PRELIMINARY DRAFT

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Parks and Wildlife Code
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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 5001. GENERAL PROVISIONS

Revised Law

Sec. 5001.0101. PUBLIC FRESH WATER. A public freshwater lake, river, creek, or bayou in this state that is contained in a survey of private land must remain open to the public and may not be sold. (Parks & Wild. Code, Sec. 1.012 (part).)

Source Law

> Sec. 1.012. PUBLIC FRESH WATER. Any public freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. . . .

Revised Law

Sec. 5001.0102. STATE PROPERTY: BEDS AND BOTTOMS OF CERTAIN PUBLIC WATER. (a) The beds, bottoms, and products of beds and bottoms of public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of the part of the Gulf of Mexico within this state's jurisdiction are the property of this state.

(b) The state may permit:

(1) the use of the waters and bottoms described by Subsection (a); and

(2) the taking of products of the waters and bottoms described by Subsection (a). (Parks & Wild. Code, Sec. 1.011(c).)

Source Law

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

Revised Law

Sec. 5001.0103. PROPERTY OF THE PEOPLE OF THIS STATE: WILDLIFE. The following are the property of the people of this state while inside the boundaries of this state:

(1) wild animals;

(2) fur-bearing animals;

(3) wild birds;

(4) wild fowl; and

(5) fish and other aquatic animal life in:

(A) freshwater rivers, creeks, and streams; and

(B) lakes or sloughs subject to overflow from rivers or other streams. (Parks & Wild. Code, Secs. 1.011(a), (b).)

Source Law

Sec. 1.011. PROPERTY OF THE STATE. (a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

Revisor's Note

Sections 1.011(a) and (b), Parks and Wildlife Code, refer to the "borders" of this state. The revised law substitutes "boundaries" for "borders" because, in context, the terms are synonymous and

"boundaries" is more commonly used.

Revised Law

Sec. 5001.0104. FENCES AND WILD ANIMALS. (a) This code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied.

(b) An owner or occupant of land who constructs a fence on the land owned or occupied is not liable for the restriction of the movement of a wild animal by the fence.

(c) The existence of a fence does not affect the status of a wild animal as property of the people of this state. (Parks & Wild. Code, Sec. 1.013.)

Source Law

> Sec. 1.013. FENCES. This code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied, and an owner or occupant who constructs such a fence is not liable for the restriction of the movement of wild animals by the fence. The existence of a fence does not affect the status of wild animals as property of the people of this state.

Revised Law

Sec. 5001.0105. NOTICE OF CONSTRUCTION OF CERTAIN STRUCTURES. (a) This section applies only in a county with a population of less than 500,000 that:

(1) borders the Gulf of Mexico and in which a national wildlife refuge is wholly or partly located; or

(2) does not contain a municipality with a population greater than 300,000 and is adjacent to a county described by Subdivision (1).

(b) Not later than the 90th day before the date a person begins construction of a structure taller than 575 feet, the person shall submit to the department a request for the department to review the project under Section 5002.0403(a)(3).

(c) Not later than the 45th day after the date the department receives a request under Subsection (b), the department shall recommend in writing measures to minimize the impact of the

structure on migratory birds.

(d) If the department does not provide recommendations under Subsection (c) to the person who requested review within the period required by that subsection, the construction of the project may proceed without further delay or modification.

(e) Not later than the 45th day after the date the person who requested review receives the recommendations under Subsection (c), the person shall provide a written response to the department accepting the recommendations or providing alternative minimization measures in place of department recommendations.

(f) If the department does not agree to the alternative minimization measures received under Subsection (e), the department shall reach a final decision on the minimization measures the structure must utilize not later than the 45th day after the date the department received the alternative minimization measures. If the department requires compliance with minimization measures other than those agreed to by the person who requested review, the person is entitled to an administrative hearing before the State Office of Administrative Hearings.

(g) The commission may adopt rules to implement this section.

(h) Information submitted to the department under this section is not subject to Chapter 552, Government Code. (Parks & Wild. Code, Sec. 12.023.)

Source Law

Sec. 12.023. NOTICE OF CONSTRUCTION OF CERTAIN STRUCTURES. (a) This section applies only in a county with a population of less than 500,000 that:

(1) borders the Gulf of Mexico and in which a national wildlife refuge is wholly or partly located; or

(2) does not contain a municipality with a population greater than 300,000 and is adjacent to a county described by Subdivision (1).

(b) Not later than the 90th day before the date a person begins construction of a structure taller than 575 feet, the person shall submit to the department a request for the department to review the project under Section 12.0011(b)(3).

(c) Not later than the 45th day after the date the department receives a request under Subsection (b), the department shall recommend in writing

measures to minimize the impact of the structure on migratory birds.

(d) If the department does not provide recommendations under Subsection (c) to the person who requested review within the period required by that subsection, the construction of the project may proceed without further delay or modification.

(e) Not later than the 45th day after the date the person who requested review receives the recommendations under Subsection (c), the person shall provide a written response to the department accepting the recommendations or providing alternative minimization measures in place of department recommendations.

(f) If the department does not agree to the alternative minimization measures received under Subsection (e), the department shall reach a final decision on the minimization measures the structure must utilize not later than the 45th day after the date the department received the alternative minimization measures. If the department requires compliance with minimization measures other than those agreed to by the person who requested review, the person is entitled to an administrative hearing before the State Office of Administrative Hearings.

(g) The commission may adopt rules to implement this section.

(h) Information submitted to the department under this section is not subject to Chapter 552, Government Code.

Revised Law

Sec. 5001.0106. USE OF CERTAIN WEAPONS IN OR ON BED OR BANK OF NAVIGABLE RIVER OR STREAM PROHIBITED. (a) In this section:

(1) "Archery equipment" means a longbow, recurved bow, compound bow, or crossbow.

(2) "Firearm" has the meaning assigned by Section 5103.0201.

(3) "Navigable river or stream" has the meaning assigned by Section 5003.0101.

(b) Except as provided by Subsection (c), a person may not discharge a firearm or shoot an arrow from any kind of bow if:

(1) the person is located in or on the bed or bank of a navigable river or stream at the time the firearm is discharged or the arrow is shot from the bow; or

(2) any portion of the ammunition discharged or arrow shot could physically contact the bed or bank of a navigable river or stream.

(c) This section does not apply to:

(1) an individual acting in the scope of the

individual's duties as a peace officer or department employee;

(2) the discharge of a shotgun loaded with ammunition that releases only shot when discharged;

(3) an individual engaging in fishing using archery equipment, if the individual is in compliance with Subsection (d);

(4) the discharge of a firearm during the legal taking of an alligator; or

(5) the discharge of a firearm from the bank of a navigable river or stream to take a venomous snake or nonindigenous rodent by:

(A) an owner of the land adjacent to or through which the navigable river or stream runs; or

(B) an agent of an owner described by Paragraph (A).

(d) An individual engaging in fishing using archery equipment may not possess while fishing:

(1) an arrow equipped with fletching of any kind;

(2) an unbarbed arrow; or

(3) a bow that is not equipped with a reel and line.

(e) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor.

(f) If conduct constituting an offense under this section also constitutes an offense under Title 7, the actor may be prosecuted under this section or the other law, but not both. (Parks & Wild. Code, Secs. 1.014(a), (b), (c), (e), (f), (g).)

Source Law

Sec. 1.014. USE OF CERTAIN WEAPONS IN OR ON BED OR BANK OF NAVIGABLE RIVER OR STREAM PROHIBITED. (a) In this section:

(1) "Archery equipment" means a longbow, recurved bow, compound bow, or crossbow.

(2) "Firearm" has the meaning assigned by Section 62.014.

(3) "Navigable river or stream" has the meaning assigned by Section 90.001.

(b) Except as provided by Subsection (c), a person may not discharge a firearm or shoot an arrow from any kind of bow if:

(1) the person is located in or on the bed

or bank of a navigable river or stream at the time the firearm is discharged or the arrow is shot from the bow; or

(2) any portion of the ammunition discharged or arrow shot could physically contact the bed or bank of a navigable river or stream.

(c) This section does not apply to:

(1) an individual acting in the scope of the individual's duties as a peace officer or department employee;

(2) the discharge of a shotgun loaded with ammunition that releases only shot when discharged;

(3) an individual engaging in fishing using archery equipment, if the individual is in compliance with Subsection (e);

(4) the discharge of a firearm during the legal taking of an alligator; or

(5) the discharge of a firearm from the bank of a navigable river or stream to take a venomous snake or nonindigenous rodent by:

(A) an owner of the land adjacent to or through which the navigable river or stream runs; or

(B) an agent of an owner described by Paragraph (A).

(e) An individual engaging in fishing using archery equipment may not possess while fishing:

(1) an arrow equipped with fletching of any kind;

(2) an unbarbed arrow; or

(3) a bow that is not equipped with a reel and line.

(f) A person who violates this section commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under Title 7, the actor may be prosecuted under this section or the other law, but not both.

Revisor's Note

Section 1.014(d), Parks and Wildlife Code, provides that the provisions of Section 1.014 of that code do not limit the ability of a person to carry a handgun under the authority of Subchapter H, Chapter 411, Government Code. The revised law omits that provision as unnecessary because there is no reading of Section 1.014 that would limit a person in the manner described by the omitted subsection. The omitted law reads:

> (d) This section does not limit the ability of a license holder to carry a handgun under the authority of Subchapter H, Chapter 411, Government Code.

Revised Law

Sec. 5001.0107. TAKING OF WILDLIFE BY PROPERTY OWNER UNDER

CERTAIN DEPARTMENT AUTHORIZATION. (a) Except as provided by Subsection (b), a person or agent of the person may take wildlife on the person's property if the person:

(1) has written authorization from the department; and

(2) is participating under the supervision of a department employee in a program or event designated by the executive director as being conducted for the diagnosis, management, or prevention of a disease in wildlife.

(b) Subsection (a) does not apply to a person or agent who is a department employee.

(c) The commission may adopt rules to implement this section. (Parks & Wild. Code, Secs. 12.013(d), (e), (f).)

Source Law

> (d) Except as provided by Subsection (e), a person or agent of the person may take wildlife on the person's property if the person:
>
> (1) has written authorization from the department; and
>
> (2) is participating under the supervision of a department employee in a program or event designated by the director as being conducted for the diagnosis, management, or prevention of a disease in wildlife.
>
> (e) Subsection (d) does not apply to a person or agent who is a department employee.
>
> (f) The commission may adopt rules to implement this section.

CHAPTER 5002. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Revised Law

Sec. 5002.0101. GIFTS AND DONATIONS. (a) The department may accept a gift or donation from any person to fund a program or function of the department related to wildlife conservation.

(b) A gift or donation, other than money, accepted under this section may be auctioned off or used as a prize for a fundraising program or event.

(c) The department shall use all proceeds of an auction or a fundraising program or event under Subsection (b) to fund a program or function of the department related to wildlife conservation. (Parks & Wild. Code, Sec. 12.018.)

Source Law

Sec. 12.018. ACCEPTANCE AND DISPOSITION OF GIFTS. (a) The department may accept a gift or donation from any person for the purpose of funding any program or function of the department relating to wildlife conservation.

(b) A gift or donation other than money accepted under this section may be auctioned off or used as a prize in conjunction with a fund-raising program or event. All proceeds of the auction or fund-raising program or event shall be used by the department for the purposes described by this section.

Revisor's Note

Section 12.018(b), Parks and Wildlife Code, provides that certain gifts or donations accepted under Section 12.018 of that code may be auctioned off or used as a prize in conjunction with a fund-raising program or event, and requires that the proceeds from the auction or fund-raising program or event be used "for the purposes described by [that] section." For clarity, the revised law substitutes "to fund a program or function of the department related to wildlife conservation" for the quoted language because that is the purpose for which the Parks and Wildlife Department is authorized to accept a gift or donation under that section.

Revised Law

Sec. 5002.0102. INSPECTION OF TAXED PRODUCTS. The department may:

(1) inspect a product subject to a tax imposed by a law relating to game, fish, oysters, or marine life; and

(2) verify the weight or measure of a product described by Subdivision (1). (Parks & Wild. Code, Sec. 12.001(b)(2).)

Source Law

(b) The department may:

. . .

(2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;

. . .

Revised Law

Sec. 5002.0103. DEVELOPMENT OF CERTAIN CONSERVATION AGREEMENTS. (a) In this section, "conservation agreement" includes an agreement between this state or a political subdivision of this state and the United States Department of the Interior under the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), unless the agreement relates to a permit issued under Section 7 or 10(a) of that Act.

(b) Any conservation agreement between a political subdivision of this state and the United States Department of the Interior must be developed in consultation with the Parks and Wildlife Department. (Parks & Wild. Code, Secs. 83.005, 83.011(3), (4).)

Source Law

> Sec. 83.005. CONSERVATION AGREEMENTS FOR PROTECTION OF SPECIES. (a) Any conservation agreement between a political subdivision of the state and the United States Department of the Interior must be developed in consultation with the Parks and Wildlife Department.
>
> (b) In this section, "conservation agreement" includes an agreement between the state or a political subdivision of the state and the United States Department of the Interior under the federal act that does not relate to a federal permit as defined by Section 83.011.

> Sec. 83.011. DEFINITIONS. In this chapter:
>
> (3) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.
>
> (4) "Federal permit" means a permit issued under Section 7 or 10(a) of the federal act.

Revisor's Note

(1) Section 83.005(b), Parks and Wildlife Code, refers to a "federal act" and a "federal permit" defined by Section 83.011 of that code. Section 83.011 defines various terms applicable to Chapter 83, Parks and Wildlife Code. Because Section 83.011 is revised in pertinent part as Section 5460.0101, those definitions no longer apply to terms used in this section. The revised law therefore incorporates the

substance of the definitions of "federal act" and "federal permit" provided by Section 83.011.

(2) Section 83.011(3), Parks and Wildlife Code, refers to the federal Endangered Species Act of 1973, "as amended." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Revised Law

Sec. 5002.0104. DISCLOSURE OF HARVEST REPORT INFORMATION. (a) In this section, "department" includes an agent of the department.

(b) Information from a report submitted to the department relating to the recreational harvest authorized by Chapter 5151, 5153, 5155, or 5205 of game animals, game birds, fur-bearing animals, nongame animals, alligators, or fish or other aquatic life, including the specific location of harvested wildlife, may not be disclosed except as authorized by this section or Section 5002.0204.

(c) Chapter 552, Government Code, does not apply to information from a report described by Subsection (b).

(d) The commission or the department may disclose information from a report described by Subsection (b) to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena.

(e) The department may disclose statistical data and compilations of information from a report described by Subsection (b) in a manner that does not identify:

(1) any person who:

(A) submitted the report; or

(B) harvested wildlife as described in the report; or

(2) any specific location information, including a photograph, that could be used to identify the location where the harvest of wildlife described in the report occurred.

(f) The department may disclose information from a report described by Subsection (b) only to:

(1) an individual identified in the report or that individual's representative;

(2) another governmental body, including a law enforcement entity, as needed to carry out a governmental purpose; or

(3) an entity contracted with the department that has signed a nondisclosure agreement prohibiting the entity from disclosing information from the report, if necessary for research, analysis, or another activity the department determines to be appropriate.

(g) This section does not authorize the department to disclose information the department is prohibited from disclosing by other law.

(h) The department and its officers and employees are immune from civil liability for an unintentional violation of this section. (Parks & Wild. Code, Sec. 11.0305.)

Source Law

Sec. 11.0305. DISCLOSURE OF HARVEST REPORT INFORMATION. (a) Information from a report submitted to the department relating to the recreational harvest authorized by Chapter 42, 46, 50, or 71 of game animals, game birds, fur-bearing animals, nongame animals, alligators, or fish or other aquatic life, including the specific location of harvested wildlife, may not be disclosed except as authorized by this section or Section 12.014.

(b) Chapter 552, Government Code, does not apply to information from a report described by Subsection (a).

(c) The commission or the department may disclose information from a report described by Subsection (a) to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena.

(d) The department may disclose statistical data and compilations of information from a report described by Subsection (a) in a manner that does not identify:

(1) any person who:

(A) submitted the report; or

(B) harvested wildlife as described in the report; or

(2) any specific location information, including a photograph, that could be used to identify the location where the harvest of wildlife described in the report occurred.

(e) The department may disclose information from a report described by Subsection (a) only to:

(1) an individual identified in the report or that individual's representative;

(2) another governmental body, including a law enforcement entity, as needed to carry out a governmental purpose; or

(3) an entity contracted with the department that has signed a nondisclosure agreement prohibiting the entity from disclosing information from the report, if necessary for research, analysis, or another activity the department determines to be appropriate.

(f) This section does not authorize the department to disclose information the department is prohibited from disclosing by other law.

(g) The department and its officers and employees are immune from civil liability for an unintentional violation of this section.

(h) In this section, a reference to the department includes a reference to an agent of the department.

Revisor's Note

Section 11.0305(a), Parks and Wildlife Code, refers to the recreational harvest authorized by Chapter 42, 46, 50, or 71 of that code of certain wildlife. Chapters 42, 46, 50, and 71 are revised in pertinent part as Chapters 5151, 5153, 5155, and 5205 of this code, respectively, and the revised law is drafted accordingly.

SUBCHAPTER B. WILDLIFE MANAGEMENT

Revised Law

Sec. 5002.0201. GENERAL POWERS OF DEPARTMENT EMPLOYEE. (a) A department employee acting within the employee's scope of authority may possess, take, transport, release, and manage fish or wildlife in this state for public safety, investigation, propagation, distribution, education, disease diagnosis or prevention, or scientific purposes.

(b) The commission may adopt rules to implement this section. (Parks & Wild. Code, Secs. 12.013(a), (f).)

Source Law

Sec. 12.013. POWER TO TAKE WILDLIFE; FISH.

(a) An employee of the department acting within the scope of the employee's authority may possess, take, transport, release, and manage any of the wildlife and fish in this state for public safety, investigation, propagation, distribution, education, disease diagnosis or prevention, or scientific purposes.

(f) The commission may adopt rules to implement this section.

Revised Law

Sec. 5002.0202. DISCHARGE OF FIREARM TO TAKE MORTALLY INJURED OR DISEASED WILDLIFE ON PUBLIC ROAD OR RIGHT-OF-WAY. (a) A department employee acting within the employee's scope of authority may discharge a firearm to take wildlife on a public road or right-of-way if the wildlife is:

(1) mortally injured; or

(2) behaving in a manner consistent with the wildlife being diseased.

(b) The commission may adopt rules to implement this section. (Parks & Wild. Code, Secs. 12.013(c), (f).)

Source Law

(c) An employee of the department acting within the scope of the employee's authority may discharge a firearm to take wildlife on a public road or right-of-way if the wildlife is:

(1) mortally injured; or

(2) behaving in a manner consistent with the wildlife being diseased.

(f) The commission may adopt rules to implement this section.

Revised Law

Sec. 5002.0203. PROPAGATION AND DISTRIBUTION OF CERTAIN WILDLIFE. The department may manage the propagation and distribution of:

(1) fish in state fish hatcheries; and

(2) birds and game in state reservations. (Parks & Wild. Code, Secs. 12.001(b)(4), (5).)

Source Law

(b) The department may:

. . .

(4) manage the propagation and distribution of fish in state fish hatcheries; and

(5) manage the propagation and distribution of birds and game in state reservations.

Revised Law

Sec. 5002.0204. NOTICE OF WILDLIFE DISEASE OUTBREAK. (a) Notwithstanding any law restricting the disclosure of information by the department and subject to Subsection (b), if the department becomes aware of a wildlife disease outbreak on a property, the department shall provide notice of the location and nature of the outbreak to:

(1) each owner of adjacent property; and

(2) the Texas Animal Health Commission.

(b) Subsection (a) applies only to a disease that the Texas Animal Health Commission has designated as reportable. (Parks & Wild. Code, Sec. 12.014.)

Source Law

> Sec. 12.014. NOTICE OF WILDLIFE DISEASE OUTBREAK. (a) Notwithstanding any law restricting the disclosure of information by the department and subject to Subsection (b), if the department becomes aware of a wildlife disease outbreak on a property, the department shall provide notice of the location and nature of the outbreak to:
>
> (1) each owner of adjacent property; and
>
> (2) the Texas Animal Health Commission.
>
> (b) Subsection (a) applies only to a disease that the Texas Animal Health Commission has designated as reportable.

SUBCHAPTER C. LANDOWNER TECHNICAL GUIDANCE

Revised Law

Sec. 5002.0301. TECHNICAL GUIDANCE TO LANDOWNERS. (a) The department may provide technical guidance to a landowner who requests information concerning fish, wildlife, nongame species, and habitat management.

(b) In setting priorities for the provision of money to a landowner under this section, the department shall consider:

(1) the inventory developed under Section 2102.0103; and

(2) the priorities set under Section 2102.0204.

(c) The department shall support landowner education programs and cooperate with appropriate state agencies.

(d) The department shall provide notice of Section

5002.0302 to a private landowner who requests technical assistance before entering the property to collect and record information about animal or plant life.

(e) The commission by rule shall adopt policies, including written guidelines, for a method for providing notice under Subsection (d) and for departmental entry onto privately owned land to collect information described by Section 5002.0302(c). The policies and guidelines must identify the information that the department may retain under Section 5002.0302.

(f) A review or update of a record or plan produced by the department under Section 5002.0302 and maintained by the landowner or the landowner's agent may be requested by the landowner or the department. (Parks & Wild. Code, Sec. 12.025.)

Source Law

Sec. 12.025. TECHNICAL GUIDANCE TO LANDOWNERS. (a) The department may provide technical guidance to landowners who request information concerning fish, wildlife, nongame, and habitat management.

(b) In setting priorities for the provision of money to a landowner under this section, the department shall consider:

(1) the inventory developed under Section 11.103; and

(2) the priorities set under Section 11.105.

(c) The department shall support landowner education programs and cooperate with appropriate state agencies.

(d) The department shall provide notice of Section 12.0251 to a private landowner who requests technical assistance before entering the property to collect and record information about animal or plant life.

(e) The commission by rule shall adopt policies, including written guidelines for a method for providing notice under Subsection (d) and for departmental entry onto privately owned land to collect information described by Section 12.0251(a). The policies and guidelines must identify the maximum information that the department may maintain under Section 12.0251.

(f) A review or update of a record or plan produced by the department under Section 12.0251 and maintained by the landowner or the landowner's agent may be requested by the landowner or the department.

Revisor's Note

(1) Section 12.025(a), Parks and Wildlife Code, refers to information concerning fish, wildlife, "nongame," and habitat management. The revised law

substitutes "nongame species" for "nongame" for consistency in terminology used in this code and because it is clear from the context that "nongame" is intended to refer to "nongame species."

(2) Section 12.025(b)(1), Parks and Wildlife Code, refers to the inventory developed under Section 11.103 of that code. Section 11.103 is revised in Section 2102.0103, and the revised law is drafted accordingly. Although Section 2102.0103 contains a provision that is not derived from Section 11.103, it is appropriate to refer to Section 2102.0103 in its entirety because the additional provision merely relates to the inventory developed under Section 11.103 and does not provide for the development of inventory.

(3) Section 12.025(e), Parks and Wildlife Code, refers to the "maximum information that the department may maintain" under Section 12.0251 of that code. The revised law omits "maximum" because it does not limit or expand the required content of the applicable rules and thus does not add to the clear meaning of the law. Additionally, the revised law substitutes "retain" for "maintain" for consistency in terminology used in this subchapter.

Revised Law

Sec. 5002.0302. INFORMATION COLLECTED DURING PROVISION OF TECHNICAL GUIDANCE TO PRIVATE LANDOWNER. (a) In this section, "department" includes an agent of the department.

(b) This section applies only to a parcel of land that is privately owned.

(c) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request

relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(d) The commission or the department may disclose information described by this section only to:

(1) the landowner;

(2) another person if the landowner consents to full or specified partial disclosure of information and the consent is in writing and is attached to the plan or recommendation report; or

(3) the Texas Animal Health Commission as needed to carry out a governmental purpose.

(e) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.

(f) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(g) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing. (Parks & Wild. Code, Sec. 12.0251.)

Source Law

Sec. 12.0251. DISCLOSURE OF INFORMATION COLLECTED DURING TECHNICAL GUIDANCE TO PRIVATE LANDOWNER. (a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(b) The commission or the department may disclose information described by this section only to:

(1) the landowner;

(2) another person if the landowner consents to full or specified partial disclosure of information and the consent is in writing and is attached to the plan or recommendation report; or

(3) the Texas Animal Health Commission as needed to carry out a governmental purpose.

(c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.

(d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing.

(f) In this section, a reference to the department includes a reference to an agent of the department.

(g) This section does not apply to a parcel of land that is not privately owned.

SUBCHAPTER D. PROTECTION OF FISH AND WILDLIFE RESOURCES

Revised Law

Sec. 5002.0401. PROTECTION OF FISH IN PUBLIC WATER. The department may protect fish in public water under rules adopted by the department. (Parks & Wild. Code, Sec. 1.012 (part).)

Source Law

Sec. 1.012. . . . The Parks and Wildlife Department is authorized to protect the fish in public waters under rules as it may prescribe.

Revisor's Note

Section 1.012, Parks and Wildlife Code, provides that the Parks and Wildlife Department "is authorized to" protect certain fish under prescribed rules. The revised law substitutes "may" for the quoted language because "may" is consistent with modern usage and the phrases have the same meaning when construed under Section 311.016(1), Government Code (Code Construction Act), which provides that "may" creates a discretionary authority or grants permission or a power.

Revised Law

Sec. 5002.0402. FISH KILLS AND POLLUTION. The department's resource protection activities include:

(1) investigating:

(A) fish kills; and

(B) any type of pollution that may cause the loss of fish or wildlife resources;

(2) taking necessary action to identify the cause of and party responsible for the fish kill or pollution;

(3) estimating the monetary value of lost resources; and

(4) seeking restoration through:

(A) presentation of evidence to the agency responsible for permitting; or

(B) suit in a county or district court. (Parks & Wild. Code, Sec. 12.0011(b)(1).)

Source Law

(b) The department's resource protection activities include:

(1) investigating fish kills and any type of pollution that may cause loss of fish or wildlife resources, taking necessary action to identify the

cause and party responsible for the fish kill or pollution, estimating the monetary value of lost resources, and seeking restoration through presentation of evidence to the agency responsible for permitting or through suit in county or district court;

. . .

Revised Law

Sec. 5002.0403. RECOMMENDATIONS AND INFORMATION. (a) The department's resource protection activities include providing:

(1) recommendations for protecting fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects;

(2) recommendations to the Texas Commission on Environmental Quality on scheduling in-stream flows and freshwater inflows to estuaries in this state to manage fish and wildlife resources; and

(3) information on fish and wildlife resources to local, state, and federal agencies or private organizations that make decisions affecting those resources.

(b) Recommendations and information submitted by the department under Subsection (a) in response to a request for comments from the Texas Department of Transportation must be submitted not later than the 45th day after the date the department receives the request. (Parks & Wild. Code, Secs. 12.0011(b)(2), (3), (4), (b-1).)

Source Law

(b) The department's resource protection activities include:

. . .

(2) providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects;

(3) providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources; and

(4) providing recommendations to the Texas Department of Water Resources on scheduling of in-stream flows and freshwater inflows to Texas estuaries for the management of fish and wildlife resources.

(b-1) Recommendations and information submitted by the department under Subsection (b) in response to a request for comments from the Texas Department of Transportation must be submitted not later than the

45th day after the date the department receives the request.

Revisor's Note

(1) Section 12.0011(b)(4), Parks and Wildlife Code, tasks the Parks and Wildlife Department with "providing recommendations to the Texas Department of Water Resources on scheduling of in-stream flows and freshwater inflows to Texas estuaries for the management of fish and wildlife resources." The revised law substitutes "Texas Commission on Environmental Quality" for "Texas Department of Water Resources" to reflect the name of the agency with the relevant regulatory authority. Sections 11.1471(a) and (c), Water Code, enacted by Chapters 1351 (H.B. 3) and 1430 (S.B. 3), Acts of the 80th Legislature, Regular Session, 2007, require the Texas Commission on Environmental Quality to adopt environmental flow standards that consist of a schedule of flow quantities.

(2) Section 12.0011(b-1), Parks and Wildlife Code, refers to recommendations and information submitted by the Parks and Wildlife Department under Section 12.0011(b) of that code. Section 12.0011(b) is revised in pertinent part as Subsection (a) of this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5002.0404. RESPONSE TO DEPARTMENT RECOMMENDATION OR INFORMATIONAL COMMENT. (a) An agency with statewide jurisdiction that receives a department recommendation or informational comment under Section 5002.0403(a) shall respond to the department in writing concerning the recommendation or comment. A response must include for each recommendation or comment provided by the department:

(1) a description of any modification made to the proposed project, fish and wildlife resource decision, or water

flow schedule resulting from the recommendation or comment;

(2) as applicable, any reason the agency disagreed with or did not act on or incorporate the recommendation or comment; and

(3) any other disposition of the recommendation or comment.

(b) A response under Subsection (a):

(1) must be submitted to the department not later than the 90th day after the date the agency makes a decision or takes other action related to the recommendation or informational comment provided by the department; and

(2) is public information under Chapter 552, Government Code. (Parks & Wild. Code, Secs. 12.0011(c), (d).)

Source Law

(c) An agency with statewide jurisdiction that receives a department recommendation or informational comment under Subsection (b) shall respond to the department in writing concerning the recommendation or comment. A response must include for each recommendation or comment provided by the department:

(1) a description of any modification made to the proposed project, fish and wildlife resource decision, or water flow schedule resulting from the recommendation or comment;

(2) any other disposition of the recommendation or comment; and

(3) as applicable, any reason the agency disagreed with or did not act on or incorporate the recommendation or comment.

(d) A response under Subsection (c):

(1) must be submitted to the department not later than the 90th day after the date the agency makes a decision or takes other action related to the recommendation or informational comment provided by the department; and

(2) is public information under Chapter 552, Government Code.

Revisor's Note

Section 12.0011(c), Parks and Wildlife Code, refers to a recommendation or informational comment under Section 12.0011(b) of that code. Section 12.0011(b) is revised in pertinent part as Section 5002.0403(a), and the revised law is drafted accordingly.

SUBCHAPTER E. AQUATIC LIFE AND MATERIAL

Revised Law

Sec. 5002.0501. REGULATION OF TAKING AND CONSERVATION. The department shall, in accordance with the authority vested in the department by this code, regulate the taking and conservation of:

(1) marine life, including fish, oysters, shrimp, crabs, turtles, mussels, and lobsters;

(2) marl;

(3) sand;

(4) gravel;

(5) shell; and

(6) mudshell. (Parks & Wild. Code, Sec. 1.011(d).)

Source Law

(d) The Parks and Wildlife Department shall regulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

Revisor's Note

(1) Section 1.011(d), Parks and Wildlife Code, refers to "turtles" and "terrapins." The revised law omits "terrapins" as redundant because "terrapins" is included in the meaning of "turtles."

(2) Section 1.011(d), Parks and Wildlife Code, refers to "all other kinds and forms of" marine life and "all other kinds of" shell. The revised law omits the quoted language as unnecessary because "marine life" includes all marine life and "shell" includes all shell.

(3) Section 1.011(d), Parks and Wildlife Code, requires the Parks and Wildlife Department to regulate the taking and conservation of marine life "or" sand, gravel, marl, mudshell, and shell. The revised law substitutes "and" for "or" because it is clear from the context that the department is required to regulate the taking and conservation of both marine life and

sand, gravel, marl, mudshell, and shell.

Revised Law

Sec. 5002.0502. REGULATION OF CERTAIN VESSELS IN EXCLUSIVE ECONOMIC ZONE; OFFENSE. (a) A vessel operating in the exclusive economic zone that lands fish, shrimp, crabs, or other aquatic organisms in this state is required to be licensed and registered as provided by Chapters 5158 and 5251.

(b) The commission may adopt regulations for vessels in the exclusive economic zone that land fish, shrimp, crabs, or other aquatic organisms in this state.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 47.019, 47.051 (part).)

Source Law

> Sec. 47.019. EXCLUSIVE ECONOMIC ZONE. (a) Any vessel operating in the exclusive economic zone that lands fish, shrimp, crabs, or other aquatic organisms in this state is required to be licensed and registered as provided by Chapters 47 and 77 of this code.
>
> (b) The commission may adopt regulations for vessels in the exclusive economic zone that land fish, shrimp, crabs, or other aquatic organisms in this state.
>
> Sec. 47.051. PENALTY. . . . a person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 47.019(a), Parks and Wildlife Code, provides in part that any vessel operating in the exclusive economic zone that lands fish, shrimp, crabs, or other aquatic organisms in this state is required to be licensed and registered as provided by Chapter 47 of that code. Chapter 47 is revised in pertinent part as Chapter 5158 of this code, and the revised law is drafted accordingly.

Revised Law

Sec. 5002.0503. FISH RESEARCH OR PROPAGATION. (a) This

section applies only to a program or event designated by the executive director as:

(1) being conducted for research or species propagation; and

(2) exempt from normally applicable size or bag limits.

(b) A person who is not a department employee and who is participating in a program or event described by Subsection (a) under the supervision of a department employee may possess, take, transport, or release fish in this state to accomplish the intent of the program or event.

(c) The commission may adopt rules to implement this section. (Parks & Wild. Code, Secs. 12.013(b), (f).)

Source Law

> (b) A person who is not an employee of the department who is participating under the supervision of a department employee in a program or event designated by the director as being conducted for research or species propagation and as exempt from the normally applicable size or bag limits may possess, take, transport, or release any fish in this state to accomplish the intent of the program or event.
>
> (f) The commission may adopt rules to implement this section.

Revised Law

Sec. 5002.0504. INTRODUCING AND STOCKING AQUATIC LIFE; OFFENSE. (a) The department shall:

(1) regulate the introduction and stocking of fish, shellfish, and aquatic plants into public water of this state; and

(2) keep a record of:

(A) stock fish provided, to whom the fish were provided, and the cost of the stock fish; and

(B) streams, lakes, or ponds stocked and the number and kinds of fish stocked in each.

(b) On request, the department may examine a stream, lake, or pond for the purpose of stocking with fish best suited to the location.

(c) A person commits an offense if the person violates a

regulation adopted under Subsection (a)(1). An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 12.001(b)(3), 12.003(a)(4), (5), 12.015, 12.019(a) (part).)

Source Law

[Sec. 12.001]

(b) The department may:

. . .

(3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;

. . .

Sec. 12.003. RECORDS. (a) The department shall keep a record containing the following information:

. . .

(4) all stock fish furnished, to whom the fish were furnished, and the cost of the stock fish;

(5) all streams, lakes, or ponds stocked and the number and kinds of fish stocked in each; and

. . .

Sec. 12.015. REGULATION OF FISH, SHELLFISH, AND AQUATIC PLANTS. The department shall regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state.

[Sec. 12.019]

(a) . . . a person who violates Section 12.015, . . . of this code or a regulation adopted under Section 12.015 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 12.019(a), Parks and Wildlife Code, refers to a person who violates Section 12.015 of that code or a regulation adopted under that section. The revised law omits the reference to a violation of Section 12.015 because Section 12.015 itself does not impose a duty or include a prohibition that a person could violate.

CHAPTER 5003. ACCESS TO PROTECTED FRESHWATER AREAS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5003.0101. DEFINITIONS. In this chapter:

(1) "Emergency" means a condition or circumstance in which a person reasonably believes that:

(A) an individual has sustained or is in imminent

danger of sustaining serious bodily injury; or

(B) property has sustained or is in imminent danger of sustaining significant damage or destruction.

(2) "Motor vehicle" means a wheeled or tracked vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport a person or thing.

(3) "Navigable river or stream" means a river or stream that retains an average width of 30 or more feet from the mouth or confluence up.

(4) "Protected freshwater area" means the portion of the bed, bottom, or bank of any navigable river or stream that lies at or below the gradient boundary of the river or stream. The term does not include the portion of a bed, bottom, or bank that lies below tidewater limits. (Parks & Wild. Code, Sec. 90.001.)

Source Law

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Emergency" means a condition or circumstance in which a person reasonably believes that an individual has sustained serious bodily injury or is in imminent danger of serious bodily injury or that property has sustained significant damage or destruction or is in imminent danger of significant damage or destruction.

(2) "Motor vehicle" means any wheeled or tracked vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport a person or thing.

(3) "Navigable river or stream" means a river or stream that retains an average width of 30 or more feet from the mouth or confluence up.

(4) "Protected freshwater area" means that portion of the bed, bottom, or bank of any navigable river or stream that lies at or below the gradient boundary of the river or stream. The term does not include that portion of a bed, bottom, or bank that lies below tidewater limits.

Revised Law

Sec. 5003.0102. APPLICABILITY OF CHAPTER. This chapter does not apply to a river with headwaters in another state and a mouth or confluence in another state. (Parks & Wild. Code, Sec. 90.003(b).)

Source Law

(b) This chapter does not apply to any river with headwaters in a state other than Texas and a mouth or confluence in a state other than Texas.

Revised Law

Sec. 5003.0103. DEPARTMENT RULES. (a) In this section, "vessel" has the meaning assigned by Section 5951.0101.

(b) The department may adopt rules necessary to implement Sections 5003.0202(a), 5003.0301, 5003.0302, and 5003.0303, including rules relating to locations from which a person may launch or retrieve a vessel by trailer from the banks of a protected freshwater area. (Parks & Wild. Code, Sec. 90.004(i).)

Source Law

> (i) The department may adopt rules necessary to implement this section and Section 90.002, including rules relating to locations from which a person may launch or retrieve a vessel by trailer from the banks of a protected freshwater area. For purposes of this subsection, "vessel" has the meaning assigned by Section 12.101.

Revisor's Note

Section 90.004(i), Parks and Wildlife Code, authorizes the Parks and Wildlife Department to adopt rules to implement Section 90.004 of that code. Section 90.004 is revised in pertinent part as Sections 5003.0301, 5003.0302, and 5003.0303, and the revised law is drafted accordingly.

SUBCHAPTER B. GENERAL PROCEDURES AND PROHIBITIONS

Revised Law

Sec. 5003.0201. PUBLIC ACCESS TO PROTECTED FRESHWATER AREAS. (a) Except as otherwise provided by law, a person may not restrict or interfere with public recreational use of a protected freshwater area.

(b) A person may not camp or build a fire in a dry riverbed of the Blanco River. This subsection applies only to a section of the Blanco River that is not located in a county adjacent to a county with a municipality with a population greater than 1.5 million.

(c) This section does not authorize the public to use private property to gain access to a protected freshwater area without permission of the landowner. (Parks & Wild. Code, Secs.

90.008, 90.0085.)

Source Law

Sec. 90.008. PUBLIC ACCESS. (a) Except as otherwise allowed by law, a person may not restrict, obstruct, interfere with, or limit public recreational use of a protected freshwater area.

(b) This section does not allow the public to use private property to gain access to a protected freshwater area without permission of the landowner.

Sec. 90.0085. CAMPING AND BUILDING FIRES PROHIBITED IN CERTAIN AREAS. (a) This section applies to a section of the Blanco River that is not located in a county adjacent to a county with a municipality with a population greater than 1.5 million.

(b) Notwithstanding Section 90.008(a), a person may not camp or build a fire in a dry riverbed.

Revisor's Note

(1) Section 90.008(a), Parks and Wildlife Code, provides that a person may not "restrict, obstruct, interfere with, or limit" public recreational use of a protected freshwater area. The revised law omits "obstruct" as included in the meaning of "interfere with" and omits "limit" as included in the meaning of "restrict."

(2) Section 90.008(b), Parks and Wildlife Code, provides that "[t]his section," meaning Section 90.008 of that code, does not allow the public to use private property to gain access to a protected freshwater area without permission of the landowner. Section 90.008 is revised in this section. Although this section contains a provision that is not derived from Section 90.008, the revised law retains the reference to "this section" because the additional provision is a prohibition that could not be construed to allow use of private property.

(3) Section 90.0085(b), Parks and Wildlife Code, prohibits a person from camping or building a fire in certain dry riverbeds "[n]otwithstanding Section 90.008(a)" of that code. Section 90.008(a) prohibits a person from restricting or interfering

with public recreational use of a protected freshwater area, "[e]xcept as otherwise allowed by law." The revised law omits "[n]otwithstanding Section 90.008(a)" as unnecessary because Section 90.008(a) already provides for exceptions.

Revised Law

Sec. 5003.0202. OPERATION OF MOTOR VEHICLE IN OR ON PROTECTED FRESHWATER AREA. (a) Except as provided by Subsection (b) or Section 5003.0301, a person may not operate a motor vehicle in or on a protected freshwater area.

(b) Subsection (a) does not apply to:

(1) a state, county, or municipal road right-of-way;

(2) a private road crossing established on or before December 31, 2003; or

(3) operation of a motor vehicle by:

(A) a federal, state, or local government employee if operation of a motor vehicle is necessary for conducting official business;

(B) a person if operation of a motor vehicle is necessary:

(i) for reasonable purposes related to usual and customary agricultural activities; or

(ii) to an activity authorized by Subtitle I;

(C) a person if operation of a motor vehicle is necessary to and authorized by:

(i) a mineral lease; or

(ii) a crossing easement granted by the General Land Office under the Natural Resources Code;

(D) a person in response to an emergency;

(E) a person if operation of a motor vehicle is necessary for the lawful construction, operation, or maintenance of equipment, facilities, or structures used for:

(i) the production, transportation,

transmission, or distribution of electric power;

(ii) the provision of telecommunications services or other services delivered through a cable system;

(iii) the transportation of aggregates, oil, natural gas, coal, or any product of oil, natural gas, or coal;

(iv) the production, treatment, or transportation of water or wastewater; or

(v) dredge material disposal placement;

(F) an owner of the uplands adjacent to a protected freshwater area, the owner's agent, lessee, sublessee, or the lessee or sublessee's agent, representative, licensee, invitee, or guest for reasonable purposes related to usual and customary operation of:

(i) a camp regulated under Chapter 141, Health and Safety Code; or

(ii) a retreat facility owned and operated by a nonprofit corporation chartered under the laws of this state before January 1, 1970; or

(G) an owner of the adjacent uplands on both sides of a protected freshwater area and the owner's agents, employees, representatives, and lessees only for the purpose of accessing the owner's property on the opposite side of the protected freshwater area when no reasonable alternative access is available.

(c) A person exempt under this section who operates a motor vehicle in or on a protected freshwater area must avoid, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area.

(d) A person exempt under this section who crosses a protected freshwater area must cross by the most direct feasible route. (Parks & Wild. Code, Secs. 90.002, 90.003(a), (c).)

Source Law

Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED FRESHWATER AREA PROHIBITED. Except as provided by Section 90.003 or 90.004, a person may not

operate a motor vehicle in or on a protected freshwater area on or after January 1, 2004.

Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not apply to:

(1) a state, county, or municipal road right-of-way;

(2) a private road crossing established on or before December 31, 2003; or

(3) operation of a motor vehicle by:

(A) a federal, state, or local government employee if operation of a motor vehicle is necessary for conducting official business;

(B) a person if operation of a motor vehicle is necessary for reasonable purposes related to usual and customary agricultural activities;

(C) a person if operation of a motor vehicle is necessary to and is authorized by a mineral lease;

(D) a person if operation of a motor vehicle is necessary to and authorized by a crossing easement granted by the General Land Office under the Natural Resources Code;

(E) a person if operation of a motor vehicle is necessary to an activity authorized by Chapter 86;

(F) a person in response to an emergency;

(G) a person if operation of a motor vehicle is necessary for the lawful construction, operation, or maintenance of equipment, facilities, or structures used for:

(i) the production, transportation, transmission, or distribution of electric power;

(ii) the provision of telecommunications services or other services delivered through a cable system;

(iii) the transportation of aggregates, oil, natural gas, coal, or any product of oil, natural gas, or coal;

(iv) the production, treatment, or transportation of water or wastewater; or

(v) dredge material disposal placement;

(H) an owner of the uplands adjacent to a protected freshwater area, the owner's agent, lessee, sublessee, or the lessee or sublessee's agent, representative, licensee, invitee, or guest for reasonable purposes related to usual and customary operation of:

(i) a camp regulated under Chapter 141, Health and Safety Code; or

(ii) a retreat facility owned and operated by a nonprofit corporation chartered under the laws of this state before January 1, 1970; or

(I) an owner of the adjacent uplands on both sides of a protected freshwater area and the owner's agents, employees, representatives, and lessees only for the purpose of accessing the owner's property on the opposite side of the protected freshwater area when no reasonable alternate access is available.

(c) A person exempt under this section who operates a motor vehicle in or on a protected freshwater area shall do so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the

protected freshwater area. A person exempt under this section who is crossing a protected freshwater area shall cross by the most direct feasible route.

Revisor's Note

(1) Section 90.002, Parks and Wildlife Code, provides that except as provided by Section 90.003 or 90.004 of that code, a person may not operate a motor vehicle in or on a protected freshwater area "on or after January 1, 2004." Section 90.004 is revised in pertinent part as Section 5003.0301, and the revised law is drafted accordingly. Additionally, the revised law omits "on or after January 1, 2004" as unnecessary because January 1, 2004, has passed and any future operation of a motor vehicle would necessarily occur after that date.

(2) Section 90.003(c), Parks and Wildlife Code, refers to a person exempt from motor vehicle operation prohibitions under "this section," meaning Section 90.003 of that code. The pertinent parts of Section 90.003 exempting a person from a prohibition are revised in this section. Although this section contains a provision that is not derived from Section 90.003, the revised law retains the references to exemptions under "this section" because the additional provision contains the general prohibition to which Section 90.003 provides exemptions and is not an additional source of exemptions.

Revised Law

Sec. 5003.0203. OPERATION OF AIRCRAFT IN OR ON PROTECTED FRESHWATER AREA. (a) In this section, "aircraft" means a device that can be used for flight in the air, including an airplane, ultralight airplane, and helicopter.

(b) Notwithstanding any other provision of this chapter, a person may operate an aircraft in or on a protected freshwater area.

(c) A person who operates an aircraft in or on a protected

freshwater area must avoid, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area. (Parks & Wild. Code, Sec. 90.0035.)

Source Law

> Sec. 90.0035. OPERATION OF AIRCRAFT IN OR ON PROTECTED FRESHWATER AREA. (a) In this section, "aircraft" means a device that can be used for flight in the air, including an airplane, ultralight airplane, or helicopter.
>
> (b) Notwithstanding any other provision of this chapter, a person may operate an aircraft in or on a protected freshwater area.
>
> (c) A person who operates an aircraft in or on a protected freshwater area shall do so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area.

Revised Law

Sec. 5003.0204. MOTOR VEHICLE RECREATION SITES. (a) The department shall establish a program to identify and facilitate the development of motor vehicle recreation sites that are not located in or on a protected freshwater area.

(b) The department shall:

(1) seek the cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites under Subsection (a); and

(2) seek and use funding from sources outside the general revenue fund, including from the federal government, to identify and facilitate the development of motor vehicle recreation sites under Subsection (a). (Parks & Wild. Code, Sec. 90.009.)

Source Law

> Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) The department shall establish a program to identify and to facilitate the development of motor vehicle recreation sites that are not located in or on a protected freshwater area. The department shall seek the cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites under this subsection.
>
> (b) The department shall seek and use funding from the federal government and other sources outside the general revenue fund to identify and facilitate

the development of motor vehicle recreation sites under Subsection (a).

SUBCHAPTER C. LOCAL PLANS

Revised Law

Sec. 5003.0301. LOCAL RIVER ACCESS PLAN. (a) A county, municipality, or river authority may adopt a written local plan to provide access to a protected freshwater area located in the county's geographical boundaries or the municipality's or river authority's jurisdiction.

(b) A local plan adopted under Subsection (a) may:

(1) notwithstanding Section 5003.0202(a), allow limited motor vehicle use in a protected freshwater area;

(2) provide for the county, municipality, or river authority to collect a fee from a person accessing a protected freshwater area, the amount of which may not exceed the estimated cost to the county, municipality, or river authority of allowing the limited use of motorized vehicles in protected freshwater areas in its jurisdiction; or

(3) establish other measures consistent with the policy and purposes of this chapter. (Parks & Wild. Code, Secs. 90.004(a), (b).)

Source Law

Sec. 90.004. LOCAL RIVER ACCESS PLAN. (a) A county, municipality, or river authority may adopt a written local plan to provide access to a protected freshwater area located within the county's geographical boundaries or the river authority's or municipality's jurisdiction.

(b) A local plan adopted under Subsection (a) may:

(1) notwithstanding Section 90.002, allow limited motor vehicle use in a protected freshwater area;

(2) provide for the county, municipality, or river authority to collect a fee from a person accessing a protected freshwater area, the amount of which may not exceed the estimated cost that the county, municipality, or river authority incurs by allowing the limited use of motorized vehicles in protected freshwater areas within its jurisdiction; or

(3) establish other measures consistent with the policy and purposes of this chapter.

Revised Law

Sec. 5003.0302. DEPARTMENT APPROVAL REQUIRED; CRITERIA AND

PROCEDURES. (a) Before a local plan adopted under Section 5003.0301(a) may take effect:

(1) a county, municipality, or river authority must file the plan with the department; and

(2) the plan must be approved in writing by the department.

(b) The department may approve, disapprove, or modify a local plan filed under Subsection (a). In determining whether to approve, disapprove, or modify a local plan, the department shall consider whether the plan:

(1) protects natural resources, including fish, wildlife, and water quality;

(2) protects public safety;

(3) provides for adequate enforcement;

(4) coordinates with adjacent and overlapping jurisdictions;

(5) provides for and publicizes adequate public access to a protected freshwater area;

(6) provides for adequate public services relating to access to a protected freshwater area; and

(7) protects private property rights.

(c) The department by rule may adopt additional criteria or procedures to govern approval of local plans. Lack of rules adopted under this subsection or Section 5003.0103 may not be the sole basis for disapproving a local plan. (Parks & Wild. Code, Secs. 90.004(c), (d), (e).)

Source Law

(c) Before a local plan adopted under Subsection (a) may take effect, a county, municipality, or river authority must file the plan with the department. A local plan does not take effect until the plan is approved in writing by the department.

(d) The department may approve, disapprove, or modify a local plan filed under Subsection (c). In determining whether to approve, disapprove, or modify a local plan, the department shall consider whether the plan:

(1) protects fish, wildlife, water quality, and other natural resources;

(2) protects public safety;

(3) provides for adequate enforcement;
(4) coordinates with adjacent and overlapping jurisdictions;
(5) provides for and publicizes adequate public access to a protected freshwater area;
(6) provides for adequate public services relating to access to a protected freshwater area; and
(7) protects private property rights.

(e) The department by rule may adopt additional criteria or procedures to govern approval of local plans. Lack of rules adopted under this section alone is not a sufficient basis for rejecting a local plan.

Revisor's Note

Section 90.004(e), Parks and Wildlife Code, refers to rules adopted under Section 90.004 of that code. The pertinent parts of Section 90.004 providing for the adoption of rules are revised as Subsection (c) of this section and Section 5003.0103, and the revised law is drafted accordingly.

Revised Law

Sec. 5003.0303. PERIODIC REVIEW AND REVOCATION. (a) The department may conduct periodic reviews of a local plan filed under Section 5003.0302(a) to monitor the effectiveness of the plan.

(b) A person who has reason to believe that a local plan filed under Section 5003.0302(a) does not comply with Section 5003.0301 or 5003.0302 may file a petition for revocation of the plan with the department.

(c) The department shall revoke approval of a local plan if the department finds, as a result of a periodic review conducted under Subsection (a) or a petition for revocation filed under Subsection (b), that the plan as implemented fails to meet any of the criteria for approval established by Section 5003.0302(b). (Parks & Wild. Code, Secs. 90.004(f), (g), (h).)

Source Law

(f) The department may conduct periodic reviews of a local plan filed under Subsection (c) to monitor the effectiveness of the plan.

(g) A person who has reason to believe that a local plan filed under Subsection (c) does not comply with this section may file a petition for revocation of the plan with the department.

(h) The department shall revoke approval of a local plan if the department finds, as a result of a periodic review conducted under Subsection (f) or a petition for revocation filed under Subsection (g),

that the plan as implemented fails to meet any of the criteria for approval established by Subsection (d).

Revisor's Note

Section 90.004(g), Parks and Wildlife Code, authorizes a person to file a petition for revocation of a local plan if the person has reason to believe that the plan does not comply with Section 90.004 of that code. The pertinent parts of Section 90.004 are revised as Sections 5003.0301 and 5003.0302, and the revised law is drafted accordingly.

Revised Law

Sec. 5003.0304. ASSISTANCE FROM DEPARTMENT. The department shall assist a requesting county, municipality, or river authority in developing a local plan. (Parks & Wild. Code, Sec. 90.005(a).)

Source Law

Sec. 90.005. ASSISTANCE FROM DEPARTMENT. (a) The department shall assist a requesting county, municipality, or river authority in developing a local plan.

Revised Law

Sec. 5003.0305. REMITTANCE OF CERTAIN FEES. A county, municipality, or river authority implementing a local plan shall remit to the department 20 percent of the gross receipts from fees charged under Section 5003.0301(b)(2) to offset the department's administrative costs associated with implementing this chapter. (Parks & Wild. Code, Sec. 90.005(b).)

Source Law

(b) A county, municipality, or river authority implementing a local plan shall remit to the department 20 percent of the county's, municipality's, or river authority's gross receipts from fees charged under Section 90.004(b)(2) to offset the department's administrative costs associated with implementing this chapter.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5003.9801. PRIVATE PROPERTY RIGHTS. (a) Recreational use of a protected freshwater area, including by portage over or around barriers, scouting of obstructions, or crossing of private

property to or from a protected freshwater area, does not create a prescriptive easement over private property.

(b) This section does not limit the right of a person to navigate in, on, or around a protected freshwater area. (Parks & Wild. Code, Sec. 90.007.)

Source Law

> Sec. 90.007. LANDOWNER RIGHTS. (a) A prescriptive easement over private property cannot be created by recreational use of a protected freshwater area, including by portage over or around barriers, scouting of obstructions, or crossing of private property to or from a protected freshwater area.
>
> (b) Nothing in this section shall limit the right of a person to navigate in, on, or around a protected freshwater area.

Revised Law

Sec. 5003.9802. STUDIES. The department may conduct studies necessary to implement this chapter. (Parks & Wild. Code, Sec. 90.006.)

Source Law

> Sec. 90.006. STUDIES. The department may conduct studies necessary to implement this chapter.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5003.9901. DUTY OF PEACE OFFICER. All peace officers shall enforce this chapter. (Parks & Wild. Code, Sec. 90.010.)

Source Law

> Sec. 90.010. ENFORCEMENT. All peace officers of this state shall enforce the provisions of this chapter.

Revisor's Note

> Section 90.010, Parks and Wildlife Code, refers to a peace officer "of this state." The revised law omits the quoted language as unnecessary because a peace officer to whom this code applies is necessarily a peace officer of this state.

Revised Law

Sec. 5003.9902. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 5003.0201 or 5003.0202(a).

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section for a violation of Section 5003.0201(a) or 5003.0202(a).

(c) Each violation under this section is a separate offense.

(d) Notwithstanding Section 2952.0103, Subchapter B, Chapter 12, Penal Code, applies to punishments under this section. (Parks & Wild. Code, Sec. 90.011.)

Source Law

> Sec. 90.011. PENALTY. (a) A person commits an offense if the person violates Section 90.002, 90.008, or 90.0085.
>
> (b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C misdemeanor.
>
> (c) If it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under Section 90.002 or 90.008, on conviction the defendant shall be punished for a Class B misdemeanor.
>
> (d) Each violation under this section is a separate offense.
>
> (e) Notwithstanding Section 12.403 of this code, Subchapter B, Chapter 12, Penal Code, applies to punishments under this section.

Revisor's Note

Section 90.011(c), Parks and Wildlife Code, refers to a conviction under Section 90.008 of that code. Section 90.008 is revised in pertinent part as Section 5003.0201(a), and the revised law is drafted accordingly.