

The Texas Animal Health Commission (commission) proposes amendments to §40.6, concerning CWD Movement Restriction Zone, in Chapter 40, which is entitled “Chronic Wasting Disease”. The purpose of the amendments is to redefine the boundary of the containment zone.

It was disclosed in 2011, through Chronic Wasting Disease (CWD) sampling efforts of New Mexico Game and Fish personnel that CWD had been detected in mule deer in the southern Sacramento Mountains and northern Hueco Mountains, in southern New Mexico. In 2012, samples from two mule deer taken in far West Texas tested positive for CWD. These were the first cases of CWD detected in Texas deer.

A task force comprised of members of affected deer and exotic livestock associations, private veterinary practitioners, and wildlife biologists assisted the Texas Parks and Wildlife Department (TPWD) and commission staff in developing a CWD response plan. They provided both agencies with recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. TPWD and the commission created CWD Movement Restriction Zones for this area with restrictions put in place to protect against the exposure and spread of CWD. These recommendations were implemented in a coordinated effort by TPWD and the commission.

A High Risk Zone (HRZ) was delineated as all land west of the Pecos River and IH 20, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock. The Containment Zone (CZ) was delineated as all land west of Hwy. 62-180 and Hwy. 54, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock.

TPWD has established different requirements for deer breeders located in the different zones. The commission’s two zones do not make a distinction between the need to achieve five years of CWD monitored status. As such, the commission is now proposing to redefine the existing containment zone in order to minimize confusion regarding the commission’s requirements.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact, and therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would be the

commission's ability to quickly respond and control CWD disease issues related to elk and other susceptible species regulated by the commission.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

When the rule was proposed in 2012, the commission determined that the proposed governmental action could affect private real property, but did not constitute a takings because it was an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7. The amendments were for the purpose of protecting the overall Texas native cervid and exotic livestock industries from exposure to CWD. The creation of this zone, with associated requirements, was to protect these susceptible species of the state. The amendments required a private property landowner to adhere to the stated requirements if they were using a location within the zone to raise one of the species susceptible to CWD and then transporting the animals in order to protect other susceptible species in the state. This proposal is not establishing any new area for inclusion in the established zone and does not constitute a taking of real property.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound

procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled “Regulation of Movement of Animals”, the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.0541, entitled “Elk Disease Surveillance Program”, the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.061(b), if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles or codes are affected by the proposal.

40.6. CWD Movement Restriction Zone.

(a) Definitions:

(1) Containment Zone (CZ)--A geographic area which would include a known affected (quarantined) area or area within Texas where there is a high risk of CWD existing.

(2) High Risk Zone (HRZ)--~~An area that may serve~~ Area which serves as a buffer (surveillance) zone separating the Containment Zone from the rest of Texas.

(3) Susceptible Species--All white-tailed deer, black-tailed deer, mule deer, elk, or other cervid species determined to be susceptible to Chronic Wasting Disease (CWD), which means an animal of that species has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA-APHIS.

(4) Unnatural Movement--Any artificially induced movement of a live susceptible species or the carcass of a susceptible species.

(b) Declaration of Area Restricted for CWD. CWD has been detected in mule deer and/or elk in the southern Sacramento Mountains and northern Hueco Mountains of Southern New Mexico. CWD has been detected in mule deer in the Hueco Mountains of far West Texas. This creates a high risk for CWD exposure or infection in susceptible species in this geographic area, ~~which creates the high risk that there are susceptible species for CWD that have been exposed or infected to CWD within the state. Considering the seemingly high CWD prevalence rate in the Sacramento and Hueco Mountains of New Mexico, CWD may be well established in the population and in the environment in Texas at this time. The high risk area is current area of much concern~~ was delineated as all land west of the Pecos River and Interstate Highway (IH) 20, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock ~~and the CZ was delineated as all land west of HWY 62-180 and HWY 54, and north of IH 10 to Ft. Hancock, and all land~~

west and north of Ft. Hancock. Data regarding mule deer population parameters, movement patterns of mule deer and elk in the area, and the geography and habitat of the area were considered in the delineation of these zones ~~this zone~~.

(c) Zone Boundary. The CZ is defined as follows: That portion of the state within the boundaries of a line beginning in Reeves County where the Pecos River enters from New Mexico; thence southeast along the Pecos River to Interstate Highway (IH) 20; thence west along IH 20 to IH 10; thence west along IH 10 to State Highway (SH) 20 in Hudspeth County; thence northwest along SH 20 to Farm to Market Road (FM) 1088; thence south along FM 1088 to the Rio Grande River; thence northwest along the Rio Grande River to the Texas-New Mexico border.

~~(e) Zone Boundaries.~~

~~(1) The CZ is defined as follows: beginning in Culberson County where State Highway 62-180 enters from New Mexico and thence in a southwesterly direction to the intersection with State Highway 54 and thence following that in a southwesterly direction to the intersection with IH 20 and thence following it in a westerly direction until Ft. Hancock to State Highway 20 and thence following it a westerly direction to Farm Road 1088 (east of Ft. Hancock), and thence following it in a southerly direction to the Rio Grande River to where it enters the state of New Mexico.~~

~~(2) The HRZ is defined as follows: beginning in Reeves County where the Pecos River enters from New Mexico and meanders in a southeasterly direction as the boundary between Reeves County and Loving and Ward Counties to the intersection with IH 20 and thence following it in a westerly direction until the intersection with State Highway 54 and thence following it in a northwesterly direction until the intersection with State Highway 62-180 and thence in a northeasterly direction to the border with the state of New Mexico and Culberson County.~~

~~(d) Restrictions:~~

~~(1) Prohibition of Unnatural Movement of Non-Captive Susceptible Species:~~

~~(A) No susceptible species may be trapped and transported from within the HRZ or the CZ to another location. No susceptible species may be released within the HRZ or the CZ without participating in a monitored herd program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae) and having a herd with Certified Level "C" status [of five years or higher] as established through §40.3(c)(6) §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.~~

~~(B) No part of a carcass of a susceptible species, either killed or found dead, within the HRZ or CZ may be removed from the HRZ or CZ unless a testable CWD sample from the carcass is collected by or provided to the commission ~~Commission~~ or TPWD with appropriate contact information provided by the submitter.~~

~~(2) CWD monitored status within the CZ:~~

~~(A) Previously Established CWD Monitored Facilities within the CZ. Movement of susceptible species will only be allowed for animals from previously established facilities within the CZ that have obtained Certified a five year status while in the CZ in accordance with the requirements of §40.3 of this chapter and having a herd with Certified Level "C" status of five years or higher as established through §40.3(c)(6) §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.~~

(B) Newly Established CWD Monitored Facilities within the CZ. Susceptible species moving into newly established facilities within the CZ will have their status reset to at zero, and movement will be restricted ~~must be held within the facility until the facility has gained Certified it has received five year~~ status in accordance with the requirements of §40.3 of this chapter and having a herd with Certified Level “C” ~~status of five years or higher~~ as established through §40.3(c)(6) ~~§40.3(4)(C)~~ of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

~~(3) CWD monitored status within the HRZ:~~

~~(A) Previously Established CWD Monitored Facilities within the HRZ. Movement of susceptible species from previously established facilities within the HRZ is only for animals that have obtained a five year status in accordance with the requirements of §40.3 of this chapter and having a herd with Level “C” status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.~~

~~(B) Newly Established CWD Monitored Facilities within the HRZ. Susceptible species moving into newly established facilities within the HRZ will have their status reset to zero, and movement will be restricted until the facility has gained five year status in accordance with the requirements of §40.3 of this chapter and having a herd with Level “C” status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.~~

(e) The Executive Director may authorize movement. If movement is necessary or desirable to promote the objectives of this chapter and/or to minimize the economic impact of the restricted susceptible species without endangering those objectives or the health and safety of other susceptible species within the state, the Executive Director may authorize movement in a manner that creates minimal risk to the other susceptible animals in the state.

(f) Notice of High Risk Designation. The Executive Director shall give notice of the restrictions by publishing notice in a newspaper published in the county where the restrictions will be established, or by other accepted practices or publications which circulate information in the county or counties.