water; and

(e) must not have an effluent or discharge to surface water;

(4) Adequate veterinary care must be provided to identify and minimize the spread of diseases. All exotic wildlife held in captivity must be in compliance with and subject to the current Compendium of Animal Rabies Prevention and Control.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

4. The rules proposed to be amended provide as follows, new matter underlined, stricken matter interlined:

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES
(1) The following mammals are classified as noncontrolled species:
(a) African pygmy hedgehog - *Atelerix albiventris* and *Atelerix algirus*;
(b) Wallaby (Bennets) - *Macropus rufogriseus*;
(c) Wallaby (Tammar) - *Macropus eugenii*; ~~and~~
(d) Sugar gliders - *Petaurus breviceps*~~.~~;
(e) Two toed sloth - *Choloepus didoctylus;*
(f) Serval cat - *Leptailurus serval*;
(g) Jungle cat - *Felis chaus*; and
(h) Degus (bush tailed rat) - *Octodon degus.*

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

12.6.2210 CONTROLLED SPECIES PERMITS (1) The department may authorize a permit for possession, sale, purchase, or exchange of a controlled species in Montana. A controlled species permit must require the permitee:
(a) to provide annual reports to the department of births, deaths, sales, and purchases of any controlled species;
(b) to provide a viable bio-security and emergency response plan to protect emergency personnel and the species involved;
(c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs;
(d) to report any injuries to humans inflicted by the controlled species to local public health officials;
(e) to report injuries inflicted by the exotic species on other animals to the Department of Livestock within 24 hours of infliction of the injury; and
(f) to report injuries inflicted by the exotic species on wildlife to the department within 24 hours of infliction of the injury.
(2) The department may require additional conditions on a permit ~~A permit may be conditioned~~ to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety. A person must comply with all permit conditions in order to receive or retain a permit. The department may suspend or cancel a permit if the permittee violates or fails to comply with a permit condition or is convicted of violating a federal or state law, or county or city ordinance associated with possession of the exotic wildlife species.
~~(2)~~(3) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment.
~~(3)~~(4) The department shall document compliance with conditions, either through inspection by representatives of the department or through affidavit by the permittee prior to possession of the exotic wildlife species in Montana.

~~(4)~~(5) A person that displays, exhibits or uses a controlled species for exhibition or commercial photography or television may import the species into Montana without a controlled species permit if the animal:

(a) ~~the species~~ is accompanied by evidence of lawful possession;

(b) ~~the species~~ is not in this state for more than 90 days or a time period authorized by the department;

(c) ~~the species~~ is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States department of agriculture; and

(d) ~~the species~~ is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana department of livestock within 10 days of entry into Montana.

~~(5)~~(6) An interstate shipment of a controlled species may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals ~~and~~ birds, reptiles and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported;

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

(d) the species is not unloaded or otherwise released while being transported through this state.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) The following amphibians are classified as prohibited species:

(a) African clawed frog - *Xenopus laevis*; and

(b) North American bullfrog - *Rana catesbeiana*.

(2) The following crustaceans are classified as prohibited species:

(a) Rusty crayfish - *Orconectes rusticus*.

(3) The following fish are classified as prohibited species:

(a) Bighead carp - *Hypophthalmichthys nobilis*;

(b) Black carp - *Mylopharyngodon piceus*;

(c) Grass carp - *Ctenopharyngodon idella*;

(d) Silver carp - *Hypophthalmichthys molitrix*; and

(e) Snakehead fish - genera *Channa* and *Parachanna* (29 species)~~.~~

(f) Zander (European pike perch) - *Sander lucipoerca*; and

(g) Walking catfish - *Clarias batrachus*.

(4) The following mammals are classified as prohibited species:

(a) Nutria - *Myocastor coypus*~~;~~
(b) Short tailed opossum - *Monodelphis domestica*;
(c) Virginia opossum - *Didelphis virginiana*;
(d) Brush tailed possum, - *Trichosurus vulpecula*;
(e) Southern flying squirrel - *Glaucomys volans*; and
(f) Primates in the family Cebidae.
(5) The following mollusks are classified as prohibited species:
(a) New Zealand mudsnail - *Potamopyrgus antipodarum*; and
(b) Zebra mussel - *Dreissena polymorpha*.
(6) The following reptiles are classified as prohibited:
(a) Boomslang – *Dispholidus typus*;
(b) Burrowing asps (all species in family *Atractaspidae*);
(c) Coral snakes (all species in family *Elapidae*);
(d) Cobras (all species in family *Elapidae*);
(e) Kraits (all species in family *Elapidae*);
(f) Mambas (all species in family *Elapidae*); and
(g) Pit vipers and true vipers (all species in family *Viperidae* except species indigenous to Montana).
(6) The following reptiles are classified as prohibited:
(a) Boomslang – *Dispholidus typus*;
(b) Burrowing asps (all species in family *Atractaspidae*);
(c) Coral snakes (all species in family *Elapidae*);
(d) Cobras (all species in family *Elapidae*);
(e) Kraits (all species in family *Elapidae*);
(f) Mambas (all species in family *Elapidae*); and
(g) Pit vipers and true vipers (all species in family *Viperidae* except species indigenous to Montana).
(7) The following birds are classified as prohibited species:
(a) Mute swans - *Cygnus olor*.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2220 PROHIBITED SPECIES PERMITS (1) The department may issue a permit for possession of a prohibited species only to the following:
(a) a zoo or aquarium which is an accredited institutional member of the American association of zoological parks and aquariums;
(b) a business that displays, exhibits or uses the species for exhibition or commercial photography or television if the species:
(i) is accompanied by evidence of lawful possession;
(ii) is not in this state for more than 90 days or a time period authorized by the department; ~~and~~
(iii) is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting or using animals for commercial purposes other than food or fiber, he must possess the appropriate license issued by the United States department of agriculture; and

(iv) is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ten days of entry into Montana;

(c) a college, university, or government agency, for scientific or public health research;

(d) any other scientific institution, as determined by the department, for research or medical necessity;

(e) a tax-exempt nonprofit organization licensed by the United States department of agriculture that exhibits wildlife solely for educational or scientific purposes; or

(f) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a physician licensed in the state of Montana.

(2) An interstate shipment of a prohibited species may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals ~~and~~, birds, reptiles, and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported;

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

(d) the species is not unloaded or otherwise released while being transported through this state.

(3) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA;
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

5. The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticulture, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

In May of 2005, new rules were adopted officially classifying and regulating various exotic wildlife species as noncontrolled and prohibited. At that time, the committee did not recommend any species as eligible for classification as "controlled." Recently, the committee recommended to the commission that three species be listed as "controlled species" within the state of Montana. The committee believed listing these species as controlled was necessary because special requirements are needed to eliminate risks to the environment should those species escape or be released from captivity.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes. New rules I, II, and III are necessary to implement committee recommendations as the listing of controlled species within the state of Montana is established.

New rule I is necessary to officially list by administrative rule the species recommended by the committee for classification as controlled.

New rule II is needed to establish the procedure and requirements for obtaining a controlled species permit.

New rule III describes the requirements for care and housing of exotic wildlife held in captivity. These new rules are similar to rules under ARM 12.6.1304 that regulate the treatment and sanitation of wildlife held in captivity at roadside menageries for the purpose of exhibition or attracting trade. This rule is necessary to assure that exotic wildlife held in captivity is treated humanely and cared for appropriately. New rule III also provides requirements for the holding of exotic species of fish in backyard/ornamental ponds to prevent escape into the state's waters.

In addition to establishing controlled species in Montana, the committee recommended the addition of four exotic wildlife species to the list of noncontrolled species. These additions made revisions to ARM 12.6.2205 necessary. The committee recommended classification of these species as noncontrolled following evaluation of the potential impacts of private ownership of the species.

Revisions to ARM 12.6.2210 provide the potential for an extension of the 90 day time period for possession of a controlled species in Montana for exhibition, commercial photography, or television without obtaining a controlled species permit. Some contracted exhibitions schedule longer exhibition periods and could be granted longer time periods at the discretion of the department under this rule revision. ARM 12.6.2210 has also been revised to require reptiles and amphibians imported into Montana to be accompanied by a certificate of veterinary inspection. That documentation is required under 81-2-703(1), MCA. Finally, revisions have been made to ARM 12.6.2210 listing controlled species permit requirements necessary prior to authorization of a controlled species permit.

Revisions to ARM 12.6.2215 add seven species of exotic wildlife and all primate species in the family *Cebidae* to the list of prohibited species not allowed for personal possession as pets in Montana. The classification of these exotic wildlife species as prohibited for personal possession as pets was recommended by the committee because the species 1) would not be readily subject to control by humans while in captivity 2) would pose a substantial threat to native wildlife and plants or agricultural production if released from captivity or 3) would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

Revisions to ARM 12.6.2220 are identical to the first two changes made in ARM 12.6.2210 but pertain to prohibited species of exotic wildlife.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Beth Giddings, P.O. Box 200701, Helena, Montana 59620-0701; or email FWPExotics@mt.gov.

7. Tim Feldner or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Steve Doherty
Chairman, Fish, Wildlife and Parks Commission

Bill Schenk
Rule Reviewer

Certified to the Secretary of State July 17, 2006