



Think positive

An overview of national and international Positive Lists

An introduction to Positive Lists

A Positive List (also known as an approved, a permitted, or a white list) is a list of animal species that are allowed to be kept by private citizens in a jurisdiction. It is a precautionary approach for regulating the keeping of animals by private citizens, safeguarding human health and safety, animal welfare and wildlife and the environment. Positive Lists may also aim to reduce nuisance complaints, make law enforcement more efficient and reduce costs to enforcement authorities.

There are many advantages to using a Positive List, including but not limited to:

- The list is concise and easy to understand and therefore more manageable and able to facilitate a more efficient and effective regulatory process.
- It is a preventative/precautionary approach and therefore more safety conscious.
- The foundation is an evidence-based approach to animal welfare, human safety, and environmental protection.
- The list is developed based on a pre-determined set of criteria which can be catered to individual jurisdictional circumstances.
- They have a minimal impact on the retail pet sector as the most popular pets are usually allowed and Positive Lists have no effect on sales of related husbandry products.
- The burden of proof is on the pet industry to demonstrate, in advance, that the keeping, breeding and sale of animals is safe and does not have an unacceptable, negative impact on the public, animals or the environment. This safety-conscious and preventative approach, commonly under-pinned by statutory obligations, applies to most industries.
- They are growing in popularity. Positive Lists have been adopted by countries in Europe (e.g., Belgium and the Netherlands), in the United States (e.g., the State of Maine), and here in Canada (e.g., New Brunswick, Nova Scotia and multiple municipalities in Ontario and Quebec).

The criteria for including an animal species on a Positive List can vary. However, the following criteria are usually recommended:

- **Animal welfare:** Substantial, independent, impartial, scientific, peer-reviewed evidence concluding that the welfare of animals will not be compromised due to their captivity in domestic environments must exist. Evidence must show that:
 - The animals belonging to a specific species are able to express a normal range of key natural behaviours.
 - Manifestations of abnormal or captivity-stress related behavioural and negative physical consequences must be absent or rare.
 - The animal species' nutritional, thermal, environmental, spatial, and furnishing requirements are known and can be comprehensively and easily met.
- **Public health and safety:** No relevant threats exist to the public by zoonoses, poisoning, envenomation, or dangerous injury.
- **Environmental protection:** No relevant threats exist to the environment and natural ecosystems through the possibility of an animal species escaping or being released and becoming invasive or the introduction of a disease.
- **Protecting wildlife populations elsewhere:** The existence of a sustainable captive breeding population, to prevent wild caught members of a species from entering the pet trade.
- **Disposition of animals:** Local animal control agencies, humane societies, shelters, and rescue organizations should have the capacity, skills, and environments to take in and rehome unwanted, abandoned, or seized animals.
- **Available knowledge:** Qualified veterinary and if necessary additional biological advice must be easily available on all aspects of species' health and welfare needs.
- **Precautionary principle:** If there is insufficient data or a conflict between data, the benefit of the doubt goes to the species. The species will not be listed until there is sufficient evidence to meet the above-mentioned criteria.

Positive Lists around the world

The Positive List regulatory framework has been implemented in jurisdictions across the world for a variety of reasons including curbing the wildlife trade, and safeguarding animal welfare, public health, habitats, and native and non-native wildlife populations. The overview of jurisdictions below is based on information reviewed in September 2020. It may not reflect all jurisdictions in the world that have Positive List regulatory frameworks. Furthermore, development and implementation of these lists are often ongoing.

Europe

Numerous countries in Europe have enshrined, implemented, or are developing Positive Lists for nationwide implementation. There are also efforts at the European Union to regulate the exotic pet trade by means of a Positive List.¹

Belgium

A Positive List was implemented in 2001 by royal decree, resulting in a court challenge by the exotic pet industry. In June 2008, the European Court ruled during the *Andibel* Judgement (case C-219/07)² in favour of the Belgium government paving the way for the first Federal mammal Positive List in Europe. The final mammal list contains 42 species³ and is based on the following criteria:

1. Animal welfare: animals must be easy to keep and be able to be kept according to their physiological, ethological, and ecological needs.
2. Environment: species that pose an ecological risk due to escape cannot be kept as pets.
3. Human health: animals cannot be aggressive or dangerous by nature or pose a danger to human health.
4. Husbandry: information concerning the keeping of animals must be readily available.
5. Precautionary principle: If there is insufficient data or a conflict between data, the benefit of the doubt goes to the species. The species will not be listed until there is sufficient evidence to meet the above-mentioned criteria.

Research into the effectiveness of the mammal Positive List shows that the adoption of the Positive List was effective in regulating and reducing the trade of

¹ <https://www.eurogroupforanimals.org/news/meps-support-call-eu-positive-list-species-allowed-pets>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62007CJ0219&from=NL>

³ <http://www.huisdierinfo.be/positieve-lijst-zoogdieren>

exotic mammals as pets and found that the public was better informed on animal species that are suitable to be kept as pets.⁴

In April 2017, the Belgium region of Wallonia implemented a reptile Positive List, followed by a bird Positive List in May 2019⁵. The region of Flanders implemented a reptile Positive List in October 2019⁶.

Croatia

Regulation NN 17/2017-404 contains a Positive List for birds, fishes, molluscs, and plants.⁷ The risk of the introduction of invasive animals and plants were the main consideration for the development of this list.

Luxemburg

The Positive List principle is enshrined in the 2018 Animal Protection law.⁸ Annex I in the regulations lists mammals that are authorized to be kept by private citizens and Annex III lists animals that can be used in circuses.⁹ Zoos, research institutions, animal shelters and veterinarians are exempted from the Positive List.

Malta

The Positive List principle is enshrined in the Animal Welfare Act. In Part III, Keeping of Animals, it is stated that an animal cannot be kept 'unless they belong in each case to the species or categories of animals specified in regulations prescribed.'¹⁰ It is unclear if regulations have been developed under this Act, but the Minister is responsible for categorizing and listing animals for which the legislation is applicable.

The Netherlands

The Positive List has been enshrined in the Federal 'Wet Dieren' (Animal Act) since 2011. Provision 2.2, paragraph 1 states it is prohibited to keep an animal not belonging to an animal species or category designated by the Minister. Research was conducted in 2014 to assess which exotic animals were kept as pets in the country. A Positive List for mammals was introduced in 2015 but after a judicial procedure it was struck down in court. The Dutch Trade and Industry Appeals Tribunal ruled that the proposed Positive List did not meet the criteria mandated by the European Court in the Andibel Judgement. In September 2019 a new Positive List assessment framework was recommended on which the Positive List should be based on, this framework is still pending for approval. Criteria and risk factors that are the foundation of the proposal include:

⁴ Di Silvestre, I. and van der Hoeven S. (2016). The implementation of the Positive List for mammal pets in Belgium: a success story. Report by Eurogroup for Animals, Brussels, Belgium, 20 pp.

⁵ <http://bienetreanimal.wallonie.be/cwbea>

⁶ <https://www.huisdierinfo.be/welke-reptielen-mag-je-houden>

⁷ <https://www.eurogroupforanimals.org/sites/eurogroup/files/2020-07/Eurogroup%20for%20Animals%20Exotic%20pets%20reopr v5%20%281%29.pdf>

⁸ <http://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a537/jo>

⁹ <http://legilux.public.lu/eli/etat/leg/rgd/2018/11/16/a1055/jo>

¹⁰ <https://legislation.mt/eli/cap/439/eng/pdf>

- The biological characteristics of animal species and the apparent negative impact captivity can have on animal welfare and health, particularly dietary, spatial, climate and social requirements.
- The apparent negative impact on public safety relating to zoonotic disease transmission and physical harm.
- The existence of scientific evidence to demonstrate that the animal can be kept without significant risks.

Norway

Norway had a reptile ban for 40 years which changed in 2017. The Norwegian Food Safety Authority asked the Norwegian Scientific Committee for Food and Environment to conduct a reptile welfare study for 31 species considering the following criteria:

- The possibility of a species to adapt to living in captivity.
- The possibility meeting species-specific housing and husbandry requirements.
- Risk of invasiveness.
- Public health risk relating to inflicting physical harm and transmitting zoonotic diseases.

After analysis, 19 species were deemed to meet all criteria.¹¹

United Kingdom (UK)

A licence is generally required for the keeping of non-native fishes and shellfishes in the UK. An exception has been made for a variety of ornamental fishes kept by zoos, aquariums, and private individuals.¹²

Lithuania

In December 2019, Lithuania introduced a Wildlife Bill which contains a provision to enact a Positive List. The Bill was approved by the government and tabled in Parliament where it passed the first stage of approval.

Finland

The government has shown support for the Positive List by introducing a Bill as part of a reform package. The Bill fell through due to issues unrelated to the Positive List. The Finish government is still committed to introducing a Positive List and is expected to reintroduce a proposal in time.

¹¹ <https://www.regjeringen.no/no/dokumenter/forskrift-om-forbud-mot-a-innfore-omsette-og-holde-eksotiske-dyr/id2553122/>

¹² <https://www.gov.uk/guidance/introduce-or-keep-non-native-fish-and-shellfish#when-you-need-a-licence>

Other European countries

Other countries that have expressed interest in the Positive List regulatory framework or are conducting research in regulating the exotic pet trade include Cyprus, Estonia, Italy, and Slovenia.

European Union

Additionally, during the 2019 European Election, 107 Members of European Parliament signed a pledge committing themselves to supporting an EU Positive List.

Positive lists on other continents

The popularity of Positive Lists is also growing elsewhere in the world. Identifying jurisdictions that have implemented the Positive List can be more challenging because these regulations are often implemented at provincial, state, territory, or municipal level.

Maine, USA

The Inland Fisheries & Wildlife Rule Chapter 7 on Captive Wildlife contains lists of species that can or cannot be kept with or without permit. Wildlife species are divided in:

- Unrestricted species list: anybody in the State of Maine can keep animals listed.
- Prohibited species list: these species cannot be kept, some exceptions apply.
- Restricted species list: these species can only be kept when in possession of a permit. Species are divided in two categories each with specific permit criteria.

The interests of wildlife, the public and local natural resources were the primary considerations for the establishment of the lists.¹³ Other States that have a Positive List or a hybrid Positive List/Negative List regulatory framework include but is not limited to Alaska, Colorado, Hawaii, Kansas,, Maryland, Ohio, Utah and Wyoming.

New South Wales (NSW), Australia

As in many other jurisdictions, NSW has a hybrid legislative system pertaining to the keeping of wildlife as pets. Several classes of animals are prohibited, others require a permit/license and 41 species are exempt of any permit, certificate, or license requirements.¹⁴ Wildlife that are permitted to be kept as pets are native to Australia, there is a general importation ban on non-Australian wildlife species due

¹³ <https://www.maine.gov/ifw/fish-wildlife/captivity.html>

¹⁴ <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Licences-and-permits/nsw-native-animal-keepers-species-list.pdf>

to concerns for invasiveness and the introduction of novel diseases into the environment.¹⁵ Animals can only be acquired from a licensed pet shop or licensed animal keeper.

Singapore

The keeping of wildlife as pets is restricted in Singapore to prevent the introduction and spread of novel diseases, concerns about native and non-native biodiversity and ecosystems damage, risk of animal welfare compromise and public safety concerns.¹⁶ Conditions attached to keeping animals on the Positive List include, but are not limited to:

- Owners must be in possession of appropriate permits.
- Animals can not be bred, re-exported, used for display or sold.
- Owners must comply with the Code of Animal Welfare.

Positive Lists in Canada

Numerous jurisdictions throughout Canada have implemented Positive Lists. There is little consistency regarding the permitted animals or the criteria on which the lists are based. In fact, in many instances, criteria are not enshrined in the law, resulting in a seemingly arbitrary choice of which animals are allowed within a jurisdiction.

New Brunswick

The tragic death of two Campbellton boys caused by an African rock python prompted a review of New Brunswick's exotic animal regulations. This resulted in the Exotic Animals Act being enacted in 2017. The Act established a Committee responsible for the periodic review and assessment of criteria that categorize exotic animals and determine which animals are listed on the Positive List. The Act mandates the committee to consider:

- Public health and safety inherent to the possession of exotic animals.
- The protection of native fauna, flora, and ecosystems.
- And how to regulate the ownership of exotic animals considering the conservation status and complex needs of exotic animals.

At the time of writing, regulations have not been developed yet. Until that time the Positive List in the Exotic Wildlife Regulation, NB Reg 92-74 is enforced.¹⁷

Other jurisdictions

A list of Canadian jurisdictions that have a Positive List or a hybrid Positive List/Negative List legislative framework can be found below.

¹⁵ <https://www.agriculture.gov.au/travelling/bringing-mailing-goods/unique-exotic-pets>

¹⁶ <https://www.nparks.gov.sg/avs/animals/wildlife-and-endangered-animals/keeping-of-wildlife-as-pets>

¹⁷ <https://www.canlii.org/en/nb/laws/regu/nb-reg-92-74/latest/nb-reg-92-74.html>

- Alberta has a Positive List for native wildlife species.¹⁸
- Newfoundland and Labrador has Positive Lists for animals that are permitted to be possessed and imported into the province without a permit.¹⁹
- Nova Scotia has a hybrid legislative framework which includes prohibited, restricted, and permitted animals.²⁰
- Nunavut wildlife regulations contain a list of animals which can be imported without restrictions and a list of animals that are prohibited to be imported.²¹
- Prince Edward Island has a positive list to regulate the use of animals in circuses.²²
- Saskatchewan has a list of native and non-native species that a person may hold in captivity without a license.²³

Known municipalities with a Positive List or hybrid Positive List /Negative List regulatory framework include Aurora, Newmarket, Kitchener (all in Ontario), Montréal, Longueuil, Brossard, Québec, Gatineau, Sherbrooke, Chicoutimi/Saguenay, Saint-Jean-Sur-Richelieu, Saint-Hyacinthe, Shawinigan and Rimouski (all in Quebec)

In closing

Positive Lists are used across the world and is a precautionary, preventative approach for regulating the keeping of animals by private citizens. While Positive Lists are widely used, a reoccurring issue is the lack of clear and consistent criteria that are enshrined in the law. This can give the impression that Positive Lists are arbitrary and even leave Positive Lists open to legal challenges. The foundation of the Positive List is that it prioritizes animal welfare, human health and safety and protecting native environments. It is critical that these priorities are clarified with criteria and are anchored in the law to ensure a transparent, fair, and accessible process.

When implementing and executing Positive Lists according to these comprehensive risk criteria, it will be easy to enforce, and understand and will put the onus on the people who want to trade them to prove the suitability of an animal to be kept as a pet. The exotic pet industry is an ever-evolving market and moves faster than regulatory and enforcement bodies. By the time exotic pet ownership becomes an issue it will be more complicated and costly to solve it.

18

https://www.gp.alberta.ca/1266.cfm?page=1997_143.cfm&leg_type=Regs&isbncln=9780779818594

¹⁹ <https://www.canlii.org/en/nl/laws/regu/cnlr-1156-96/latest/cnlr-1156-96.html#document>

²⁰ <https://novascotia.ca/natr/wildlife/laws/captivewildlife.asp>

²¹ <https://www.canlii.org/en/nu/laws/regu/nwt-reg-nu-026-92/latest/nwt-reg-nu-026-92.html>

²² <https://www.princeedwardisland.ca/sites/default/files/legislation/A%2611-2-2-Animal%20Welfare%20Act%20Circus%20Animals%20Regulations.pdf>

²³ <https://www.canlii.org/en/sk/laws/regu/rrs-c-w-13.1-reg-13/latest/rrs-c-w-13.1-reg-13.html>