

The Texas Animal Health Commission (Commission) proposes new §40.6, CWD Movement Restriction Zone, in Chapter 40, which is entitled “Chronic Wasting Disease”. The new section will create Chronic Wasting Disease (CWD) movement restriction zone(s) in the Trans Pecos Region.

There is a task force comprised of members of affected deer and exotic livestock associations, private veterinary practitioners, and wildlife biologists who assist the Texas Parks and Wildlife Department (TPWD) and Commission staff in developing a response plan for CWD detected in mule deer harvested in New Mexico within 1-2 miles of the Texas border. They recently met and provided both agencies with recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. The recommendations follow the creation of CWD Movement Restriction Zone(s) for the area with restrictions put in place to protect against the exposure and spread of CWD from New Mexico. These recommendations are being taken in a coordinated effort by both TPWD and the Commission.

It was recently disclosed that through CWD sampling efforts of New Mexico Game and Fish personnel that CWD has been detected in mule deer in the southern Sacramento Mountains and northern Hueco Mountains, in southern New Mexico. While sample sizes are very small, it seems that the CWD prevalence may be quite high in that location. Several of the animals sampled were located in close proximity to the Texas border. This is significant for the state of Texas, considering basic biology and movement patterns of susceptible species located there such as mule deer and elk indicate that the animals may be moving back and forth between Texas and New Mexico.

Prions are found ubiquitously throughout the body of an infected animal, and can be shed onto soil, where they may remain viable and able to infect other susceptible animals for many years. Suspected additional susceptible species besides mule deer, white tail deer and elk, include red deer and sika deer. There is still no evidence that humans or domestic livestock can be infected with CWD.

Deer populations in other states where CWD prevalence exceeds 40% have experienced significant (>45%) population declines. As the prevalence rates increase and geographic distribution has expanded in other states, hunters are more likely to alter hunting behaviors which may include avoiding areas with high CWD prevalence. This could have an adverse economic impact on local communities dependent on hunting revenue, and could affect TPWD efforts to manage cervid populations through hunter harvest.

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 current area of concern 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 and 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. Data regarding mule deer population parameters and mule deer

movements, knowledge on elk movements, and the geography and habitat types of the area were considered in the delineation of these zones.

FISCAL NOTE

Ms. Debbie Metzler, Director of Financial Services, 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 rule. 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. For that reason the Commission has determined that there is not an adverse 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.

PUBLIC BENEFIT NOTE

Ms. Metzler 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 new section 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

The agency has determined that the proposed governmental action can affect private real property but does not constitute takings. The proposed rule is 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 rule is for the purpose of protecting the overall Texas native cervid and exotic livestock industries from exposure to CWD. Based on the disclosure of positive animals immediately adjacent to the area defined as a CWD high risk zone, the Commission believes that the creation of this zone, with associated requirements, will protect these susceptible species of the state. The rule would require 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.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

Section 161.054 provides that as a control measure, the Commission by rule may regulate the movement of animals, including feral swine. The Commission may restrict the intrastate movement of animals, including feral swine, even though the movement of the animals is unrestricted in interstate or international commerce. The Commission by rule may prohibit or regulate the movement of animals, into a quarantined herd, premise, or area. In §161.048, a person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.0541, entitled “Elk Disease Surveillance Program”, provides that the Commission by rule may establish a disease surveillance program for elk. Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that the Commission may authorize the Executive Director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

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)--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, 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 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.

(c) 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 Interstate Highway (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 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 Interstate Highway 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 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) 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 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 a five-year status while in the CZ 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 CZ. Susceptible species moving into newly established facilities within the CZ will have their status reset at zero and must be held within the facility until it has received 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.

(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 is attained 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.