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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 B. GENERAL WILDLIFE PROVISIONS

CHAPTER 5051. MANAGEMENT OF NONGAME SPECIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5051.0101. DEFINITION. In this chapter, "nongame species" means those species of vertebrate and invertebrate fish or wildlife indigenous to this state that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters. (Parks & Wild. Code, Sec. 67.001.)

Source Law

> Sec. 67.001. DEFINITION. In this chapter, "nongame" means those species of vertebrate and invertebrate wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters.

Revisor's Note

> Section 67.001, Parks and Wildlife Code, defines the term "nongame" to mean certain species of vertebrate and invertebrate "wildlife" indigenous to this state. To more accurately reflect the substance of the definition and for consistency in terminology used in this code, the revised law substitutes "nongame species" for "nongame." Additionally, the revised law substitutes "fish or wildlife" for "wildlife" for clarity and consistency in terminology used in this chapter because, throughout Chapter 67, Parks and Wildlife Code, revised as this chapter, "nongame" is always used in reference to "fish and wildlife" or "fish or wildlife."

Revised Law

Sec. 5051.0102. APPLICABILITY OF CHAPTER TO CRAYFISH. This chapter does not apply to crayfish other than crayfish in public water. (Parks & Wild. Code, Sec. 67.0011.)

Source Law

Sec. 67.0011. EXEMPTION OF CRAYFISH. This chapter does not apply to crayfish, other than in public water.

Revised Law

Sec. 5051.0103. COMMISSION REGULATIONS. (a) The commission by regulation shall establish limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame species that the department considers necessary to manage the species.

(b) Regulations adopted under this section must state the common and scientific name of the species or subspecies that the department determines to be in need of management under this chapter. (Parks & Wild. Code, Sec. 67.004.)

Source Law

Sec. 67.004. ISSUANCE OF REGULATIONS. (a) The commission by regulation shall establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

(b) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

Revisor's Note

Section 67.004(a), Parks and Wildlife Code, refers to "nongame fish or wildlife." Throughout this chapter, the revised law substitutes "nongame species" for "nongame fish or wildlife" or "nongame species of fish or wildlife" and similar phrases because "nongame species" is the defined term for this chapter and fish and wildlife are included in the definition of that term.

SUBCHAPTER B. MANAGEMENT OF NONGAME SPECIES

Revised Law

Sec. 5051.0201. MANAGEMENT PROGRAMS. (a) The department shall develop and administer management programs to ensure the continued ability of nongame species to perpetuate successfully.

(b) In managing nongame species, the department may:

(1) disseminate information pertaining to the conservation, management, and values of nongame species;

(2) conduct scientific investigation and survey of nongame species for improved protection and conservation;

(3) propagate, distribute, protect, and restore nongame species;

(4) research and manage nongame species; and

(5) develop or acquire habitats for nongame species. (Parks & Wild. Code, Sec. 67.002.)

Source Law

Sec. 67.002. MANAGEMENT OF NONGAME SPECIES. (a) The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

(b) In managing nongame species of fish and wildlife, the department may:

(1) disseminate information pertaining to nongame species conservation, management, and values;

(2) conduct scientific investigation and survey of nongame species for better protection and conservation;

(3) propagate, distribute, protect, and restore nongame species;

(4) research and manage nongame species;

(5) develop habitats for nongame species; and

(6) acquire habitats for nongame species.

Revised Law

Sec. 5051.0202. ONGOING SCIENTIFIC INVESTIGATIONS. The department shall conduct ongoing investigations of nongame species to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information. (Parks & Wild. Code, Sec. 67.003.)

Source Law

Sec. 67.003. CONTINUING SCIENTIFIC INVESTIGATIONS. The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

Revised Law

Sec. 5051.0203. NONGAME SPECIES PERMITS. The department may issue a permit for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species if necessary to properly manage that species. (Parks & Wild. Code, Sec. 67.0041(a).)

Source Law

> Sec. 67.0041. REGULATIONS AND PERMITS. (a) The department may issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

Revised Law

Sec. 5051.0204. PERMIT FEE. The department may charge a fee in an amount set by the commission for a permit issued under Section 5051.0203. (Parks & Wild. Code, Sec. 67.0041(b).)

Source Law

> (b) The department may charge a fee for a permit issued under this section. The fee shall be set by the commission.

Revisor's Note

Section 67.0041(b), Parks and Wildlife Code, refers to a permit issued under Section 67.0041 of that code. Section 67.0041 is revised in pertinent part as Section 5051.0203, and the revised law is drafted accordingly.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5051.9901. CRIMINAL PENALTY. (a) A person commits an offense if the person violates a commission regulation adopted under this chapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor, except that the offense is:

(1) a Class B Parks and Wildlife Code misdemeanor if the defendant has previously been convicted one time of an offense under this section; or

(2) a Class A Parks and Wildlife Code misdemeanor if the defendant has previously been convicted two or more times of an offense under this section. (Parks & Wild. Code, Sec. 67.005.)

Source Law

> Sec. 67.005. PENALTY. (a) A person who violates a regulation of the commission issued under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.
>
> (c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this chapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

CHAPTER 5052. ENDANGERED SPECIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5052.0101. DEFINITIONS. In this chapter:

(1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring of any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, dead or alive.

(2) "Management" means:

(A) the collection and application of biological information for the purpose of:

(i) increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of the fish or wildlife's habitat; and

(ii) maintaining those numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) as appropriate, the protection of and

regulation of the taking of fish or wildlife species and populations. (Parks & Wild. Code, Sec. 68.001.)

Source Law

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.

(2) "Management" means:

(A) the collection and application of biological information for the purpose of increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of their habitat and maintaining these numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) when and where appropriate, the protection of and regulation of the taking of fish and wildlife species and populations.

Revised Law

Sec. 5052.0102. APPLICABILITY OF CHAPTER. (a) This chapter applies, to the exclusion of other regulatory and licensing laws, to all species and subspecies of wildlife classified as endangered.

(b) This chapter does not apply to:

(1) coyotes;

(2) cougars;

(3) bobcats;

(4) prairie dogs; or

(5) red foxes.

(c) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by a public or private nonprofit educational, zoological, or research institution. The department may require an institution to provide:

(1) a list of mounted or preserved fish or wildlife possessed by the institution; and

(2) proof of the time of acquisition. (Parks & Wild. Code, Secs. 68.019, 68.020.)

Source Law

Sec. 68.019. APPLICABILITY OF CHAPTER. All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws.

Sec. 68.020. EXCEPTIONS. (a) This chapter does not apply to:

(1) coyotes (prairie wolves);

(2) cougars;

(3) bobcats;

(4) prairie dogs; or

(5) red foxes.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions. The department may require an institution to furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition.

Revisor's Note

Section 68.020(a), Parks and Wildlife Code, refers to "coyotes (prairie wolves)." The revised law omits "(prairie wolves)" as unnecessary because coyotes and prairie wolves are the same animal and "coyotes" is more commonly used.

Revised Law

Sec. 5052.0103. APPLICABILITY OF OTHER LAW. The provisions of Subchapter G, Chapter 5159, apply to all fish or wildlife classified as endangered. (Parks & Wild. Code, Sec. 68.006 (part).)

Source Law

Sec. 68.006. PERMIT FOR TAKING ENDANGERED SPECIES. The provisions of Subchapter C, Chapter 43, of this code are applicable to all fish or wildlife classified as endangered, and . . . .

Revised Law

Sec. 5052.0104. DEPARTMENT REGULATIONS. The department shall adopt regulations necessary to administer this chapter, including regulations governing:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying endangered fish or wildlife which may be possessed, propagated, or sold under this

chapter, including goods made from endangered fish or wildlife;

(4) the publication and distribution of lists of species and subspecies of endangered fish or wildlife and products made from those species and subspecies; and

(5) limitations on:

(A) the capture, trapping, taking, or killing of, or the attempt to capture, trap, take, or kill, an endangered species; and

(B) the possession, transportation, exportation, sale, and offering for sale of endangered species. (Parks & Wild. Code, Sec. 68.014.)

Source Law

> Sec. 68.014. REGULATIONS. The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:
> (1) permit application forms, fees, and procedures;
> (2) hearing procedures;
> (3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter;
> (4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products; and
> (5) limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

Revisor's Note

> Section 68.014, Parks and Wildlife Code, requires the Parks and Wildlife Department to make regulations necessary to administer the provisions of Chapter 68 of that code "and to attain its objectives," with specific types of regulations listed. The revised law omits the quoted language as unnecessary because it does not add to the clear meaning of the law.

Revised Law

Sec. 5052.0105. DISPOSITION OF MONEY. Money received under this chapter shall be deposited to the credit of the special nongame and endangered species conservation account. (Parks & Wild. Code,

Sec. 68.018.)

Source Law

Sec. 68.018. DISPOSITION OF FUNDS; APPROPRIATIONS. All revenue received under this chapter shall be deposited in the state treasury to the credit of the special nongame and endangered species conservation account.

Revisor's Note

Section 68.018, Parks and Wildlife Code, refers to the disposition of "revenue." The revised law substitutes "money" for "revenue" because the meaning is the same in context and "money" is more commonly used.

SUBCHAPTER B. CLASSIFICATION OF ENDANGERED SPECIES

Revised Law

Sec. 5052.0201. DEFINITION. In this subchapter, "statewide extinction list" means the list filed by the executive director under Section 5052.0203. (New.)

Revisor's Note

The definition of "statewide extinction list" is added to the revised law for drafting convenience and to avoid frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 5052.0202. ENDANGERED SPECIES. Species of fish or wildlife indigenous to this state are endangered if listed on:

(1) the United States List of Endangered Native Fish and Wildlife; or

(2) the statewide extinction list. (Parks & Wild. Code, Sec. 68.002.)

Source Law

Sec. 68.002. ENDANGERED SPECIES. Species of fish or wildlife indigenous to Texas are endangered if listed on:

(1) the United States List of Endangered Native Fish and Wildlife; or

(2) the list of fish or wildlife threatened with statewide extinction as filed by the director of the department.

Revised Law

Sec. 5052.0203. STATEWIDE EXTINCTION LIST. (a) The executive director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) The executive director may classify fish or wildlife as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

(1) the destruction, drastic modification, or severe curtailment of the fish or wildlife's habitat;

(2) the overutilization of the fish or wildlife for commercial or sporting purposes;

(3) disease or predation of the fish or wildlife; or

(4) other natural or man-made factors. (Parks & Wild. Code, Sec. 68.003.)

Source Law

Sec. 68.003. STATEWIDE EXTINCTION LIST. (a) The director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) disease or predation; or

(4) other natural or man-made factors.

Revised Law

Sec. 5052.0204. MODIFICATION OF STATEWIDE EXTINCTION LIST. (a) The executive director may modify the statewide extinction list by filing an order with the secretary of state. The order is effective on filing.

(b) The executive director shall give notice of the intention to file a modification order under Subsection (a) at least 60 days before the date the executive director files the order. The notice must contain the contents of the proposed order.

(c) If a reclassification petition is filed under Section

5052.0205 during the 60-day notice period required by Subsection (b), the executive director may not file the order until the conclusion of the reclassification proceeding. (Parks & Wild. Code, Secs. 68.004(b), (c), (d).)

Source Law

> (b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state. The order is effective on filing.
>
> (c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.
>
> (d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of this section, the order may not be filed until the conclusion of the proceeding on reclassification.

Revisor's Note

(1) Section 68.004(b), Parks and Wildlife Code, provides that the executive director of the Parks and Wildlife Department may "amend" the statewide extinction list. For consistency in terminology used in this chapter, the revised law substitutes "modify" for "amend" because, in this context, the terms are synonymous and "modification" is the term used in Section 68.004(c), Parks and Wildlife Code, revised as Subsection (b) of this section.

(2) Section 68.004(d), Parks and Wildlife Code, refers to a reclassification petition. For clarity and the convenience of the reader, the revised law includes a reference to the provision authorizing such a petition.

Revised Law

Sec. 5052.0205. RECLASSIFICATION PETITION FOR STATEWIDE EXTINCTION LIST. (a) Three or more persons may petition the department to add or remove a species of fish or wildlife from the statewide extinction list. The petition must present substantial evidence for the addition or removal.

(b) If fewer than 50 persons join in a reclassification

petition, the department may refuse to review the statewide extinction list.

(c) If 50 or more persons join in a reclassification petition, the department shall conduct a hearing to review the statewide extinction list. The hearing must be open to the public. Notice of the hearing must be given in at least three major newspapers of general circulation in this state at least one week before the date of the hearing.

(d) Based on the findings of a hearing conducted under Subsection (c), the department may file an order with the secretary of state altering the statewide extinction list. The order is effective on filing. (Parks & Wild. Code, Sec. 68.005.)

Source Law

> Sec. 68.005. PETITION OF RECLASSIFICATION. (a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.
>
> (b) The petition must present substantial evidence for the addition or deletion.
>
> (c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.
>
> (d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

Revised Law

Sec. 5052.0206. MODIFICATION OF FEDERAL LIST OF ENDANGERED SPECIES. The executive director shall file an order with the secretary of state accepting a modification made to the United States list of endangered native species. The order is effective immediately. (Parks & Wild. Code, Sec. 68.004(a).)

Source Law

> Sec. 68.004. AMENDMENTS TO LIST BY DIRECTOR. (a) If the list of endangered native species issued by the United States is modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

SUBCHAPTER C. PROHIBITED ACTS

Revised Law

Sec. 5052.0301. GENERAL PROHIBITED ACTS. (a) A person may not:

(1) capture, trap, take, or kill, or attempt to capture, trap, take, or kill, endangered fish or wildlife; or

(2) possess, sell, distribute, or offer or advertise for sale:

(A) endangered fish or wildlife, unless the fish or wildlife was lawfully born and raised in captivity for commercial purposes under this chapter; or

(B) any goods made from endangered fish or wildlife, unless:

(i) the goods were made from fish or wildlife born and raised in captivity for commercial purposes under this chapter; or

(ii) the goods were made from fish or wildlife lawfully taken in another state and the person presents documented evidence to the department to substantiate the lawful taking.

(b) Unless a person holds a permit under Subchapter G, Chapter 5159, the person may not:

(1) take or transport endangered fish or wildlife from the fish or wildlife's natural habitat for propagation for commercial purposes; or

(2) possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes. (Parks & Wild. Code, Secs. 68.006 (part), 68.015(a), (b), (c).)

Source Law

> Sec. 68.006. . . . it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code.

> Sec. 68.015. PROHIBITED ACTS. (a) No person

may capture, trap, take, or kill, or attempt to capture, trap, take, or kill, endangered fish or wildlife.

(b) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter.

(c) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless:

(1) the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter; or

(2) the goods were made from fish or wildlife lawfully taken in another state and the person presents documented evidence to the department to substantiate that fact.

Revised Law

Sec. 5052.0302. PROHIBITION AGAINST FALSIFICATION. A person may not sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife. (Parks & Wild. Code, Sec. 68.015(d).)

Source Law

(d) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

Revised Law

Sec. 5052.0303. SALE OF ENDANGERED FISH OR WILDLIFE AND CERTAIN GOODS WITHOUT REQUIRED TAG OR LABEL. A person may not sell endangered fish or wildlife, or goods made from endangered fish or wildlife, unless the fish or wildlife or goods are tagged or labeled in a manner to indicate compliance with Section 5052.0301(a)(2). (Parks & Wild. Code, Sec. 68.016.)

Source Law

Sec. 68.016. SOLD SPECIES TO BE TAGGED. No person may sell endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife or goods are tagged or labeled in a manner to indicate compliance with Section 68.015(a) and (b) of this code.

Revisor's Note

Section 68.016, Parks and Wildlife Code, prohibits a person from selling endangered fish or wildlife or goods made from endangered fish or

wildlife unless the fish or wildlife or goods are "tagged or labeled in a manner to indicate compliance with Section 68.015(a) and (b) of this code." Sections 68.015 and 68.016 were added by Chapter 545, Acts of the 64th Legislature, Regular Session, 1975. In that act, Sections 68.015(a) and (b) prohibited a person from possessing, selling, distributing, or offering or advertising for sale endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife were born and raised in captivity for commercial purposes under the provisions of Chapter 68, Parks and Wildlife Code, or federal law. Section 68.015 was amended by Chapter 1256, Acts of the 75th Legislature, Regular Session, 1997, to add a new Subsection (a) that prohibited a person from capturing, trapping, taking, or killing, or attempting to capture, trap, take, or kill, endangered fish or wildlife and relettered the former Subsections (a) and (b) as Subsections (b) and (c). That act, however, did not amend Section 68.016 to correct the references to Sections 68.015(a) and (b). It is clear from the context that the failure to amend the references in Section 68.016 to conform to the amendment to Section 68.015 was a drafting error, and the revised law is drafted accordingly.

SUBCHAPTER D. COMMERCIAL PROPAGATION PERMITS

Revised Law

Sec. 5052.0401. COMMERCIAL PROPAGATION PERMIT REQUIRED. A person may not possess endangered fish or wildlife for the purpose of propagating the fish or wildlife for sale unless the person holds a commercial propagation permit issued by the department under this subchapter. (Parks & Wild. Code, Sec. 68.007.)

Source Law

Sec. 68.007. PROPAGATION PERMIT REQUIRED. No

person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

Revisor's Note

Section 68.007, Parks and Wildlife Code, refers to a commercial propagation permit issued under Chapter 68 of that code. Chapter 68 is revised in pertinent part as this subchapter, and the revised law is drafted accordingly.

Revised Law

Sec. 5052.0402. ORIGINAL PERMIT. (a) A person may apply for an original commercial propagation permit by submitting to the department:

(1) an application containing information or statements as required by the department; and

(2) a permit fee of $300 or a greater amount set by the commission.

(b) The department shall issue an original commercial propagation permit if the department determines that:

(1) the applicant has complied with the requirements under Subsection (a);

(2) the initial breeding stock was acquired under a permit issued under Subchapter G, Chapter 5159, or was otherwise legally acquired; and

(3) the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original commercial propagation permit:

(1) must contain a description of the endangered fish or wildlife authorized to be possessed under the permit; and

(2) is valid for one year from the date the department issues the permit. (Parks & Wild. Code, Sec. 68.008.)

Source Law

Sec. 68.008. ORIGINAL PROPAGATION PERMIT. (a) A person may apply for an original propagation permit by submitting an application containing information or

statements as required by the department and by submitting an original propagation permit fee of $300 or an amount set by the commission, whichever amount is more.

(b) The department shall issue the permit if it determines that the applicant has complied with Subsection (a) of this section, that the initial breeding stock was acquired under a permit issued under Section 43.022 of this code or was otherwise legally acquired, and that the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original propagation permit must contain a description of endangered fish and wildlife authorized to be possessed under the permit.

(d) An original propagation permit is valid for one year from the date of its issuance.

Revisor's Note

Section 68.008, Parks and Wildlife Code, provides the procedures and requirements for an "original propagation permit." Throughout this subchapter, the revised law adds "commercial" to references to an original or renewal "propagation permit" for clarity and consistency in terminology used in this subchapter and because it is clear from the context that the type of permit referenced is the commercial propagation permit described by Section 68.007, Parks and Wildlife Code, revised as Section 5052.0401.

Revised Law

Sec. 5052.0403. RENEWAL PERMIT. (a) Except as provided by Subsection (b), the department shall issue a renewal commercial propagation permit to the holder of an original commercial propagation permit or a renewal commercial propagation permit if:

(1) the person submits to the department:

(A) an application for renewal; and

(B) a permit fee of $550 or a greater amount set by the commission; and

(2) the department receives the application and fee on or before the expiration date of the applicant's permit, but not earlier than the 10th day before the permit's expiration date.

(b) The department may refuse to renew a commercial propagation permit if the department determines that the refusal of

the permit would be in the best interest of the species of fish or wildlife described in the permit.

(c) A renewal commercial propagation permit is valid for three years beginning on the date the department issues the permit. (Parks & Wild. Code, Sec. 68.009.)

Source Law

> Sec. 68.009. RENEWAL PROPAGATION PERMIT. (a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit on application to the department and on the payment of a renewal propagation permit fee of $550 or an amount set by the commission, whichever amount is more, if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.
>
> (b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.
>
> (c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

Revised Law

Sec. 5052.0404. PERMIT HOLDER REPORTS. A commercial propagation permit holder shall submit to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state regarding:

(A) the physical conditions of the permit holder's propagation facilities; and

(B) the conditions of the fish or wildlife held under the permit; and

(2) a written report, on forms prepared by the department, relating to propagation activities under the permit during the preceding year. (Parks & Wild. Code, Sec. 68.010.)

Source Law

> Sec. 68.010. REPORTS BY PERMITTEE. A person holding a commercial propagation permit shall send to the department annually:
>
> (1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and
>
> (2) a written report on forms prepared by the department relating to propagation activities

during the previous year.

Revised Law

Sec. 5052.0405. NOTICE AND SEIZURE OF FISH OR WILDLIFE HELD UNDER PERMIT. (a) If the department finds, based on a report required by Section 5052.0404 or an investigation or inspection by an authorized department employee, that a commercial propagation permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper care or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions. (Parks & Wild. Code, Sec. 68.011.)

Source Law

> Sec. 68.011. REFUSAL OR CANCELLATION OF PERMIT. (a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.
>
> (b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

Revisor's Note

Section 68.011(a), Parks and Wildlife Code, refers to a finding by the Parks and Wildlife Department with respect to the improper care or handling of fish or wildlife by a "permit holder." For clarity, the revised law substitutes "commercial propagation permit holder" for "permit holder" because it is clear from the context that the type of permit referenced is the commercial propagation permit

described under Section 68.007, Parks and Wildlife Code, revised as Section 5052.0401.

Revised Law

Sec. 5052.0406. DISPOSITION OF FISH OR WILDLIFE FOLLOWING PERMIT EXPIRATION OR CANCELLATION. A person whose commercial propagation permit has expired or been canceled shall dispose of any endangered fish or wildlife held under the expired or canceled permit in the manner required by the department. (Parks & Wild. Code, Sec. 68.013.)

Source Law

> Sec. 68.013. DISPOSITION OF FISH OR WILDLIFE. A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

Revised Law

Sec. 5052.0407. APPEAL OF CANCELED OR REFUSED PERMIT. (a) A person aggrieved by the department's cancellation of or refusal to issue or renew a commercial propagation permit may appeal the cancellation or refusal not later than the 20th day after the date of the department's final action to a district court of Travis County or the county of the aggrieved person's residence.

(b) The appeal must be by trial de novo in the same manner as appeals from the justice court to the county court. (Parks & Wild. Code, Sec. 68.012.)

Source Law

> Sec. 68.012. APPEAL. (a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.
>
> (b) The appeal shall be by trial de novo as are appeals from the justice court to the county court.

Revisor's Note

Section 68.012(a), Parks and Wildlife Code, refers to the refusal to "grant" or renew a commercial propagation permit. For consistency in terminology used in this code, the revised law substitutes "issue"

for "grant" because, in the context of permits, the terms are synonymous and "issue" is more commonly used.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5052.9901. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a department regulation adopted under this chapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor, except that the offense is:

(1) a Class B Parks and Wildlife Code misdemeanor if the defendant has previously been convicted one time of an offense under this section; or

(2) a Class A Parks and Wildlife Code misdemeanor if the defendant has previously been convicted two or more times of an offense under this section. (Parks & Wild. Code, Sec. 68.021.)

Source Law

> Sec. 68.021. PENALTY. (a) A person who violates any provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.
>
> (c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.
>
> (d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

Revised Law

Sec. 5052.9902. SEIZURE OF FISH OR WILDLIFE. (a) A peace officer who has arrested a person for a violation of this chapter or a department regulation adopted under this chapter may seize fish or wildlife, or goods made from fish or wildlife, taken, possessed, or made in violation of this chapter or a department regulation adopted under this chapter.

(b) Property seized under this section must be delivered to

the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of this chapter or a department regulation adopted under this chapter, the department may dispose of the property under department regulations.

(c) In appropriate cases, the department may recover from the defendant any costs of holding seized fish or wildlife during the pendency of the proceedings. (Parks & Wild. Code, Secs. 68.017, 68.021(d).)

Source Law

> Sec. 68.017. SEIZURE OF FISH OR WILDLIFE. (a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.
>
> (b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.
>
> [Sec. 68.021]
>
> (d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

CHAPTER 5053. PROVISIONS GENERALLY APPLICABLE TO POSSESSING, SELLING, TRANSPORTING, OR STORING WILDLIFE

SUBCHAPTER A. POSSESSION, SALE, TRANSPORTATION, AND STORAGE OF WILDLIFE GENERALLY

Revised Law

Sec. 5053.0101. DEFINITIONS. For the purpose of enforcement of the game laws of this state:

(1) "Closed season" means the period when it is unlawful to hunt a game animal, wild fowl, or bird.

(2) "Open season" means the period when it is lawful to hunt a specified animal, game animal, wild fowl, or bird. (Parks & Wild. Code, Secs. 62.001(1), (2).)

Source Law

Sec. 62.001. DEFINITIONS. For the purpose of enforcement of the game laws of this state:

(1) "Closed season" means the period of time during which it is unlawful to hunt a game animal, wild fowl, or bird.

(2) "Open season" means the period of time during which it is lawful to hunt a specified animal, game animal, wild fowl, or bird.

Revised Law

Sec. 5053.0102. POSSESSION OF ILLEGALLY KILLED GAME PROHIBITED. A person may not possess an illegally killed game bird or animal. (Parks & Wild. Code, Sec. 62.010(d).)

Source Law

(d) No person may possess an illegally killed game bird or animal.

Revised Law

Sec. 5053.0103. SALE OR PURCHASE OF CERTAIN GAME. (a) Except as provided by Subsection (c), a person may not sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, game bird, or game animal, dead or alive, or part of the bird or animal.

(b) This section applies only to a bird or animal protected by this code, regardless of whether the bird or animal is taken or killed in this state.

(c) This section does not prohibit the sale of:

(1) a live game animal, a dead or live game bird, or the feathers of a game bird if the sale is conducted under the authority of a license or permit issued under this code; or

(2) the following inedible parts:

(A) an inedible part, including the feathers, bones, or feet, of a game bird, other than a migratory game bird, that was lawfully taken or is lawfully possessed;

(B) the hair, hide, antlers, bones, horns, skull, hooves, or sinew, as applicable, of a collared peccary or javelina, deer, desert bighorn sheep, gray squirrel, pronghorn antelope, or red squirrel; or

(C) the feathers of a migratory game bird in

accordance with federal law. (Parks & Wild. Code, Sec. 62.021.)

Source Law

Sec. 62.021. SALE OR PURCHASE OF CERTAIN GAME. (a) Except as provided by Subsection (c), no person may sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, game bird, or game animal, dead or alive, or part of the bird or animal.

(b) This section applies only to a bird or animal protected by this code without regard to whether the bird or animal is taken or killed in this state.

(c) This section does not prohibit the sale of:

(1) a live game animal, a dead or live game bird, or the feathers of a game bird if the sale is conducted under authority of a license or permit issued under this code; or

(2) the following inedible parts:

(A) an inedible part, including the feathers, bones, or feet, of a game bird other than a migratory game bird that was lawfully taken or is lawfully possessed;

(B) the hair, hide, antlers, bones, horns, skull, hooves, or sinew, as applicable, of a deer, pronghorn antelope, desert bighorn sheep, collared peccary or javelina, red squirrel, or gray squirrel; or

(C) the feathers of a migratory game bird in accordance with federal law.

Revised Law

Sec. 5053.0104. SALE BY TAXIDERMIST. (a) A taxidermist or tanner may sell a mounted game animal, game bird other than a migratory game bird, or head or tanned hide for the amount due for labor performed if the owner of the lawfully taken game animal or game bird, including the head or hide of a lawfully taken game animal or game bird that has been mounted or tanned, does not claim the mounted game animal, game bird, or head or the tanned hide within 90 days after notification by the taxidermist or tanner.

(b) A taxidermist or tanner who sells a mounted game animal, game bird, or head or tanned hide under this section shall maintain, until the second anniversary of the completion of the taxidermy or tanning, documentation of the identity of the person who left the game animal, game bird, head, or hide for taxidermy or tanning. Documentation under this subsection may include a hunting tag, wildlife resource document, or cold storage record. (Parks & Wild. Code, Sec. 62.023.)

Source Law

Sec. 62.023. SALE BY TAXIDERMIST. (a) If the owner of a lawfully taken game animal or game bird, including the head or hide of a lawfully taken game animal or game bird that has been mounted or tanned, has not claimed the mounted game animal, game bird, or head or the tanned hide within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the mounted game animal, game bird other than a migratory game bird, or head or tanned hide for the amount due for labor performed.

(c) A taxidermist or tanner selling a mounted game animal, game bird, or head or tanned hide under this section shall maintain, until the second anniversary of the completion of the taxidermy or tanning, documentation of the identity of the person who left the game animal, game bird, head, or hide for taxidermy or tanning. Documentation under this section may include a hunting tag, wildlife resource document, or cold storage record.

Revised Law

Sec. 5053.0105. TRANSPORTATION OF WILD BIRDS AND ANIMALS. (a) A person may transport or ship a specimen or part of a specimen of wild bird or wild animal of this state to and from a taxidermist or tannery for mounting or preserving purposes, or to the person's home, if:

(1) the bird or animal was lawfully taken by the person; and

(2) the specimen is not for sale.

(b) This section does not prohibit the transportation of a specimen or parts of a specimen as permitted under Section 5053.0103. (Parks & Wild. Code, Sec. 62.0265.)

Source Law

Sec. 62.0265. TRANSPORTATION OF WILD ANIMALS AND BIRDS. (a) A person may transport or ship to and from a taxidermist or tannery for mounting or preserving purposes or to his home, a specimen or part of a specimen of a wild bird or wild animal of this state, if the bird or animal was lawfully taken by the person, and if the specimen is not for sale.

(b) This section does not prohibit the transportation of a specimen and parts of a specimen as permitted under Sections 62.021 and 62.022 of this code.

Revisor's Note

Section 62.0265(b), Parks and Wildlife Code, refers to Section 62.022 of that code. The revised law

omits the reference to Section 62.022 because that section was repealed by Chapter 267, Acts of the 69th Legislature, Regular Session, 1985.

Revised Law

Sec. 5053.0106. IMPORTATION OF GAME DURING CLOSED SEASON. Except as otherwise provided by this code, a person may not bring into this state a bird or animal protected by this code during the closed season for that bird or animal. (Parks & Wild. Code, Sec. 62.024.)

Source Law

> Sec. 62.024. IMPORTATION OF GAME. No person may bring into this state any bird or animal protected by this code during the closed season for that bird or animal except as provided by this code.

Revised Law

Sec. 5053.0107. IMPORTATION OF GAME DURING OPEN SEASON. Except as provided by Section 5053.0108, a person may not bring into this state a bird or animal protected by this code for sale, barter, exchange, or shipment for sale during the open season for that bird or animal. (Parks & Wild. Code, Sec. 62.025.)

Source Law

> Sec. 62.025. IMPORTATION OF GAME. No person may bring into this state a bird or animal protected by this code for sale, barter, exchange, or shipment for sale during the open season for that bird or animal except as provided in Section 62.026 of this code.

Revised Law

Sec. 5053.0108. IMPORTATION OF PROTECTED WILDLIFE FROM UNITED MEXICAN STATES. (a) A person may ship or bring a wild game bird, wild game animal, or another protected species of wildlife from the United Mexican States into this state at any season if the person importing the wildlife has obtained a statement from the United States customs officer at the port of entry showing that the wildlife was brought from the United Mexican States.

(b) The department may adopt reasonable rules for:

(1) the importation of wild game birds, wild game animals, and other protected species of wildlife; and

(2) the number of each species that may be imported during a calendar week under this section. (Parks & Wild. Code, Sec. 62.026.)

Source Law

> Sec. 62.026. IMPORTATION OF PROTECTED WILDLIFE FROM MEXICO. (a) It is lawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has obtained:
>
> (2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.
>
> (e) The department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this section.

Revisor's Note

(1) Section 62.026(a), Parks and Wildlife Code, refers to the "Republic of Mexico." The revised law substitutes "United Mexican States" for "Republic of Mexico" to reflect the official name of that nation.

(2) Section 62.026(e), Parks and Wildlife Code, authorizes the Parks and Wildlife Department to prescribe certain "rules and regulations." The revised law omits "regulations" because, in context, the terms are synonymous and under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation.

Revised Law

Sec. 5053.0109. POSSESSION OF GAME IN COLD STORAGE OR PROCESSING FACILITY. A person may place and maintain, or possess, in a cold storage or processing facility a number of lawfully killed game birds and game animals that does not exceed the number permitted to be possessed by law. (Parks & Wild. Code, Sec. 62.030.)

Source Law

> Sec. 62.030. POSSESSION OF GAME IN COLD STORAGE OR PROCESSING FACILITY. A person may place and maintain, or possess, in a cold storage or processing facility lawfully killed game birds and game animals

not in excess of the number permitted to be possessed by law.

Revised Law

Sec. 5053.0110. RECORDS OF GAME IN COLD STORAGE OR PROCESSING FACILITY. (a) In this section:

(1) "Cold storage or processing facility" has the meaning assigned by Section 5053.0201.

(2) "Private cold storage or processing facility" means a cold storage or processing facility that is not available for use by the public.

(b) The owner, operator, or lessee of a cold storage or processing facility shall maintain a record book containing:

(1) the name, address, and hunting license number of each person who killed a game bird or game animal placed in the facility;

(2) the name and address of each person who places a game bird or game animal in the facility, if different from the person who killed the bird or animal;

(3) the number and kind of game birds or game animals placed in the facility; and

(4) the date each game bird or game animal is placed in the facility.

(c) The owner, operator, or lessee of a cold storage or processing facility shall enter all information into the record book as required by this section before placing a game bird or game animal in storage or processing.

(d) A cold storage or processing facility record book:

(1) must be kept at the facility until the first anniversary of the date of the last entry in the book; and

(2) may be inspected by an authorized department employee during business hours or at any other reasonable time.

(e) This section does not apply to a private, noncommercial, family-owned cold storage or processing facility unless the facility is:

(1) located on a hunting lease, as defined by Section

5157.0101; and

(2) made available to individuals other than the landowner, the landowner's nonpaying family members, or the landowner's nonpaying guests.

(f) This section does not require the entry or maintenance of a record for the carcass of a deer or antelope, as those terms are defined by Section 5053.0201, that is:

(1) properly tagged; and

(2) placed in a private cold storage or processing facility. (Parks & Wild. Code, Secs. 62.029(a)(1), (2), (3), (4), (b), (c), (d), (e), (f), (g).)

Source Law

Sec. 62.029. RECORDS OF GAME IN COLD STORAGE OR PROCESSING FACILITY. (a) In this section:

(1) "Carcass" has the meaning assigned by Section 42.001.

(2) "Cold storage or processing facility" has the meaning assigned by Section 42.001.

(3) "Hunting lease" has the meaning assigned by Section 43.041.

(4) "Private cold storage or processing facility" means a cold storage or processing facility that is not available for use by the public.

(b) The owner, operator, or lessee of a cold storage or processing facility shall maintain a book containing a record of:

(1) the name, address, and hunting license number of each person who killed a game bird or game animal that is placed in the facility;

(2) the name and address of each person who places a game bird or game animal in the facility, if different from the person who killed the bird or animal;

(3) the number and kind of game birds or game animals placed in the facility; and

(4) the date on which each game bird or game animal is placed in the facility.

(c) The owner, operator, or lessee shall enter all information into the book as required by this section before placing in storage or processing any game animal or game bird.

(d) The cold storage or processing facility record book shall be kept at the facility and may be inspected by an authorized employee of the department during business hours or at any other reasonable time.

(e) Each cold storage or processing facility record book shall be kept at the facility until the first anniversary of the date of the last entry in the book.

(f) This section does not apply to a private, noncommercial, family-owned cold storage or processing facility unless the facility is located on a hunting lease and is made available to individuals other than the landowner, the landowner's nonpaying

family members, or the landowner's nonpaying guests.

(g) This section does not require the entry or maintenance of a record for the carcass of a deer or antelope that is properly tagged and is placed in a private cold storage or processing facility.

Revisor's Note

(1) Section 62.029(a)(3), Parks and Wildlife Code, provides that "hunting lease" has the meaning assigned by Section 43.041 of that code. Section 43.041 is revised in pertinent part as Section 5157.0101, and the revised law is drafted accordingly.

(2) Section 62.029(a)(5), Parks and Wildlife Code, defines "quartering" for purposes of Section 62.029 of that code. The revised law omits the definition as unnecessary because the term is not used in Section 62.029. The omitted law reads:

(5) "Quartering" has the meaning assigned by Section 42.001.

Revised Law

Sec. 5053.0111. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter.

(b) Except as provided by Subsection (c), an offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(c) An offense under this section for a violation of Section 5053.0103 is a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this section for a violation of Section 5053.0103. (Parks & Wild. Code, Sec. 62.032.)

Source Law

Sec. 62.032. PENALTIES. (a) Except as provided by Subsection (b) of this section, a person who violates a provision of this subchapter or a rule adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant for a violation of Section 62.021 of this code that he has been convicted within five years before the trial date of a violation of that section, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

SUBCHAPTER B. POSSESSION OF CERTAIN GAME ANIMALS AND GAME BIRDS

Revised Law

Sec. 5053.0201. DEFINITIONS. In this subchapter:

(1) "Antelope" means an antelope listed in Section 5201.0101.

(2) "Carcass" means, with respect to a deer or antelope, the body of a dead deer or antelope that has not been processed more than by quartering.

(3) "Cold storage or processing facility" means a stationary facility designed and constructed to store or process game animals and game birds.

(4) "Deer" means a deer listed in Section 5201.0101.

(5) "Final destination" for a deer or antelope carcass or a wild turkey, or any part of a deer or antelope carcass or wild turkey, means:

(A) the permanent residence of the hunter;

(B) the permanent residence of another person receiving the carcass or wild turkey or the part of the carcass or wild turkey; or

(C) a cold storage or processing facility.

(6) "Final processing" for a deer or antelope carcass or a wild turkey means the cleaning of the dead animal for cooking or storage purposes. For a deer or antelope carcass, the term also includes the processing of the animal more than by quartering.

(7) "Quartering" means the processing of an animal into not more than two hindquarters each having the femur attached down to the knee and the two front shoulders each having the scapula and humerus attached down to the elbow. The term also includes removal of two back straps.

(8) "Wildlife resource document" means a document prescribed by the department, other than a tag or permit, that allows a person to give, leave, receive, or possess any species of legally taken game animal or game bird, or part of a legally taken game animal or game bird, if the game animal or game bird is

otherwise required to have a tag or permit attached or is protected by a bag or possession limit. (Parks & Wild. Code, Secs. 42.001(3), (4), (5), (6), (7), (8).)

Source Law

Sec. 42.001. DEFINITIONS. In this chapter:

(3) "Carcass" means the body of a dead deer or antelope, as listed in Section 63.001(a), that has not been processed more than by quartering.

(4) "Final destination," for a carcass or wild turkey or any part of a carcass or wild turkey, means:

(A) the permanent residence of the hunter;

(B) the permanent residence of any other person receiving the carcass or wild turkey or the part of a carcass or wild turkey; or

(C) a cold storage or processing facility.

(5) "Final processing," for a carcass or wild turkey, means the cleaning of the dead animal for cooking or storage purposes. For a carcass, the term also includes the processing of the animal more than by quartering.

(6) "Cold storage or processing facility" means a stationary facility designed and constructed to store or process game animals and game birds.

(7) "Wildlife resource document" means a document prescribed by the department, other than a tag or permit, that allows a person to give, leave, receive, or possess any species of legally taken game bird or game animal, or part of a legally taken game bird or game animal, if the game bird or game animal is otherwise required to have a tag or permit attached or is protected by a bag or possession limit.

(8) "Quartering" means the processing of an animal into not more than two hindquarters each having the leg bone (femur) attached down to the knee and two front shoulders each having the leg bones (scapula and humerus) attached down to the elbow. The term also includes removal of two back straps.

Revisor's Note

(1) Section 42.001(4), Parks and Wildlife Code, refers to a "carcass." Section 42.001(3), Parks and Wildlife Code, defines "carcass" for Chapter 42 of that code as the body of a dead deer or antelope, as listed in Section 63.001(a) of that code, that has not been processed more than by quartering. Throughout this subchapter, the revised law adds "deer," "antelope," or "deer or antelope" to references to "carcass" for clarity. Additionally, the revised law adds definitions of "deer" and "antelope" for the

convenience of the reader and to provide consistency in terminology used in this subchapter.

(2) Section 42.001(8), Parks and Wildlife Code, refers to "leg bone (femur)" in connection with the hindquarters of an animal and refers to "leg bones (scapula and humerus)" in connection with the front shoulders of an animal. For clarity and conciseness, the revised law substitutes "femur" for "leg bone (femur)" and substitutes "scapula and humerus" for "leg bones (scapula and humerus)."

Revised Law

Sec. 5053.0202. POSSESSION AND PROCESSING OF DEER CARCASS. (a) Except as provided by Subsection (d) or (e) or commission rule, a person may not possess a deer carcass before the carcass has been finally processed at a final destination unless a properly executed deer tag from a hunting license issued by the department to the person who killed the deer is attached to the carcass.

(b) A deer tag is properly executed only if:

(1) the month and the date of the kill are cut out; and

(2) the tag is filled out to show:

(A) the place the deer to which the tag is attached was killed; and

(B) any other information required by the commission.

(c) If the deer's head is severed from the carcass, the properly executed tag must remain with the carcass.

(d) A wildlife resource document completed by the person who killed the deer must accompany the head or other part of the deer not accompanied by a tag if, at any time before the carcass is finally processed, the head or other part of the deer no longer accompanies the carcass. A wildlife resource document must be retained with the head of a deer that is not kept with the carcass until the head is delivered to:

(1) the owner after taxidermy; or

(2) if not treated by a taxidermist, a final destination.

(e) If a portion of a deer carcass is divided among two or more persons and separated and the person who killed the deer retains a portion of the carcass, that person shall retain the tag with the portion of the carcass retained by that person.

(f) Final processing for a deer carcass may occur only at a final destination.

(g) This section does not prohibit a person from removing and preparing a part of a deer carcass for immediate cooking or consumption before delivering the carcass to a final destination.

(h) A landowner or the landowner's agent operating under a wildlife management plan approved by the department is, if authorized by the commission, exempt from the tag requirements of this section. (Parks & Wild. Code, Sec. 42.018.)

Source Law

Sec. 42.018. TAG TO BE ATTACHED TO DEER. (a) Except as provided by Subsection (d) or commission rule, no person may possess the carcass of a deer before the carcass has been finally processed at a final destination unless there is attached to the carcass a properly executed deer tag from a hunting license provided by the department and issued to the person who killed the deer.

(b) A tag is properly executed only when the month and the date of the kill are cut out and the tag is filled out to show the place the deer to which the tag is attached was killed and to show other information required on the tag by the commission.

(c) If the deer's head is severed from the carcass, the properly executed tag must remain with the carcass.

(d) A wildlife resource document completed by the person who killed the deer must accompany the head or other part of the deer not accompanied by a tag if at any time before the carcass is finally processed the head or other part of the deer no longer accompanies the carcass. If a portion of the carcass is divided among persons and separated and the person who killed the deer retains a portion of the carcass, that person shall retain the tag with the portion of the carcass retained by that person. A wildlife resource document shall be retained with the head of a deer that is not kept with the carcass until the head is delivered to the owner after taxidermy or, if not treated by a taxidermist, until delivered to a final destination.

(e) Final processing for a deer carcass may occur only at a final destination.

(f) This section does not prohibit a person before delivering a deer carcass to a final destination from removing and preparing a part of the

deer if the removal and preparation occur immediately before the part is cooked or consumed.

(g) A landowner or the landowner's agent operating under a wildlife management plan approved by the department is, if authorized by the commission, exempt from the tag requirements of this section.

Revised Law

Sec. 5053.0203. POSSESSION OF WILD TURKEY. (a) Except as provided by commission rule, a person may not possess a wild turkey after the turkey is killed and before the turkey has been finally processed at a final destination unless a properly executed turkey tag from a hunting license issued by the department to the person who killed the turkey is attached to the turkey.

(b) A turkey tag is properly executed only if:

(1) the month and the date of the kill are cut out; and

(2) the tag is filled out to show:

(A) the place the wild turkey to which the tag is attached was killed; and

(B) any other information required on the tag.

(c) A wildlife resource document completed by the person who killed the wild turkey must accompany a part of the turkey if, at any time before the turkey reaches a final destination, the part of the turkey no longer accompanies the tagged turkey and is possessed by the person who killed the turkey or is given to, left with, or possessed by another person, including a taxidermist.

(d) This section does not prohibit a person from preparing part of a wild turkey for immediate cooking and consumption before delivering the turkey to a final destination. (Parks & Wild. Code, Sec. 42.0185.)

Source Law

Sec. 42.0185. TAG TO BE ATTACHED TO TURKEY. (a) Except as provided by commission rule, no person may possess a wild turkey at any time after the turkey is killed and before it has been finally processed at a final destination unless there is attached to the turkey a properly executed turkey tag from a hunting license provided by the department and issued to the person who killed the turkey.

(b) A turkey tag is properly executed only when the month and the date of the kill are cut out and the tag is filled out to show the place the turkey to which the tag is attached was killed and to show other information required on the tag.

(c) A wildlife resource document completed by the person who killed the turkey must accompany a part of the turkey if at any time before the turkey reaches a final destination the part of the turkey no longer accompanies the tagged turkey and is possessed by the person who killed the turkey or is given to, left with, or possessed by another person, including a taxidermist.

(d) This section does not prohibit a person before delivering a wild turkey to a final destination from preparing part of the turkey immediately before cooking and consuming the part.

Revised Law

Sec. 5053.0204. POSSESSION AND PROCESSING OF ANTELOPE. (a) Except as provided by Subsection (c) or (d), a person may not possess an antelope carcass before the carcass has been finally processed at a final destination unless an antelope permit issued by the department and executed legibly, accurately, and completely by the person who killed the antelope is attached to the carcass.

(b) If the antelope's head is severed from the carcass, the properly executed permit must remain with the carcass.

(c) A wildlife resource document completed by the person who killed the antelope must accompany the head or other part of the antelope not accompanied by a permit if, at any time before the carcass is finally processed, the head or other part of the antelope no longer accompanies the carcass. A wildlife resource document must be retained with the head of an antelope that is not kept with the carcass until the head is delivered to:

(1) the owner after taxidermy; or

(2) if not treated by a taxidermist, a final destination.

(d) If a portion of an antelope carcass is divided among two or more persons and separated and the person who killed the antelope retains a portion of the carcass, that person shall retain the permit with the portion of the carcass retained by that person.

(e) Final processing for an antelope carcass may occur only at a final destination.

(f) This section does not prohibit a person from removing and preparing a part of an antelope carcass for immediate cooking and consumption before delivering the carcass to a final

destination. (Parks & Wild. Code, Sec. 42.019.)

Source Law

> Sec. 42.019. POSSESSION OF CERTAIN PARTS OF ANTELOPE. (a) Except as provided by Subsection (c), no person may possess the carcass of an antelope before it has been finally processed at a final destination unless there is attached to the carcass an antelope permit provided by the department that is executed legibly, accurately, and completely by the person who killed the antelope.
>
> (b) If the antelope's head is severed from the carcass, the properly executed permit must remain with the carcass.
>
> (c) A wildlife resource document completed by the person who killed the antelope must accompany the head or other part of the antelope not accompanied by a permit if at any time before the carcass is finally processed the head or other part of the antelope no longer accompanies the carcass. If a portion of the carcass is divided among persons and separated and the person who killed the antelope retains a portion of the carcass, that person shall retain the permit with the portion of the carcass retained by that person. A wildlife resource document shall be retained with the head of an antelope that is not kept with the carcass until the head is delivered to the owner after taxidermy or, if not treated by a taxidermist, until delivered to a final destination.
>
> (d) Final processing for an antelope carcass may occur only at a final destination.
>
> (e) This section does not prohibit a person before delivering an antelope carcass to a final destination from removing and preparing a part of the antelope if the removal and preparation occur immediately before the part is cooked and consumed.

Revised Law

Sec. 5053.0205. COMMISSION RULES RELATING TO KILLED BIRDS OR ANIMALS. The commission by rule may modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of Section 5053.0201, 5053.0202, 5053.0203, or 5053.0204 or other similar requirements or provisions of this subchapter. (Parks & Wild. Code, Sec. 42.0177 (part).)

Source Law

> Sec. 42.0177. BIRD OR ANIMAL CARCASSES: COMMISSION RULES. The commission by rule may modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of Section 42.001, 42.018, 42.0185, 42.019, or . . . or other similar requirements or provisions in this chapter.

Revised Law

Sec. 5053.0206. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 42.025.)

Source Law

> Sec. 42.025. PENALTY. A person who violates any provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5053.0207. ATTACHMENT OF DEER OR TURKEY TAG NOT PRIMA FACIE EVIDENCE OF LAWFUL KILL. The attachment of a deer or turkey tag as provided by Section 5053.0202 or 5053.0203 is not prima facie evidence that the deer or turkey was lawfully killed. (Parks & Wild. Code, Sec. 42.021 (part).)

Source Law

> Sec. 42.021. . . . the attachment of deer or turkey tags as provided by this chapter is not prima facie evidence that the deer or turkey was lawfully killed.

Revisor's Note

Section 42.021, Parks and Wildlife Code, refers to the attachment of a deer or turkey tag as provided by Chapter 42 of that code. The pertinent parts of Chapter 42 providing for the attachment of a deer or turkey tag are revised as Sections 5053.0202 and 5053.0203, and the revised law is drafted accordingly.

SUBCHAPTER C. POSSESSION, SALE, TRANSPORTATION, AND STORAGE OF AQUATIC WILDLIFE GENERALLY

Revised Law

Sec. 5053.0301. DEFINITIONS. In this subchapter:

(1) "Aquatic animal product" means any live or dead, uncooked, fresh or frozen aquatic animal life.

(2) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths. The term does not include coastal or tidal water. (Parks & Wild. Code, Secs. 47.001(16), 66.001(1).)

Source Law

> Sec. 47.001. DEFINITIONS. In this chapter:
>
> (16) "Aquatic product" means any live or dead, uncooked, fresh or frozen aquatic animal life.

Sec. 66.001. DEFINITIONS. In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.

Revisor's Note

(1) Section 47.001(16), Parks and Wildlife Code, defines the term "aquatic product" for purposes of Chapter 47 of that code to mean "any live or dead, uncooked, fresh or frozen aquatic animal life." Section 66.014(c), Parks and Wildlife Code, includes a nearly identical definition of "aquatic product" for purposes of Section 66.014 of that code, revised in pertinent part as Section 5053.0304, except that the definition in Section 66.014(c) does not include "live or dead." The definitions of "aquatic product" in Sections 47.001(16) and 66.014(c) have the same meaning because any aquatic animal life will either be "live or dead." For clarity and consistency in terminology used in this subchapter, the revised law applies the definition of "aquatic product" from Section 47.001(16) to the entire subchapter and omits the definition of that term from Section 66.014(c). The omitted law reads:

(c) "Aquatic product" means any uncooked, fresh or frozen aquatic animal life.

(2) Section 47.001(16), Parks and Wildlife Code, refers to an "aquatic product." Throughout this subchapter, the revised law substitutes "aquatic animal product" for "aquatic product" for clarity.

Revised Law

Sec. 5053.0302. UNLAWFUL COMMERCIAL SALE OR PURCHASE OF AQUATIC ANIMAL PRODUCTS; OFFENSE. (a) A person commits an offense if the person purchases for resale or receives for sale, barter, exchange, transport, or any other commercial purpose aquatic animal products that are taken, possessed, transported, or sold in

violation of a federal or state law or regulation.

(b) It is an affirmative defense to prosecution under this section that the person:

(1) had no reason to believe at the time of the offense that the aquatic animal products purchased or received were taken, possessed, transported, or sold in violation of a federal or state law or regulation; and

(2) purchased or received the aquatic animal products from a seller who had a valid commercial license to sell aquatic animal products.

(c) An offense under this section is:

(1) a Class B Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $500 if the weight of the aquatic animal products totals at least 10 pounds but less than 50 pounds; or

(B) $1,000 if the weight of the aquatic animal products totals at least 50 pounds but less than 100 pounds;

(2) a Class A Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $1,500 if the weight of the aquatic animal products totals at least 100 pounds but less than 200 pounds; or

(B) $2,000 if the weight of the aquatic animal products totals at least 200 pounds but less than 300 pounds; or

(3) a Parks and Wildlife Code state jail felony punishable by, in addition to confinement, a fine of at least:

(A) $3,000 if the weight of the aquatic animal products totals at least 300 pounds but less than 500 pounds; or

(B) $4,000 if the weight of the aquatic animal products totals at least 500 pounds.

(d) An offense under this section may be prosecuted in:

(1) the county in which the aquatic animal products were unlawfully taken, possessed, transported, or sold; or

(2) any county through or into which the aquatic animal products were taken or transported.

(e) If aquatic animal products are obtained in violation of this section under one scheme or continuing course of conduct, whether from the same or several sources, the scheme or conduct may be considered as one offense and the weight of the aquatic animal products aggregated in determining the grade of the offense.

(f) Money received for a fine paid for a violation of this section, less allowable deductions, must be sent to the department not later than the 10th day of the month following receipt. (Parks & Wild. Code, Secs. 47.0121, 47.053, 47.055 (part).)

Source Law

Sec. 47.0121. UNLAWFUL COMMERCIAL SALE OR PURCHASE OF AQUATIC PRODUCTS. (a) A person commits an offense if the person purchases for resale or receives for sale, barter, exchange, transport, or any other commercial purpose aquatic products that are taken, possessed, transported, or sold in violation of a federal or state law or regulation.

(b) It is an affirmative defense to prosecution under this section that the person:

(1) had no reason to believe at the time the offense was committed that the aquatic products purchased for resale or received for sale, barter, exchange, transport, or any other commercial purpose were taken, possessed, transported, or sold in violation of a federal or state law or regulation; and

(2) purchased or received the aquatic products described by Subdivision (1) from a seller who had a valid commercial license to sell aquatic products.

Sec. 47.053. PENALTY. (a) A person who violates or fails to comply with Section 47.0121 commits an offense that is:

(1) a Class B Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $500 if the weight of the aquatic products totals 10 pounds or more but less than 50 pounds; or

(B) $1,000 if the weight of the aquatic products totals 50 pounds or more but less than 100 pounds;

(2) a Class A Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $1,500 if the weight of the aquatic products totals 100 pounds or more but less than 200 pounds; or

(B) $2,000 if the weight of the aquatic products totals 200 pounds or more but less than 300 pounds; or

(3) a Parks and Wildlife Code state jail felony for which, in addition to confinement, the person may be punished by a fine of at least:

(A) $3,000 if the weight of the aquatic products totals 300 pounds or more but less than 500 pounds; or

(B) $4,000 if the weight of the aquatic products totals 500 pounds or more.

(b) An offense under this section may be prosecuted in the county in which the aquatic products were unlawfully taken, possessed, transported, or sold or in any county through or into which the aquatic products were taken or transported.

(c) When aquatic products are obtained in violation of Section 47.0121 under one scheme or continuing course of conduct, whether from the same or several sources, the scheme or conduct may be considered as one offense and the weight of the aquatic products aggregated in determining the grade of the offense.

Sec. 47.055. DISPOSITION OF FUNDS. Money received for . . . fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt.

Revised Law

Sec. 5053.0303. PURCHASE OF AQUATIC ANIMAL PRODUCTS BY RESTAURANT OWNER, OPERATOR, OR EMPLOYEE. A restaurant owner, operator, or employee may not purchase for consumption by the restaurant's patrons on the restaurant's premises an aquatic animal product from any person in this state unless the owner, operator, or employee purchases the aquatic animal product from:

(1) the operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code; or

(2) the holder of:

(A) a general commercial fisherman's license;

(B) a commercial finfish fisherman's license;

(C) a wholesale fish dealer's license;

(D) a commercial shrimp boat license;

(E) a commercial gulf shrimp unloading license;

(F) a commercial shrimp boat captain's license; or

(G) a commercial crab fisherman's license.

(Parks & Wild. Code, Sec. 47.012.)

Source Law

Sec. 47.012. PURCHASE OF AQUATIC PRODUCTS BY RESTAURANT OWNER, OPERATOR, OR EMPLOYEE. No restaurant owner, operator, or employee may purchase for consumption by the restaurant's patrons on the restaurant's premises any aquatic product from any person or entity in this state unless the person purchases the aquatic product from the operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, or the holder of:

(1) a wholesale fish dealer's license;
(2) a general commercial fisherman's license;
(3) a commercial shrimp boat license;
(4) a commercial shrimp boat captain's license;
(5) a commercial crab fisherman's license;
(6) a commercial finfish fisherman's license; or
(7) a commercial gulf shrimp unloading license.

Revisor's Note

Section 47.012, Parks and Wildlife Code, refers to a "person or entity." The revised law omits "entity" because under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include any legal entity.

Revised Law

Sec. 5053.0304. IDENTIFICATION OF VEHICLE TRANSPORTING AQUATIC ANIMAL PRODUCTS. (a) In this section, "motor vehicle," "semitrailer," and "trailer" have the meanings assigned by Section 541.201, Transportation Code.

(b) A person may not transport an aquatic animal product for commercial purposes unless the person clearly identifies the motor vehicle, trailer, or semitrailer as a vehicle that carries aquatic animal products.

(c) The commission:

(1) shall prescribe by proclamation the identification requirements for a motor vehicle, trailer, or semitrailer transporting aquatic animal products; and

(2) may prescribe that the identification must list the state of origin of the aquatic animal products. (Parks & Wild. Code, Sec. 66.014(a).)

Source Law

Sec. 66.014. IDENTIFICATION OF VEHICLE TRANSPORTING AQUATIC PRODUCTS. (a) No person may transport any aquatic product for commercial purposes unless the person clearly identifies the motor vehicle, trailer, or semitrailer as a vehicle that carries aquatic products. The commission shall prescribe by proclamation the identification requirements for a motor vehicle, trailer, or semitrailer transporting aquatic products, and the commission may prescribe that the identification shall

list the state of origin of the aquatic products. In this subsection, "motor vehicle," "trailer," and "semitrailer" have the meanings assigned by Section 541.201, Transportation Code.

Revisor's Note

Section 66.014(b), Parks and Wildlife Code, provides that a person who violates Section 66.014 of that code commits an offense that is a Class C Parks and Wildlife Code misdemeanor. The revised law omits that provision as unnecessary because it duplicates in substance Section 66.012(a), Parks and Wildlife Code, revised in Section 5053.0311, which creates a Class C Parks and Wildlife Code misdemeanor offense for violating a provision of Subchapter A, Chapter 66, of that code. The omitted law reads:

> (b) A person who violates this section commits an offense. An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5053.0305. AQUATIC ANIMAL PRODUCT TRANSPORTATION INVOICES. (a) In this section, "commercial fisherman" and "finfish" have the meanings assigned by Section 5158.0101.

(b) Except as provided by Subsection (c), a person may not transport an aquatic animal product for commercial purposes, regardless of origin or destination, without an invoice containing the following information correctly stated and legibly written:

(1) the invoice number;

(2) the date of shipment;

(3) the name and physical address of shipper;

(4) the name and physical address of receiver;

(5) the license number of shipper; and

(6) the quantity of aquatic animal products contained in the shipment, with finfish described by species and by number or weight, oysters described by volume, and all other aquatic animal products described by weight.

(c) Subsection (b) does not apply to a commercial fisherman

who is licensed to take aquatic animal products from water of this state and is transporting the fisherman's own catch within this state.

(d) An aquatic animal product transportation invoice must be prepared by the shipper and copies retained on file by both shipper and receiver for at least one year from the date of shipment. The shipper must sequentially number the invoices the shipper prepares during each license period. An individual license holder may not use an invoice number more than one time during a license period. (Parks & Wild. Code, Sec. 47.0181.)

Source Law

Sec. 47.0181. AQUATIC PRODUCT TRANSPORTATION INVOICES. (a) No person, except a commercial fisherman licensed to take aquatic products from Texas waters transporting the fisherman's own catch within this state, may transport aquatic products for commercial purposes, regardless of origin or destination, without an invoice containing the following information correctly stated and legibly written:

(1) the invoice number;

(2) the date of shipment;

(3) the name and physical address of shipper;

(4) the name and physical address of receiver;

(5) the license number of shipper; and

(6) the quantity of aquatic products contained in the shipment; finfish by species and by number or weight, oysters by volume, and all other aquatic products by weight.

(b) Aquatic product transportation invoices must be prepared by the shipper and copies retained on file by both shipper and receiver for at least one year from the date of shipment. The shipper shall sequentially number the invoices during each license period. No invoice number may be used twice during any one license period by an individual licensee.

Revisor's Note

Section 47.0181(a), Parks and Wildlife Code, uses the terms "commercial fisherman" and "finfish." Section 47.001, Parks and Wildlife Code, revised in pertinent part in Section 5158.0101, defines those terms for purposes of Chapter 47 of that code. For drafting convenience, the revised law defines "commercial fisherman" and "finfish" by cross-reference to Section 5158.0101.

Revised Law

Sec. 5053.0306. AQUATIC ANIMAL PRODUCT SHIPPING REQUIREMENTS. (a) Each container of aquatic animal products shipped for commercial purposes must have a label attached to the outside listing the following information correctly stated and legibly written:

(1) the aquatic animal product transportation invoice number for the shipment of which the container is a part; and

(2) the kind and weight of the aquatic animal products.

(b) A person may not ship finfish as defined by Section 5158.0101 in individual packages that contain more than one species of aquatic life.

(c) A person may not possess a shipment of aquatic animal products in violation of Subsection (a) or (b). (Parks & Wild. Code, Sec. 47.0182.)

Source Law

Sec. 47.0182. AQUATIC PRODUCT SHIPPING REQUIREMENTS. (a) Each container of aquatic products shipped for commercial purposes must have a label attached to the outside listing the following information correctly stated and legibly written:

(1) the aquatic product transportation invoice number of the shipment of which the container is a part; and

(2) the kind and weight of aquatic product.

(b) No person may ship finfish in individual packages that contain more than one species of aquatic life.

(c) A person possessing a shipment of aquatic products in violation of Subsection (a) or (b) of this section commits an offense.

Revisor's Note

(1) Section 47.0182(b), Parks and Wildlife Code, uses the term "finfish." Section 47.001, Parks and Wildlife Code, revised in pertinent part in Section 5158.0101, defines "finfish" for purposes of Chapter 47 of that code. For drafting convenience, the revised law defines "finfish" by cross-reference to Section 5158.0101.

(2) Section 47.0182(c), Parks and Wildlife Code, provides that a person possessing a shipment of aquatic products in violation of Section 47.0182(a) or (b) of that code commits an offense. For clarity, the revised law restates the provision as a prohibition on possessing the shipment in the described manner but omits the portion of the provision creating an offense because it duplicates in substance Section 47.051, Parks and Wildlife Code, revised in pertinent part in Section 5053.0311, which creates an offense for violating a provision of Chapter 47 of that code.

Revised Law

Sec. 5053.0307. REQUIRED DOCUMENTATION FOR TRANSPORTATION OF AQUATIC ANIMAL PRODUCTS. (a) A person who transports an aquatic animal product for commercial purposes shall:

(1) possess the license or a copy of the license authorizing the commercial transportation;

(2) keep with the aquatic animal product each document, including a tag, invoice, or bill of lading, that is required by this code or a commission regulation for transporting aquatic animal products; and

(3) on the request of a game warden, present to the game warden without delay a license, copy of a license, or document required by this code or a commission regulation for transporting aquatic animal products.

(b) A culpable mental state is not required to establish a violation of this section. (Parks & Wild. Code, Sec. 47.0183.)

Source Law

Sec. 47.0183. TRANSPORTATION OF AQUATIC PRODUCTS; DISPLAY OF DOCUMENTS. (a) A person transporting aquatic products for commercial purposes commits an offense if:

(1) the person does not possess the license or a copy of the license authorizing the commercial transportation;

(2) the person does not keep with the aquatic product any document, including a tag, invoice, or bill of lading, that is required by this code or a regulation of the commission for

transporting aquatic products; or

(3) the person does not, on the request of a game warden, present to the game warden without delay a license, copy of a license, or document required by this code or a regulation of the commission for transporting aquatic products.

(b) A culpable mental state is not required to establish an offense under this section.

Revisor's Note

Section 47.0183(a), Parks and Wildlife Code, provides that a person transporting aquatic products for commercial purposes commits an offense if the person does not possess, keep, or present certain items or documents. For clarity, the revised law restates the provision as an affirmative duty to possess, keep, and present the items and documents rather than a prohibition on failing to possess, keep, or present the items or documents but omits the portion of the provision creating an offense for the reason stated in Revisor's Note (2) to Section 5053.0306.

Revised Law

Sec. 5053.0308. SALE AND PURCHASE OF CERTAIN FISH TAKEN FROM PUBLIC FRESH WATER. (a) A person may not buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange a fish taken from the public fresh water of this state.

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

(1) nongame fish regulated under Chapter 5051; or

(2) channel catfish of more than 14 inches in length or blue catfish of more than 14 inches in length taken from the public fresh water of:

(A) Angelina, Bowie, Camp, Cass, Chambers, Franklin, Freestone, Gregg, Hardin, Harris, Harrison, Jasper, Jefferson, Lamar, Leon, Liberty, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Red River, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Upshur, or Walker County;

(B) the Neches or Trinity River in Houston

County;

(C) the Colorado River in Bastrop, Colorado, Fayette, Matagorda, or Wharton County; or

(D) Falcon Lake in Starr or Zapata County. (Parks & Wild. Code, Sec. 66.111.)

Source Law

Sec. 66.111. SALE AND PURCHASE OF CERTAIN FISH. (a) Except as provided by Subsection (b), no person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange any fish taken from the public fresh water of this state.

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

(1) nongame fish regulated under Chapter 67; or

(2) channel catfish of more than 14 inches in length or blue catfish of more than 14 inches in length taken from the public fresh water of Angelina, Bowie, Camp, Cass, Chambers, Franklin, Freestone, Gregg, Hardin, Harris, Harrison, Jasper, Jefferson, Lamar, Leon, Liberty, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Red River, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Upshur, or Walker County, the public fresh water of the Neches or Trinity River in Houston County, the public fresh water of the Colorado River in Bastrop, Colorado, Fayette, Matagorda, or Wharton County, or the public fresh water of Falcon Lake in Starr or Zapata County.

Revised Law

Sec. 5053.0309. COMMERCIAL JOINT FISHING VENTURES. (a) A person who is engaged in taking seafood in a commercial joint venture may not sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) A person who is employed to take seafood may not sell or offer to sell the products taken in the course of the person's employment without the express or implied consent of the person's employer.

(c) A person may not purchase seafood with the knowledge that the seafood is sold in violation of this section. (Parks & Wild. Code, Sec. 66.208.)

Source Law

Sec. 66.208. COMMERCIAL JOINT FISHING VENTURES. (a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the

products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

Revised Law

Sec. 5053.0310. POSSESSION OF HEADED OR TAILED FINFISH. (a) A person may not possess a finfish of any species taken from coastal water, except broadbill swordfish, shark, or king mackerel, that has the head removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

(b) A person may not possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer. (Parks & Wild. Code, Sec. 66.216.)

Source Law

Sec. 66.216. POSSESSION OF HEADED OR TAILED FISH. (a) No person may possess a finfish of any species taken from coastal water, except broadbill swordfish, shark, or king mackerel, that has the head removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

(b) No person may possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

Revised Law

Sec. 5053.0311. CRIMINAL PENALTY. (a) A person commits an offense if the person violates:

(1) this subchapter;

(2) a proclamation adopted under Section 5053.0309 or 5053.0310; or

(3) a commission rule adopted under Section 5053.0304.

(b) Except as otherwise provided by this section or Section 5053.0302, an offense under this section is a Class C Parks and

Wildlife Code misdemeanor.

(c) An offense under this section for a violation of Section 5053.0309 or a proclamation adopted under that section is a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this section for a violation of Section 5053.0309. (Parks & Wild. Code, Secs. 47.051 (part), 66.012(a) (part), 66.121 (part), 66.218(a), (b) (part).)

Source Law

Sec. 47.051. PENALTY. Except as provided by Sections . . . 47.053, a person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

[Sec. 66.012]
(a) . . . a person who violates a provision of this subchapter or a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Sec. 66.121. PENALTY. A person who violates Section . . . 66.111, or 66.117(b) of this code or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Sec. 66.218. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a proclamation adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
(b) If it is shown at the trial for a violation of Section . . . 66.208 of this code or a proclamation adopted under those sections that the defendant has been convicted within five years before the trial date of a violation of the section for which the defendant is being prosecuted, on conviction the defendant shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 66.121, Parks and Wildlife Code, refers to Section 66.117(b) of that code. The revised law omits that reference because Section 66.117, Parks and Wildlife Code, was repealed by Chapter 586, Acts of the 72nd Legislature, Regular Session, 1991.

SUBCHAPTER D. SALE, PURCHASE, TRANSPORTATION, POSSESSION, AND IMPORTATION OF PROTECTED FISH

Revised Law

Sec. 5053.0401. DEFINITIONS. In this subchapter:

(1) "Prepared feed" means a pelleted ration that consists of 20 percent or more plant protein or grain by-products.

(2) "Protected fish" means Atlantic goliath grouper, bass of the genus Micropterus, blue marlin, crappie, flathead catfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white marlin, yellow bass, or a hybrid of any of those fish. (Parks & Wild. Code, Secs. 66.001(2), 66.020(a) (part).)

Source Law

Sec. 66.001. DEFINITIONS. In this chapter:

(2) "Prepared feed" means a pelleted ration, 20 percent or more of which consists of plant protein or grain by-products.

[Sec. 66.020]

(a) . . . bass of the genus Micropterus, blue marlin, crappie, flathead catfish, jewfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white marlin, yellow bass, or hybrids of any of those fish.

Revisor's Note

(1) The definition of "protected fish" is added to the revised law for drafting convenience and to avoid frequent, unnecessary repetition of the substance of the definition.

(2) Section 66.020(a), Parks and Wildlife Code, refers to "jewfish," an obsolete common name for the species Epinephelus itajara. Section 66.020(j), Parks and Wildlife Code, revised as Section 5053.0410, provides that the names of fishes in Chapter 66 of that code, revised in pertinent part as this subchapter, are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and

Scientific Names of Fishes of the United States and Canada." The American Fisheries Society changed the common name of Epinephelus itajara to "goliath grouper" in 2001 and later further redesignated the species as "Atlantic goliath grouper" based on genetic differences identified between fish populations. Accordingly, throughout this subchapter, the revised law substitutes "Atlantic goliath grouper" for "jewfish."

Revised Law

Sec. 5053.0402. APPLICABILITY OF SUBCHAPTER; EXEMPTIONS. (a) This subchapter applies to the sale, purchase, transportation, or possession of protected fish without regard to where the fish was taken, caught, or raised.

(b) Except as provided by Section 5053.0403, this subchapter does not apply to:

(1) the transportation or possession of protected fish taken, caught, or raised outside this state and transported by common carrier without being unloaded from outside this state to a point of delivery outside this state;

(2) protected fish raised by being continuously fed a prepared feed and sold by an operator of a commercial aquaculture facility, as defined by Section 134.001, Agriculture Code, located in this state;

(3) the sale of fish described by Subdivision (2) by:

(A) a licensed wholesale fish dealer;

(B) a licensed retail fish dealer; or

(C) a restaurant;

(4) bass of the genus Micropterus and crappie if the fish are:

(A) reared in private water; and

(B) sold by an operator of a commercial aquaculture facility located in this state for the purpose of stocking:

(i) water of this state under a permit required under Section 5054.0303(a); or

(ii) private water with the documentation required under Section 134.018, Agriculture Code; or

(5) a Texas finfish import license holder's lawful importation into this state from another state or country or the exclusive economic zone of a fish described by Subsection (c) if:

(A) the fish are tagged, invoiced, packaged, and labeled under commission regulations; and

(B) the license holder complies with any commission proclamation requiring the fish to enter the stream of commerce for sale in this state in a condition allowing ready identification of the species, including a requirement that:

(i) the fish enter this state with the head and tail intact and tagged; and

(ii) an invoice accompany all the imported fish regulated by this subchapter through each sales transaction, including at the place of final sale to the consumer.

(c) Subsection (b)(5) applies only to:

(1) farm-raised red drum, bass of the genus Micropterus, crappie, flathead catfish, striped bass, white bass, or a hybrid of any of those fish that have been continuously fed a prepared feed as a primary food source; and

(2) lawfully taken, caught, or raised blue marlin, Atlantic goliath grouper, longbill spearfish, muskellunge, northern pike, sailfish, sauger, snook, spotted sea trout, tarpon, walleye, white marlin, yellow bass, or a hybrid of any of those fish. (Parks & Wild. Code, Sec. 66.020(b).)

Source Law

(b) This section applies to the possession, transportation, sale, or purchase of any fish described by Subsection (a) without regard to where the fish was taken, caught, or raised, but does not apply to:

(1) the transportation or possession of fish taken, caught, or raised outside this state and transported by common carrier without being unloaded from outside this state to a point of delivery outside

this state;

(2) fish raised by being continuously fed a prepared feed and sold by an operator of a Texas commercial aquaculture facility, as defined by Section 134.001, Agriculture Code;

(3) the sale of fish described by Subdivision (2) by:

(A) a licensed wholesale fish dealer;

(B) a licensed retail fish dealer; or

(C) a restaurant;

(4) bass of the genus Micropterus and crappie if the fish are:

(A) reared in private water; and

(B) sold by an operator of a Texas commercial aquaculture facility for the purpose of stocking:

(i) water of the state under a permit required under Section 66.015(b); or

(ii) private water with the documentation required under Section 134.018, Agriculture Code; or

(5) the lawful importation by the holder of a Texas finfish import license into this state from another state or foreign country or the exclusive economic zone of farm-raised red drum, bass of the genus Micropterus, crappie, flathead catfish, striped bass, white bass, or a hybrid of any of those fish that have been continuously fed a prepared feed as a primary food source or lawfully taken, caught, or raised blue marlin, jewfish, longbill spearfish, muskellunge, northern pike, sailfish, sauger, snook, spotted sea trout, tarpon, walleye, white marlin, yellow bass, or a hybrid of any of those fish, if the fish are tagged, invoiced, packaged, and labeled under regulations of the commission and if the license holder complies with any requirements the commission may establish by proclamation that the fish enter the stream of commerce for sale in this state in a condition allowing ready identification of the species, including a requirement that the fish come into the state with the head and tail intact and tagged and a requirement that an invoice accompany all imported fish regulated by this section through each sales transaction, including transactions at the place of the final sale to the consumer.

Revised Law

Sec. 5053.0403. REQUIRED DOCUMENTATION FOR POSSESSION OF PROTECTED FISH UNDER EXEMPTION. (a) A person who possesses a protected fish under Section 5053.0402(b) shall:

(1) keep with the fish a document or documents that verify the place of origin of the fish; and

(2) on the request of a game warden, present to the game warden without delay a document or documents that verify the place of origin of the fish.

(b) Documents that verify the place of origin of a protected fish include tags, labels, or invoices required by:

(1) this code;

(2) a commission regulation;

(3) Chapter 134, Agriculture Code; or

(4) a regulation of the commissioner of agriculture.

(c) A person is not required to have a culpable mental state to violate this section. (Parks & Wild. Code, Sec. 66.021.)

Source Law

Sec. 66.021. PROTECTED FISH: DISPLAY OF DOCUMENTS. (a) A person commits an offense if the person possesses a fish described by Subsection 66.020(a) of this code under Subsection 66.020(b) of this code and:

(1) fails to keep with the fish a document or documents that verify the place of origin of the fish; or

(2) fails, on the request of a game warden, to present to the game warden without delay a document or documents that verify the place of origin of the fish.

(b) Documents that verify the place of origin of any fish described by Subsection 66.020(a) of this code include tags, labels, or invoices required by this code, a regulation of the commission, Chapter 134 of the Agriculture Code, or a regulation of the commissioner of agriculture.

(c) To commit an offense under Subsection (a) of this section, a person is not required to have a culpable mental state.

Revisor's Note

Section 66.021(a), Parks and Wildlife Code, provides that a person commits an offense if the person possesses certain fish under Section 66.020(b) of that code and fails to keep or present documents verifying the fish's place of origin. For clarity, the revised law restates the provision as an affirmative duty to keep and present the documents rather than a prohibition on failing to keep or present the documents but omits the portion of the provision creating an offense because it duplicates in substance Section 66.012(a), Parks and Wildlife Code, revised in pertinent part as Section 5053.0411(a), which creates an offense for violating a provision of Subchapter A, Chapter 66, of that code or a rule adopted by the Parks and Wildlife Commission under that subchapter.

Revised Law

Sec. 5053.0404. SALE, PURCHASE, AND TRANSPORTATION OF PROTECTED FISH GENERALLY PROHIBITED. Except as otherwise provided by this subchapter, a person may not buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange protected fish. (Parks & Wild. Code, Sec. 66.020(a) (part).)

Source Law

> Sec. 66.020. SALE AND PURCHASE OF PROTECTED FISH. (a) It is unlawful for any person to buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange [bass of the genus Micropterus, blue marlin, crappie, flathead catfish, jewfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white marlin, yellow bass, or hybrids of any of those fish.]

Revisor's Note

(1) Section 66.020(a), Parks and Wildlife Code, provides that "[i]t is unlawful for" a person to engage in certain activities with respect to fish species listed in that provision. Throughout this subchapter, the revised law substitutes "a person may not" for the quoted language because, in context, the phrases are synonymous and "a person may not" is more consistent with modern usage. Additionally, under Section 66.012(a), Parks and Wildlife Code, revised in pertinent part as Section 5053.0411(a), a person who violates a provision of Subchapter A, Chapter 66, of that code commits an offense.

(2) Section 66.020(a), Parks and Wildlife Code, prohibits certain activities with respect to fish species listed in that provision. Other provisions of Section 66.020, Parks and Wildlife Code, which are revised in this subchapter, provide exceptions to the general prohibition in Section 66.020(a), and the revised law adds language to indicate to the reader

that exceptions to the general prohibition are included in other provisions of this subchapter.

Revised Law

Sec. 5053.0405. TEXAS FINFISH IMPORT LICENSE; LICENSE REQUIRED TO IMPORT, TRANSPORT, OR SELL PROTECTED FISH. (a) A person may not receive directly from another state or country, import, transport, or sell protected fish unless the person holds a Texas finfish import license issued by the department.

(b) The fee for a Texas finfish import license is $50 or a greater amount set by the commission.

(c) A Texas finfish import license is valid only during the yearly period for which the license is issued without regard to the date the license is acquired. For purposes of this subsection, each yearly period:

(1) begins on September 1 or another date set by the commission; and

(2) extends through August 31 of the next year or another date set by the commission.

(d) The commission by rule may:

(1) provide for a license term for a transition period that is less than or exceeds one year; and

(2) set the fee for a license issued during a transition period at an amount less than the amount prescribed by Subsection (b).

(e) A Texas finfish import license may not be transferred to another person, except that:

(1) the license may be transferred to a new address if the business moves to another location; and

(2) a Texas finfish import license issued in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(f) The commission by regulation may prescribe:

(1) requirements necessary to clarify a license transfer procedure; and

(2) a form to be used and fee to be charged for:

(A) transfer of a Texas finfish import license; or

(B) a duplicate or replacement Texas finfish import license. (Parks & Wild. Code, Secs. 66.017 (part), 66.020(d), (e).)

Source Law

Sec. 66.017. LICENSE, TAG, AND PERMIT EXPIRATIONS AND TRANSFERS. (a) All licenses, . . . issued under the authority of Chapter 66 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(b) All licenses, . . . issued under the authority of Chapter 66 of this code may not be transferred to another person except that a license issued in the name of a business shall remain valid for the business location specified on the license or . . . if a change of ownership and/or business name occurs. A license issued under the authority of Section 66.020(e) may be transferred to a new address if the business moves to another location. The commission, by regulation, may prescribe requirements necessary to clarify license and . . . transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses and . . . in this chapter and for duplicate or replacement licenses, ...

[Sec. 66.020]

(d) It is unlawful for any person to receive directly from another state or foreign country, import, transport, or sell bass of the genus Micropterus, blue marlin, crappie, flathead catfish, jewfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white marlin, yellow bass, or a hybrid of any of those fish unless the person holds a Texas finfish import license issued by the department.

(e) The fee for a Texas finfish import license is $50 or an amount set by the commission, whichever amount is more.

Revisor's Note

(1) Section 66.017, Parks and Wildlife Code, refers to licenses issued under the authority of Chapter 66 of that code. The only license authorized

under Chapter 66 is a Texas finfish import license under Section 66.020, Parks and Wildlife Code, revised in this subchapter, and the revised law is drafted accordingly.

(2) Section 66.020(d), Parks and Wildlife Code, prohibits certain activities with respect to fish species listed in that provision. The revised law substitutes "protected fish" for the list of fish species, because "protected fish" is the defined term for this subchapter and the fish species listed in that definition are the same fish species listed in Section 66.020(d).

Revised Law

Sec. 5053.0406. TAG, PACKAGE, LABEL, AND INVOICE REQUIREMENTS FOR IMPORTED FISH. (a) The commission by proclamation may require fish imported under this subchapter to be tagged, packaged, labeled, and accompanied by an invoice. The department may provide a prenumbered invoice to a person importing protected fish into this state from another state or country and may charge a fee for the invoice in an amount the commission determines is reasonable to defray the administrative costs incurred under this subsection. The invoice shall be used to report shipments of protected fish. A person who receives an invoice under this subsection must account to the department for the invoice as required by commission rule.

(b) A person may not sell or offer to sell imported protected fish unless the fish is tagged, packaged, labeled for identification, and invoiced as provided by this subchapter. (Parks & Wild. Code, Secs. 66.020(f), (g).)

Source Law

(f) The commission by proclamation may require fish imported under this section to be tagged, packaged, and labeled and to be accompanied by an invoice. The department may provide a prenumbered invoice to a person importing any of the fish described by Subsection (a) of this section into this state from another state or foreign country and may charge a fee

for the invoice in an amount determined by the commission that is reasonable to defray the administrative costs incurred under this subsection. The invoice shall be used to report shipments of any of the fish described by Subsection (a) of this section. A person who receives invoices under this subsection must account to the department for all invoices received as required by rules adopted by the commission. A person commits an offense if the person fails or refuses to account for an invoice as required by commission rules.

(g) It is unlawful for a person to sell or offer to sell any imported fish described by Subsection (a) of this section unless it is tagged, packaged, invoiced, and labeled for identification as provided by this section.

Revisor's Note

Section 66.020(f), Parks and Wildlife Code, provides that "[a] person commits an offense if the person fails or refuses to account for an invoice as required by commission rules." The revised law omits the quoted language for the reason stated in the revisor's note to Section 5053.0403.

Revised Law

Sec. 5053.0407. SUBSEQUENT SALE OF CERTAIN LAWFULLY IMPORTED FISH. Notwithstanding Section 5053.0402(b)(5), the commission may allow the subsequent sale of lawfully imported fish without the head and tail intact and without a tag if the fish are labeled in a manner the commission prescribes and the tag is destroyed when removed. Any required tag must be of a type the commission prescribes and shall be sold to an applicant at a cost the commission determines is reasonable to defray the administrative costs incurred in connection with the tag requirement. (Parks & Wild. Code, Sec. 66.020(c).)

Source Law

(c) Notwithstanding Subsection (b)(5), the commission may allow subsequent sale of lawfully imported fish without the head and tail intact and without a tag if the fish are labeled in a manner prescribed by the commission and the tag when removed is destroyed. A tag, if required, must be of a type prescribed by the commission and shall be sold to an applicant at a cost as determined by the commission that is reasonable to defray the administrative costs incurred in connection with the tag requirement.

Revised Law

Sec. 5053.0408. LAWFUL PURCHASE OF PROTECTED FISH AUTHORIZED IN ANY SEASON. A person may purchase protected fish as provided by this subchapter at any season of the year. (Parks & Wild. Code, Sec. 66.020(h).)

Source Law

> (h) A person may purchase at any season of the year fish described by Subsection (a) as provided by this section.

Revised Law

Sec. 5053.0409. LIMITATION ON POSSESSION OF PROTECTED FISH WITHOUT LAWFUL DOCUMENTATION. A person may not possess more than three times the possession limit of protected fish, as provided by this code or by commission proclamation, without lawful documentation. (Parks & Wild. Code, Sec. 66.020(i) (part).)

Source Law

> (i) A person possessing more than three times the possession limit, as provided by this code or by a proclamation of the commission under this code, of fish described by Subsection (a) of this section without lawful documentation commits an offense. . . .

Revisor's Note

(1) Section 66.020(i), Parks and Wildlife Code, refers to a Parks and Wildlife Commission proclamation "under this code." The revised law omits the quoted language because a commission proclamation is necessarily under the Parks and Wildlife Code.

(2) Section 66.020(i), Parks and Wildlife Code, provides that a person who possesses more than a certain amount of protected fish without lawful documentation commits an offense. For clarity, the revised law restates the provision as a prohibition on possession of more than a certain amount of protected fish without lawful documentation but omits the portion of the provision creating an offense for the reason stated in the revisor's note to Section 5053.0403.

Revised Law

Sec. 5053.0410. FISH NAMES. The names of fish in this subchapter are those prescribed by the American Fisheries Society in the most recent edition of Common and Scientific Names of Fishes from the United States, Canada, and Mexico. (Parks & Wild. Code, Sec. 66.020(j).)

Source Law

> (j) In this chapter the names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of the United States and Canada."

Revisor's Note

Section 66.020(j), Parks and Wildlife Code, provides that the names of fish in Chapter 66 of that code are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of the United States and Canada." The pertinent parts of Chapter 66 prescribing names of fish are revised in this subchapter, and the revised law is drafted accordingly. Additionally, the revised law substitutes "Common and Scientific Names of Fishes from the United States, Canada, and Mexico" for the quoted language to reflect the name of the most recent edition of that publication.

Revised Law

Sec. 5053.0411. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates this subchapter or a commission rule adopted under this subchapter.

(b) Except as otherwise provided by this section, an offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(c) An offense under this section for a violation of Section 5053.0403 is a Class B Parks and Wildlife Code misdemeanor.

(d) An offense under this section for a violation of Section 5053.0406 or a commission proclamation adopted under that section

is:

(1) a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted one time of a violation of the same subsection of that section; or

(2) a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of a violation of the same subsection of that section.

(e) An offense under this section for a violation of Section 5053.0409 is a Class A Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.012(a), (b) (part), (e) (part), (f) (part), 66.020(i) (part).)

Source Law

> Sec. 66.012. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (b) A person who violates Section . . . 66.021, or . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.
>
> (e) An offense under Section . . . 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.
>
> (f) An offense under Section . . . 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.
>
> [Sec. 66.020]
>
> (i) . . . An offense under this subsection is a Class A Parks and Wildlife Code misdemeanor.

SUBCHAPTER E. POSSESSION OF EXOTIC ANIMAL

Revised Law

Sec. 5053.0501. DEFINITION. In this subchapter, "exotic animal" means exotic livestock or exotic fowl as defined by Section 161.001(a), Agriculture Code, aoudad sheep, or elk. (Parks & Wild.

Code, Sec. 62.015(a).)

Source Law

Sec. 62.015. HUNTING AND POSSESSION OF EXOTIC ANIMALS. (a) In this section, "exotic animal" means exotic livestock or exotic fowl as defined by Section 161.001(a), Agriculture Code, aoudad sheep, or elk.

Revised Law

Sec. 5053.0502. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) the owner of an exotic animal or an employee of the owner;

(2) a person who holds a permit for the management of wildlife or exotic animals by the use of aircraft under Subchapter H, Chapter 5159;

(3) a public health officer;

(4) a law enforcement officer; or

(5) a veterinarian. (Parks & Wild. Code, Sec. 62.015(e).)

Source Law

(e) Subsection (d) of this section does not apply to the owner or employee of the owner of the exotic animal, a person who holds a permit for the management of wildlife or exotic animals by the use of aircraft under Subchapter G, Chapter 43, of this code, a public health officer, a law enforcement officer, or a veterinarian.

Revised Law

Sec. 5053.0503. POSSESSION OF EXOTIC ANIMAL GENERALLY PROHIBITED; OFFENSE. (a) Except as otherwise provided by this subchapter, a person may not possess an exotic animal or the carcass of an exotic animal.

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

(c) It is an affirmative defense to prosecution under this section that the person possessed the exotic animal or the carcass of the exotic animal with the knowledge and consent of the owner. (Parks & Wild. Code, Secs. 62.015(d), (f), (g).)

Source Law

(d) Except as provided in Subsections (e) and (f) of this section, no person may possess an exotic animal or the carcass of an exotic animal.

(f) It is an affirmative defense to a prosecution under Subsection (d) of this section that the person possessed the exotic animal or the carcass of the exotic animal with the knowledge and consent of the owner.

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

CHAPTER 5054. FISH, SHELLFISH, AND OTHER AQUATIC PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5054.0101. DEFINITIONS. In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths. The term does not include coastal or tidal water.

(2) "Public water" means:

(A) the bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of this state; and

(B) the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(3) "Salt water" means all coastal or tidal water. (Parks & Wild. Code, Secs. 66.001(1), (3), 66.007(e)(3), 66.0073(a)(1), 66.015(a).)

Source Law

Sec. 66.001. DEFINITIONS. In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.

(3) "Salt water" means all coastal or tidal water.

[Sec. 66.007]

(e) In this section:

(3) "Public water" has the meaning assigned by Section 66.015.

[Sec. 66.0073]

(a) In this section:

(1) Public water" has the meaning assigned by Section 66.015.

Sec. 66.015. INTRODUCTION OF FISH, SHELLFISH, AND AQUATIC PLANTS. (a) In this section, "public water" means the bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

Revisor's Note

Section 66.015, Parks and Wildlife Code, defines the term "public water" for purposes of that section, and Sections 66.007(e)(3) and 66.0073(a)(1) of that code provide a section-wide definition of that term by means of a cross-reference to Section 66.015. Sections 66.007, 66.0073, and 66.015, Parks and Wildlife Code, are revised in this chapter. Although this chapter also includes the revision of other provisions, the revised law applies the definition of the term "public water" to the entire chapter because the term is not used in those other provisions.

SUBCHAPTER B. HARMFUL EXOTIC FISH AND EXOTIC SHELLFISH

Revised Law

Sec. 5054.0201. DEFINITIONS. In this subchapter:

(1) "Exotic fish" means a nonindigenous fish that is not normally found in public water.

(2) "Exotic shellfish" means a nonindigenous shellfish that is not normally found in public water. (Parks & Wild. Code, Secs. 66.007(e)(1), (2).)

Source Law

(e) In this section:

(1) "Exotic fish" means a nonindigenous fish that is not normally found in the public water of this state.

(2) "Exotic shellfish" means a nonindigenous shellfish that is not normally found in the public water of this state.

Revisor's Note

Sections 66.007(e)(1) and (2), Parks and Wildlife Code, refer to "public water of this state." Throughout this chapter, the revised law substitutes "public water" for the quoted language and similar

language because "public water" is the defined term for this chapter and includes the concept that the water described by the definition is located within the jurisdiction of this state.

Revised Law

Sec. 5054.0202. DEPARTMENT RULES. The department shall adopt rules to implement Sections 5054.0201, 5054.0203, and 5054.0204. (Parks & Wild. Code, Sec. 66.007(c).)

Source Law

(c) The department shall make rules to carry out this section.

Revisor's Note

Section 66.007(c), Parks and Wildlife Code, requires the Parks and Wildlife Department to make rules to carry out Section 66.007 of that code. Section 66.007 is revised in pertinent part as Sections 5054.0201, 5054.0203, and 5054.0204, and the revised law is drafted accordingly.

Revised Law

Sec. 5054.0203. HARMFUL EXOTIC FISH AND EXOTIC SHELLFISH. (a) Except as provided by Subsection (d), a person may not import, possess, sell, or place into public water an exotic fish or exotic shellfish that is harmful or potentially harmful unless the person is authorized to do so by rule or permit issued by the department.

(b) The department shall publish a list of exotic fish and exotic shellfish for which a permit under Subsection (a) is required.

(c) The commission by rule shall waive the initial and renewal fees for a permit required under Subsection (a) if the permit or permit renewal is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that combines aquaculture and hydroponics. To qualify for a fee waiver, the school must submit an application to the department showing

that the program meets the department's requirements, including requirements for supervision, handling of exotic species, and control of waste.

(d) A water transfer does not violate Subsection (a) or require a permit under that subsection if:

(1) the transfer is by a district or authority created under Section 59, Article XVI, Texas Constitution, and:

(A) is initially conveyed by a water intake structure that is:

(i) shared by at least two districts or authorities; and

(ii) located on a reservoir situated on the boundary of this state and another state;

(B) uses a closed conveyance system approved by the United States Army Corps of Engineers in accordance with an invasive species management plan approved by the United States Army Corps of Engineers; and

(C) contributes to a water supply that serves at least 1.5 million people, all of whom reside in an area that:

(i) borders another state;

(ii) contains at least 10 contiguous counties;

(iii) contains at least one county with a population of more than one million; and

(iv) is adjacent to a county with a population of more than one million; or

(2) the transfer is:

(A) through a water supply system, including a related water conveyance, storage, or distribution facility;

(B) undertaken by a utility owned by a political subdivision, including a water district or municipality; and

(C) a transfer of water:

(i) from a water body in which there is no known harmful or potentially harmful exotic fish or exotic

shellfish population;

(ii) into a water body in which there is a known harmful or potentially harmful exotic fish or exotic shellfish population;

(iii) directly to a water treatment facility;

(iv) that has been treated prior to the transfer into a water body; or

(v) from a reservoir or through a dam to address flood control or to meet water supply requirements or environmental flow purposes, provided that a person making a transfer of water described by this subparagraph from a body of water in which there is a known harmful or potentially harmful exotic fish or exotic shellfish population notifies the department annually in writing before the proposed transfer occurs. (Parks & Wild. Code, Secs. 66.007(a), (b), (c-1), (m), (n).)

Source Law

> Sec. 66.007. EXOTIC HARMFUL OR POTENTIALLY HARMFUL FISH AND SHELLFISH. (a) No person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department.
>
> (b) The department shall publish a list of exotic fish and exotic shellfish for which a permit under Subsection (a) is required.
>
> (c-1) The commission by rule shall waive the initial and renewal fees for an exotic species permit if the permit or permit renewal is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that mixes aquaculture and hydroponics. To qualify for the fee waiver, the school must submit an application to the department showing that the school's program meets the department's requirements, including requirements for supervision, handling of the exotic species, and control of wastes.
>
> (m) A water transfer described by this subsection is not a violation of this section. The department may not require a permit under this section for a water transfer described by this subsection. This subsection applies to a water transfer by a district or authority created under Section 59, Article XVI, Texas Constitution, that:
>
> (1) is initially conveyed by a water intake structure that is:
>
> (A) shared by at least two districts

or authorities; and

(B) located on a reservoir situated on the boundary of this state and another state;

(2) uses a closed conveyance system approved by the United States Army Corps of Engineers in accordance with an invasive species management plan approved by the United States Army Corps of Engineers; and

(3) contributes to a water supply that serves at least 1.5 million people, all of whom reside in an area that:

(A) borders another state;

(B) contains at least 10 contiguous counties;

(C) contains at least one county with a population of more than one million; and

(D) is adjacent to a county with a population of more than one million.

(n) A water transfer described by this subsection is not a violation of this section. The department may not require a permit under this section for a water transfer described by this subsection. This subsection applies to a water transfer that meets the following criteria:

(1) the transfer is through a water supply system, including a related water conveyance, storage, or distribution facility;

(2) the transfer is undertaken by a utility owned by a political subdivision, including a water district or municipality; and

(3) the transfer is described by one or more of the following:

(A) a transfer from a water body in which there is no known exotic harmful or potentially harmful fish or shellfish population;

(B) a transfer of water into a water body in which there is a known exotic harmful or potentially harmful fish or shellfish population;

(C) a transfer of water directly to a water treatment facility;

(D) a transfer of water that has been treated prior to the transfer into a water body; or

(E) a transfer of water from a reservoir or through a dam to address flood control or to meet water supply requirements or environmental flow purposes, provided that a person making a transfer of water described by this paragraph from a body of water in which there is a known exotic harmful or potentially harmful fish or shellfish population notifies the department annually in writing before the proposed transfer occurs.

Revisor's Note

(1) Section 66.007(c-1), Parks and Wildlife Code, requires the Parks and Wildlife Commission by rule to waive the initial and renewal fees for "an exotic species permit" under certain circumstances. For the convenience of the reader, the revised law substitutes "a permit required under Subsection (a)" for the quoted language because it is clear from the

context that "an exotic species permit" refers to the permit that is required under Section 66.007(a), Parks and Wildlife Code, revised as Subsection (a) of this section.

(2) Sections 66.007(m) and (n), Parks and Wildlife Code, provide that certain water transfers are not a violation of Section 66.007 of that code and prohibit the Parks and Wildlife Department from requiring a permit under that section. The pertinent part of Section 66.007 is revised as Subsection (a) of this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5054.0204. AQUACULTURE FACILITY OPERATIONS. (a) In this section, "commercial aquaculture facility" has the meaning assigned by Section 134.001, Agriculture Code. The department by rule shall determine the meaning under this section of "manifestation of disease" and "quarantine condition."

(b) An operator of a commercial aquaculture facility may import, possess, or sell harmful or potentially harmful exotic fish species as provided by Section 134.020, Agriculture Code.

(c) An operator of a commercial aquaculture facility may not import, possess, propagate, or transport exotic shellfish unless the operator provides evidence required by the department showing that the shellfish are free of disease.

(d) The commission may adopt rules to control a disease or agent of disease transmission that:

(1) may affect penaeid shrimp species; and

(2) has the potential to affect cultured species or other aquatic species.

(e) If a manifestation of disease is observed in any cultured marine penaeid shrimp species, the department shall immediately place the aquaculture facility under quarantine condition.

(f) The department may coordinate with the Texas Animal Health Commission regarding testing for diseases.

(g) On receiving notice from an owner of the observance of a manifestation of disease, the department shall immediately:

(1) notify the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission; and

(2) advise the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission regarding the appropriate action to be taken.

(h) Except as provided by Subsection (i), an operator of an aquaculture facility under quarantine condition may not discharge waste or another substance from the facility, except with:

(1) department approval; and

(2) a wastewater discharge authorization issued by the Texas Commission on Environmental Quality.

(i) Regardless of whether an aquaculture facility is under quarantine condition, the facility shall discharge wastewater or another substance as necessary to comply with an emergency plan that has been:

(1) submitted to and approved by the department; and

(2) incorporated into a wastewater discharge authorization issued by the Texas Commission on Environmental Quality. (Parks & Wild. Code, Secs. 66.007(d), (f), (g), (h), (i), (j), (k), (l).)

Source Law

(d) An operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, may import, possess, or sell harmful or potentially harmful exotic fish species as provided by Section 134.020, Agriculture Code.

(f) An operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, may not import, possess, propagate, or transport exotic shellfish unless the operator furnishes evidence required by the department showing that the shellfish are free of disease.

(g) The commission may adopt rules to control a disease or agent of disease transmission that:

(1) may affect penaeid shrimp species; and

(2) has the potential to affect cultured species or other aquatic species.

(h) If one or more manifestations of disease is observed in any cultured marine penaeid shrimp species, the department shall immediately place the aquaculture facility under quarantine condition. The department shall determine, by rule, the meaning of "manifestation of disease" and "quarantine condition" under this section.

(i) The department may coordinate with the Texas Animal Health Commission regarding testing for diseases.

(j) Except as provided in Subsection (k), an operator of an aquaculture facility under quarantine condition may not discharge waste or another substance from the facility except with approval of the department and a wastewater discharge authorization from the Texas Commission on Environmental Quality.

(k) Even if under quarantine condition, an aquaculture facility shall discharge wastewater or another substance as necessary to comply with an emergency plan that has been submitted to and approved by the department and incorporated into a wastewater discharge authorization issued by the Texas Commission on Environmental Quality.

(l) On receiving notice from an owner of the observance of manifestations of disease, the department shall immediately:

(1) notify the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission; and

(2) advise the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission regarding the appropriate action to be taken.

Revisor's Note

Section 66.007(h), Parks and Wildlife Code, requires that the Parks and Wildlife Department by rule determine the meaning of "manifestation of disease" and "quarantine condition" under Section 66.007 of that code. The pertinent parts of Section 66.007 relating to a "manifestation of disease" or "quarantine condition" are revised in this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5054.0205. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a commission rule adopted under this subchapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor, except that the offense is:

(1) a Class B Parks and Wildlife Code misdemeanor if it

is shown on the trial of the offense that the defendant has previously been convicted one time of a violation of this subchapter; or

(2) a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of a violation of this subchapter. (Parks & Wild. Code, Secs. 66.012(a), (e) (part), (f) (part).)

Source Law

> Sec. 66.012. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (e) An offense under Section 66.007, . . . or a proclamation adopted by the commission under those sections is a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.
>
> (f) An offense under Section 66.007, . . . or a proclamation adopted by the commission under those sections is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.

SUBCHAPTER C. FISH, FISHERIES, AND AQUATIC PRODUCTS

Revised Law

Sec. 5054.0301. GAME AND NONGAME FISH DEFINED BY COMMISSION PROCLAMATION. The commission by proclamation shall define game and nongame fish. (Parks & Wild. Code, Sec. 66.114.)

Source Law

> Sec. 66.114. GAME AND NONGAME FISH DEFINED: COMMISSION PROCLAMATION. The commission by proclamation shall define game and nongame fish.

Revised Law

Sec. 5054.0302. COMMERCIAL FISHERY RESEARCH AND DEVELOPMENT. (a) The department shall conduct research in and develop commercial fisheries under the former Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. Section 779 et seq.). The department shall comply with the Act and the rules

adopted under the Act by the United States secretary of the interior.

(b) Money received from the federal government and appropriated by this state for research and development of commercial fisheries shall be deposited to the credit of the game, fish, and water safety account.

(c) Federal grants for research and development of commercial fisheries may be used for individual fishery projects with department approval. (Parks & Wild. Code, Secs. 66.013, 83.002.)

Source Law

Sec. 66.013. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

Sec. 83.002. COMMERCIAL FISHERIES RESEARCH. (a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the game, fish, and water safety account.

Revisor's Note

(1) Section 83.002(a), Parks and Wildlife Code, requires the Parks and Wildlife Department to conduct research in and develop commercial fisheries under "an Act of Congress entitled 'Commercial Fisheries Research and Development Act of 1964' (Title 16, Sections 779-779f, U.S.C.A.)." The revised law refers to the "Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. Section 779 et seq.)" because that is the proper citation of that act. The revised law adds "former" because that act was repealed by Section 309, Pub. L. No. 99-659. Public Law No. 99-659 enacted the Interjurisdictional Fisheries

Act of 1986 (16 U.S.C. Section 4101 et seq.). The revised law does not substitute a reference to the Interjurisdictional Fisheries Act of 1986 for the reference to the former Commercial Fisheries Research and Development Act of 1964 because it is not clear that the Interjurisdictional Fisheries Act of 1986 constitutes a reenactment, revision, or amendment of the former Commercial Fisheries Research and Development Act of 1964 for purposes of Section 311.027, Government Code (Code Construction Act).

(2) Section 83.002(a), Parks and Wildlife Code, refers to certain "rules and regulations promulgated" by the United States secretary of the interior. The revised law omits "regulations" for the reasons stated in Revisor's Note (2) to Section 5053.0108. Additionally, the revised law substitutes "adopted" for "promulgated" because, in context, the terms are synonymous and "adopted" is more commonly used.

(3) Section 83.002(b), Parks and Wildlife Code, refers to certain "funds" received from the federal government. Throughout this chapter, the revised law substitutes "money" for "funds" when the meaning is the same in context because "money" is the more commonly used term.

Revised Law

Sec. 5054.0303. INTRODUCTION OF FISH, SHELLFISH, AND AQUATIC PLANTS; PERMIT REQUIRED; OFFENSE. (a) A person may not place a species of fish, shellfish, or aquatic plant into public water unless the person holds a permit issued by the department.

(b) The department shall adopt rules governing the issuance of a permit under this section.

(c) Subsection (a) does not apply to a native, nongame fish, as defined by the commission, except in waters designated by the commission where threatened or endangered fish are present.

(d) A person commits an offense if the person violates Subsection (a).

(e) A person commits an offense if:

(1) a fish, shellfish, or aquatic plant the person possesses or places in nonpublic water escapes into public water; and

(2) the person does not hold a permit issued under this section.

(f) An offense under this section is a Class B Parks and Wildlife Code misdemeanor, except that the offense is:

(1) a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted one time of an offense under this section; or

(2) a Parks and Wildlife Code felony 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.

(g) This section does not apply to a department employee acting at the direction of the commission. (Parks & Wild. Code, Secs. 66.012(b) (part), (c) (part), (d) (part), 66.015(b), (c), (d), (e), (f).)

Source Law

[Sec. 66.012]

(b) A person who violates Section . . . 66.015, . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) An offense under Section . . . 66.015 is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.

(d) An offense under Section . . . 66.015 is a Parks and Wildlife Code felony if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.

[Sec. 66.015]

(b) No person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.

(c) The department shall establish rules and regulations governing the issuance of permits under this section.

(d) Subsection (b) of this section does not

apply to native, nongame fish as defined by the commission, except in waters designated by the commission where threatened or endangered fish are present.

(e) A person violates this section if fish, shellfish, or aquatic plants the person possesses or has placed in nonpublic water escape into the public water of the state and the person does not hold a permit issued under this section.

(f) An employee of the department acting at the direction of the commission is exempt from this section.

Revisor's Note

(1) Section 66.015(c), Parks and Wildlife Code, requires the Parks and Wildlife Department to establish "rules and regulations" governing the issuance of permits under Section 66.015 of that code. The revised law omits "regulations" for the reasons stated in Revisor's Note (2) to Section 5053.0108.

(2) Sections 66.015(c) and (e), Parks and Wildlife Code, refer to a permit issued under "this section," and Section 66.015(f) of that code exempts certain department employees from "this section," meaning Section 66.015 of that code. The revised law retains the references to "this section" because the pertinent parts of Section 66.015, which relate to the issuance of a permit and the establishment of prohibitions and violations related to the placement or escape into public water of certain aquatic life, are revised in this section. Although this section also includes the revision of other provisions, it is appropriate to refer to the section in its entirety because those other provisions merely prescribe criminal penalties for violations of Section 66.015.

Revised Law

Sec. 5054.0304. STATISTICAL REPORTS ON HARVEST OF AQUATIC PRODUCTS; OFFENSE. (a) The department shall:

(1) gather statistical information on the harvest of aquatic products of this state;

(2) prescribe the method used to gather the

statistical information; and

(3) produce and distribute any applicable report forms.

(b) Unless otherwise required by the department, a dealer who purchases or receives aquatic products directly from a person who is not a licensed dealer shall file a report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The dealer must file the report even if no reportable activity occurred in the month covered by the report. A dealer may not file an incorrect or false report. A culpable mental state is not required to establish an offense under this section.

(c) Unless otherwise required by the department, a dealer who purchases, receives, or handles aquatic products, other than oysters, from a person who is not a dealer shall:

(1) maintain a cash sale ticket in the form required by this section as a record of a cash sale transaction; and

(2) make the cash sale ticket available for examination by an authorized department employee during reasonable business hours of the dealer:

(A) for statistical purposes; or

(B) as part of an ongoing investigation of a criminal violation.

(d) A cash sale ticket must be maintained at the place of business for at least one year after the date of the sale.

(e) A cash sale ticket must include:

(1) the name of the seller;

(2) if the seller is selling finfish or crabs, the seller's:

(A) general commercial fisherman's license number; and

(B) commercial finfish fisherman's license number or commercial crab fisherman's license number, as applicable;

(3) as applicable to the seller or to the vessel used to take the aquatic product, the:

(A) general commercial fisherman's license number;

(B) commercial finfish fisherman's license number;

(C) commercial crab fisherman's license number;

(D) commercial shrimp boat captain's license number;

(E) commercial shrimp boat license number; or

(F) commercial fishing boat license number;

(4) the number of pounds sold by species;

(5) the date of sale;

(6) the water body or bay system from which the aquatic products were taken; and

(7) the price paid per pound for each species.

(f) A person commits an offense if the person violates Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor. (Parks & Wild. Code, Sec. 66.019.)

Source Law

Sec. 66.019. STATISTICAL REPORTS. (a) The department shall gather statistical information on the harvest of aquatic products of this state.

(b) The department shall prescribe the method or methods used to gather information and shall produce and distribute any applicable report forms.

(c) Unless otherwise required by the department, no dealer who purchases or receives aquatic products directly from any person other than a licensed dealer may fail to file the report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The report must be filed even if no reportable activity occurs in the month covered by the report. No dealer required to report may file an incorrect or false report. A culpable mental state is not required to establish an offense under this section.

(d) Unless otherwise required by the department, no dealer who purchases, receives, or handles aquatic products, other than oysters, from any person except another dealer may fail to:

(1) maintain cash sale tickets in the form required by this section as records of cash sale transactions; or

(2) make the cash sale tickets available for examination by authorized employees of the

department for statistical purposes or as a part of an ongoing investigation of a criminal violation during reasonable business hours of the dealer.

(e) All cash sale tickets must be maintained at the place of business for at least one year from the date of the sale.

(f) A cash sale ticket must include:

(1) the name of the seller;

(2) the general commercial fisherman's license number and the commercial finfish fisherman's license number or the general commercial fisherman's license number and the commercial crab fisherman's license number, as applicable, if the holder of the general commercial fisherman's license is selling finfish or crabs;

(3) the general commercial fisherman's license number, the commercial crab fisherman's license number, the commercial finfish fisherman's license number, the commercial shrimp boat captain's license number, the commercial shrimp boat license number, or the commercial fishing boat license number of the seller or of the vessel used to take the aquatic product, as applicable;

(4) the number of pounds sold by species;

(5) the date of sale;

(6) the water body or bay system from which the aquatic products were taken; and

(7) price paid per pound per species.

(g) Any person who violates Subsection (c) or (d) of this section is guilty of a Class C misdemeanor.

Revisor's Note

Section 66.019(b), Parks and Wildlife Code, requires the Parks and Wildlife Department to prescribe "the method or methods" for statistical information gathering. The revised law omits "methods" as unnecessary because Section 311.012(b), Government Code (Code Construction Act), provides that a reference to the singular includes the plural and vice versa.

Revised Law

Sec. 5054.0305. RULES REQUIRING DRAINING WATER FROM VESSELS. (a) In this section, "vessel" has the meaning assigned by Section 4001.0101.

(b) The commission may adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. This subsection does not apply to salt water.

(c) When adopting a rule described by Subsection (b), the

commission shall:

(1) consider the rule's effect on boaters, anglers, and local interests; and

(2) maintain the ability to prevent the spread of harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

(d) If the commission adopts a rule described by Subsection (b), an authorized employee of the department may inspect a vessel leaving or approaching public water, including any portable containers on board the vessel, for the presence of water. This subsection does not apply to a vessel that is on public water. (Parks & Wild. Code, Secs. 66.0073(a)(3), (b), (c), (d).)

Source Law

Sec. 66.0073. RULES REQUIRING WATER TO BE DRAINED. (a) In this section:

(3) "Vessel" has the meaning assigned by Section 31.003.

(b) The commission may adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. This subsection does not apply to salt water.

(c) When promulgating rules described by Subsection (b), the commission shall consider the effects on boaters, anglers, and local interests while maintaining the ability to prevent the spread of harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

(d) If the commission adopts rules described by Subsection (b), an authorized employee of the department may inspect a vessel leaving or approaching public water, including any portable containers on board the vessel, for the presence of water. This subsection does not apply to a vessel that is on public water.

Revisor's Note

(1) Section 66.0073(a)(2), Parks and Wildlife Code, defines the term "salt water" for purposes of Section 66.0073 of that code by means of a cross-reference to Section 66.001 of that code. The revised law omits the definition as unnecessary because the definition of "salt water" in Section 66.001, revised in pertinent part as Section

5054.0101(3), applies to Section 66.0073 on its own terms. The omitted law reads:

> (2) "Salt water" has the meaning assigned by Section 66.001.

(2) Section 66.0073(c), Parks and Wildlife Code, requires the Parks and Wildlife Commission to consider certain factors when "promulgating" rules under Section 66.0073(b) of that code. The revised law substitutes "adopting" for "promulgating" for the reason stated in Revisor's Note (2) to Section 5054.0302.

Revised Law

Sec. 5054.0306. FISH LADDERS; OFFENSE. (a) The department by written order may require the owner of a public or private dam or other obstruction on a regularly flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend or descend the dam or other obstruction for the purpose of depositing spawn.

(b) An owner commits an offense if the owner fails to construct or repair a fishway or fish ladder on or before the 90th day after the date the owner receives a written order under Subsection (a). Each week that an owner fails to construct or repair a fishway or fish ladder after the 90-day period is a separate offense.

(c) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.109, 66.121 (part).)

Source Law

> Sec. 66.109. FISH LADDERS. (a) The department, by written order, may require the owner of a public or private dam or other obstruction on a regularly flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend or descend the dam or other obstruction for the purpose of depositing spawn.
>
> (b) An owner who fails to construct or repair a fishway or fish ladder within 90 days after receiving the written order commits an offense. Each week of violation following the 90-day period constitutes a separate offense.

Sec. 66.121. PENALTY. A person who violates Section 66.109, . . . of this code or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5054.0307. SCREEN TO PROTECT FISH; OFFENSE. (a) The department may direct a person taking fresh water of this state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) A person commits an offense if the person fails to comply with a direction of the department made in writing under Subsection (a). Each day a person fails to comply is a separate offense.

(d) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.110, 66.121 (part).)

Source Law

Sec. 66.110. SCREENS TO PROTECT FISH. (a) The department may direct a person or corporation taking fresh water of the state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) No person may fail to comply with a direction of the department made in writing under Subsection (a) of this section.

(d) Each day's failure to comply with this section constitutes a separate offense.

Sec. 66.121. PENALTY. A person who violates Section . . . 66.110, . . . of this code or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 66.110(a), Parks and Wildlife Code, refers to a "person or corporation." The revised law omits "corporation" because, under Section 311.005(2), Government Code (Code Construction Act), "person" is defined to include a corporation.

Revised Law

Sec. 5054.0308. FINFISH RESEARCH. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum and speckled sea trout;

(2) factors affecting the increase or decrease of finfish supply;

(3) the use of trawls, nets, and other devices for the taking of finfish;

(4) the effect on finfish of industrial and other types of water pollution in areas normally frequented by finfish; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of finfish landed in this state.

(b) The department shall:

(1) make findings based on the research required by Subsection (a); and

(2) file the findings in the permanent records of the department. (Parks & Wild. Code, Sec. 66.217.)

Source Law

Sec. 66.217. FINFISH RESEARCH. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum and speckled sea trout;

(2) factors affecting the increase or decrease of finfish supply;

(3) the use of trawls, nets, and other devices for the taking of finfish;

(4) the effect on finfish of industrial and other types of water pollution in areas naturally frequented by finfish; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of finfish landed in this state.

(b) The department shall make findings based on the research required by Subsection (a) of this section.

(c) The findings shall be filed in the permanent records of the department.

Revised Law

Sec. 5054.0309. CRIMINAL PENALTY FOR RULE VIOLATION. (a) A person commits an offense if the person violates a commission rule adopted under this subchapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 66.012(a) (part).)

Source Law

> (a) . . . a person who violates . . . a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

> Section 66.012(a), Parks and Wildlife Code, provides that a person who violates a rule adopted by the Parks and Wildlife Commission under "this subchapter," meaning Subchapter A, Chapter 66, of that code, commits a Class C Parks and Wildlife Code misdemeanor. The revised law retains the reference to "this subchapter" because the pertinent parts of Subchapter A are revised in this subchapter. Although this subchapter also includes the revision of other provisions, it is appropriate to refer to the subchapter in its entirety because those other provisions do not contain rulemaking authority.

SUBCHAPTER D. TEXAS TERRITORIAL WATER

Revised Law

Sec. 5054.0401. DEFINITION. In this subchapter, "coastal water" means the salt water of this state, including any portion of the Gulf of Mexico within the jurisdiction of this state. (Parks & Wild. Code, Sec. 66.301.)

Source Law

> Sec. 66.301. DEFINITION. In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

Revised Law

Sec. 5054.0402. PROHIBITED ACTS; OFFENSE. (a) An unlicensed alien vessel may not take or attempt to take by any means or possess a natural resource of coastal water.

(b) A person who is a captain, master, or owner of an unlicensed alien vessel commits an offense if the person violates this section.

(c) An offense under this section is a Class B Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.303, 66.308.)

Source Law

> Sec. 66.303. PROHIBITED ACTS. No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.
>
> Sec. 66.308. PENALTY. A captain, master, or owner of an unlicensed alien vessel or boat who violates Section 66.303 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Revisor's Note

(1) Section 66.303, Parks and Wildlife Code, refers to "coastal water of this state." Throughout this subchapter, the revised law substitutes "coastal water" for the quoted language because "coastal water" is the defined term for this subchapter and includes the concept that the water described by the definition is water of this state.

(2) Section 66.308, Parks and Wildlife Code, refers to a "vessel or boat." The revised law omits "boat" as included in the meaning of "vessel."

Revised Law

Sec. 5054.0403. DUTY OF PORT AUTHORITY OR NAVIGATION DISTRICT. (a) A port authority or navigation district shall prevent the use of a port facility in a manner that the port authority or navigation district reasonably suspects may assist in a violation of this subchapter.

(b) A port authority or navigation district shall:

(1) use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within coastal water;

(2) promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate; and

(3) request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from a port facility. (Parks & Wild. Code, Sec. 66.304.)

Source Law

> Sec. 66.304. PORT AUTHORITIES AND NAVIGATION DISTRICTS. It is the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably suspect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

Revisor's Note

Section 66.304, Parks and Wildlife Code, imposes certain duties on "port authorities and navigation districts of this state." The revised law omits "of this state" because a port authority or navigation district to which that section applies is necessarily a port authority or navigation district of this state.

Revised Law

Sec. 5054.0404. DUTY OF HARBOR PILOT. A harbor pilot shall promptly transmit any knowledge coming to the harbor pilot's attention regarding a possible violation of this subchapter to the appropriate:

(1) navigation district;

(2) port authority; or

(3) law enforcement official. (Parks & Wild. Code, Sec. 66.305.)

Source Law

> Sec. 66.305. HARBOR PILOTS. All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

Revised Law

Sec. 5054.0405. ENFORCEMENT. (a) A law enforcement agency of this state, including an agent of the department, is empowered and directed to:

(1) arrest the master and crew of a vessel that is reasonably believed to have violated this subchapter; and

(2) seize and detain the vessel and the vessel's equipment and catch.

(b) The arresting officer under Subsection (a) shall take the offending crew or property before the court with jurisdiction over the violation.

(c) A law enforcement agency of this state shall request assistance from the United States Coast Guard in the enforcement of this subchapter if the agency is without means to effectuate arrest and restraint of a vessel and crew operating in violation or probable violation of this subchapter. (Parks & Wild. Code, Sec. 66.306.)

Source Law

> Sec. 66.306. ENFORCEMENT. All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

Revisor's Note

Section 66.306, Parks and Wildlife Code, authorizes law enforcement agencies to arrest certain persons believed to be in violation of "this chapter" and directs law enforcement agencies to request assistance from the United States Coast Guard in the enforcement of "this Act." It is clear from the context that the references to "this chapter" and "this Act" are drafting errors and that the provisions of Section 66.306 are intended to apply only to a violation of Subchapter D, Chapter 66, Parks and Wildlife Code, and to the enforcement of that subchapter, which is revised as this subchapter. The revised law is drafted accordingly.

Revised Law

Sec. 5054.0406. CERTAIN ASYLUM SEEKERS EXEMPT. A crew member or master seeking bona fide political asylum may not be fined or imprisoned under this subchapter. (Parks & Wild. Code, Sec. 66.307.)

Source Law

Sec. 66.307. POLITICAL ASYLUM. No crew member or master seeking bona fide political asylum shall be fined or imprisoned under this subchapter.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5054.9801. EXPIRATION, TRANSFER, AND REPLACEMENT OF CERTAIN PERMITS. (a) A permit issued under this chapter is valid only during the yearly period for which the permit is issued without regard to the date the permit is acquired.

(b) Each yearly period for a permit issued under this chapter:

(1) begins on September 1 or another date set by the commission; and

(2) extends through August 31 of the next year or another date set by the commission.

(c) A permit issued under this chapter may not be transferred to another person, except that a permit issued in the name of a business remains valid for the business location specified on the permit if a change of ownership or business name occurs.

(d) The commission by regulation may prescribe:

(1) requirements necessary to clarify a permit transfer procedure; and

(2) a form to be used and fee to be charged for:

(A) transfer of a permit issued under this chapter; or

(B) a duplicate or replacement permit. (Parks & Wild. Code, Sec. 66.017 (part).)

Source Law

> Sec. 66.017. LICENSE, TAG, AND PERMIT EXPIRATIONS AND TRANSFERS. (a) All [licenses, tags, and] permits issued under the authority of Chapter 66 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. . . .
>
> (b) All [licenses, tags, and] permits issued under the authority of Chapter 66 of this code may not be transferred to another person except that a license issued in the name of a business shall remain valid for the business location specified on the license or permit if a change of ownership and/or business name occurs. . . . The commission, by regulation, may prescribe requirements necessary to clarify [license and] permit transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of [licenses and] permits in this chapter and for duplicate or replacement . . . permits.

Revisor's Note

(1) Section 66.017, Parks and Wildlife Code, refers to permits issued under the authority of Chapter 66 of that code. The revised law substitutes "this chapter" for references to Chapter 66 because portions of Chapter 66 providing for permits under that chapter are revised in this chapter. Although this chapter also includes the revision of Section 83.002, Parks and Wildlife Code, revised in Section

5054.0302, it is appropriate to refer to the chapter in its entirety because Section 5054.0302 does not provide for the issuance of permits or otherwise relate to permits.

(2) Section 66.017(a), Parks and Wildlife Code, provides that all licenses, tags, and permits issued under the authority of Chapter 66 of that code are valid only during the yearly period for which they are issued without regard to the date on which the "licenses" are acquired. It is clear from the context that the legislature intended for permits issued under the authority of Chapter 66 to be valid only during the yearly period for which they are issued without regard to the date on which the permits are acquired, and the revised law is drafted accordingly.

(3) Section 66.017(b), Parks and Wildlife Code, provides that all licenses, tags, and permits issued under the authority of Chapter 66 of that code may not be transferred to another person except that a "license" issued in the name of a business shall remain valid for the business location specified on the "license or permit" under certain circumstances. Section 66.017(b) further provides that the Parks and Wildlife Commission, by regulation, may prescribe requirements necessary to clarify "license and permit" transfer procedures. It is clear from the context that the legislature intended the exception to the prohibition on transferring a license or permit to apply to both licenses and permits, and the revised law is drafted accordingly.

CHAPTER 5055. ARTIFICIAL REEFS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5055.0101. DEFINITIONS. In this chapter:

(1) "Artificial reef" means a structure or system of structures constructed, placed, or permitted in water to which this chapter applies for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) "National Fishing Enhancement Act" means the federal National Fishing Enhancement Act of 1984 (Title II, Pub. L. No. 98-623).

(3) "Reef materials" includes only materials allowed under the national artificial reef plan adopted under the National Fishing Enhancement Act for construction of artificial reefs.

(4) "State artificial reef plan" means the state artificial reef plan developed under Section 5055.0301. (Parks & Wild. Code, Secs. 89.001(1), (2), (3); New.)

Source Law

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Artificial reef" means a structure or system of structures constructed, placed, or permitted in water covered under this chapter for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) "National Fishing Enhancement Act" means Title II of Public Law No. 98-623, enacting 16 U.S.C. Section 1220d and 33 U.S.C. Sections 2101 through 2106 and amending 16 U.S.C. Sections 1220 through 1220c.

(3) "Reef materials" includes only materials allowed under the national artificial reef plan adopted under the National Fishing Enhancement Act for construction of artificial reefs.

Revisor's Note

(1) Section 89.001, Parks and Wildlife Code, refers to "this chapter," meaning Chapter 89 of that code. Although parts of Chapter 89 are revised in Subchapter Q, Chapter 2052, of this code, throughout this chapter, the revised law retains references to "this chapter" because the pertinent parts of Chapter 89 are revised in this chapter.

(2) Section 89.001(2), Parks and Wildlife Code, defines the "National Fishing Enhancement Act" as meaning Title II of Public Law No. 98-623, "enacting 16 U.S.C. Section 1220d and 33 U.S.C. Sections 2101

through 2106 and amending 16 U.S.C. Sections 1220 through 1220c." The revised law includes only a reference to Public Law No. 98-623 and omits the quoted language as unnecessary because the citation provided adequately describes the referenced federal statute.

(3) The definition of "state artificial reef plan" is added to the revised law for drafting convenience. For clarity and the convenience of the reader, the definition includes a cross-reference to the provision of this chapter under which the state artificial reef plan is developed.

Revised Law

Sec. 5055.0102. APPLICABILITY OF CHAPTER. This chapter applies only to navigable water of this state and water of the federal exclusive economic zone adjacent to water of this state. (Parks & Wild. Code, Sec. 89.001(4).)

Source Law

Sec. 89.001. DEFINITIONS. In this chapter:

(4) "Water covered under this chapter" means the navigable water of Texas and water of the federal fisheries conservation zone adjacent to Texas water.

Revisor's Note

(1) Section 89.001(4), Parks and Wildlife Code, defines the term "water covered under this chapter" for purposes of Chapter 89 of that code, revised in pertinent part as this chapter. The revised law substitutes an applicability provision for the definition of "water covered under this chapter" because the substance of the definition is more appropriately presented as a substantive provision.

(2) Section 89.001(4), Parks and Wildlife Code, refers to the "federal fisheries conservation zone" adjacent to Texas water. Section 3, Fishery

Conservation and Management Act of 1976 (Pub. L. No. 94-265), originally defined "fishery conservation zone" to mean the fishery conservation zone established by Section 101 of that Act. Section 101 of that Act established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone and defined the inner and outer boundaries of the zone. Subsequent provisions of that Act governed the fishery management authority of the United States in and beyond the fishery conservation zone. Public Law No. 99-659 amended Section 3, Magnuson Fishery Conservation and Management Act (16 U.S.C. Section 1802), to substitute a definition of "exclusive economic zone" for the definition of "fishery conservation zone" and amended subsequent provisions of that Act to govern the fishery management authority of the United States in and beyond the exclusive economic zone. Because federal law now provides for an exclusive economic zone rather than a fishery conservation zone, the revised law substitutes "federal exclusive economic zone" for "federal fisheries conservation zone."

Revised Law

Sec. 5055.0103. COMMISSION RULES AND GUIDELINES. The commission may adopt rules and guidelines as necessary to implement this chapter. (Parks & Wild. Code, Sec. 89.0025.)

Source Law

Sec. 89.0025. RULES. The commission may adopt rules and guidelines as necessary to implement this chapter.

Revised Law

Sec. 5055.0104. APPROPRIATIONS RELATING TO CERTAIN EMPLOYEE SALARIES AND COSTS. The legislature may appropriate money from the general revenue fund to the department for:

(1) salaries of department employees implementing

this chapter; and

(2) costs associated with those employees, including the cost of employee benefits. (Parks & Wild. Code, Sec. 89.042(b).)

Source Law

(b) The legislature may appropriate money from the general revenue fund to the department for:
(1) salaries of department employees implementing this chapter; and
(2) costs associated with those employees, including the cost of employee benefits.

Revised Law

Sec. 5055.0105. LIABILITY. (a) This state, an agency of this state, or an insurer of this state or an agency of this state is not liable for damages caused by an activity required under the terms of a permit for an artificial reef.

(b) A person who has transferred title to artificial reef construction materials to this state is not liable for damages arising from the use of the materials in an artificial reef if the materials meet applicable:

(1) requirements of the National Fishing Enhancement Act; and

(2) regulations of the United States Department of the Interior. (Parks & Wild. Code, Sec. 89.061.)

Source Law

Sec. 89.061. LIABILITY. (a) The state, an agency of the state, or an insurer of the state or agency of the state is not liable for damages caused by an activity required under the terms and conditions of a permit for an artificial reef.
(b) A person who has transferred title of artificial reef construction materials to the state is not liable for damages arising from the use of the materials in an artificial reef if the materials meet applicable requirements of the National Fishing Enhancement Act and applicable regulations of the United States Department of the Interior.

Revisor's Note

Section 89.061(a), Parks and Wildlife Code, refers to the "terms and conditions" of a permit for an artificial reef. The revised law omits "conditions" because, in context, the meaning of "conditions" is

included in the meaning of "terms."

SUBCHAPTER B. POWERS AND DUTIES

Revised Law

Sec. 5055.0201. GENERAL DUTIES. The department shall promote, develop, maintain, monitor, and enhance the artificial reef potential in water to which this chapter applies, including by:

(1) planning and reviewing permit applications for artificial reefs;

(2) coordinating with relevant state and federal agencies;

(3) holding public hearings on proposed artificial reefs;

(4) overseeing maintenance and placement requirements of artificial reefs; and

(5) developing rules and guidelines for the collection of fees, grants, and donations to be deposited to the credit of the artificial reef account created under Section 2052.1701. (Parks & Wild. Code, Sec. 89.002.)

Source Law

Sec. 89.002. GENERAL DUTIES. (a) The department shall promote, develop, maintain, monitor, and enhance the artificial reef potential in water covered under this chapter.

(b) In carrying out the duties under Subsection (a) of this section, the department shall:

(1) plan and review permit applications for artificial reefs;

(2) coordinate with relevant state and federal agencies;

(3) hold public hearings on proposed artificial reefs;

(4) oversee maintenance and placement requirements of artificial reefs; and

(5) develop rules and guidelines, in conjunction with the advisory committee, in the collection of fees, grants, and donations to the artificial reef account.

Revisor's Note

(1) Section 89.002(b)(5), Parks and Wildlife Code, requires the Parks and Wildlife Department to develop rules and guidelines "in conjunction with the

advisory committee" created under former Section 89.021(d), Parks and Wildlife Code. Because former Section 89.021(d) was repealed and the advisory committee was abolished by Chapter 925, Acts of the 76th Legislature, Regular Session, 1999, the revised law omits the quoted language as obsolete.

(2) Section 89.002(b)(5), Parks and Wildlife Code, refers to the "artificial reef account." The artificial reef account is the account created under Section 89.041(a), Parks and Wildlife Code, revised as Section 2052.1701, and the revised law adds a cross-reference to that section for the convenience of the reader.

Revised Law

Sec. 5055.0202. DEPARTMENT AS PERMITTEE. (a) The department may apply for a federal permit and serve as permittee for an artificial reef if the establishment of the reef complies with this chapter and the National Fishing Enhancement Act.

(b) In applying for a permit under this section, the department shall:

(1) consult with and consider the views of appropriate federal and state agencies, local governments, and other interested persons;

(2) ensure that the provisions in the permit for siting, constructing, monitoring, maintaining, and managing an artificial reef are consistent with the criteria and standards established under this chapter and the National Fishing Enhancement Act;

(3) ensure that title to an artificial reef component or construction material is unambiguous; and

(4) consider the national artificial reef plan adopted under the National Fishing Enhancement Act and notify the secretary of the United States Department of Commerce of any need to deviate from that plan. (Parks & Wild. Code, Sec. 89.003.)

Source Law

Sec. 89.003. DEPARTMENT AUTHORIZED TO SERVE AS PERMITTEE. (a) The department may apply for a federal permit and serve as permittee for an artificial reef located in water covered under this chapter if the establishment of the reef complies with this chapter and the National Fishing Enhancement Act.

(b) In applying for a permit under this section, the department shall:

(1) consult with and consider the views of appropriate federal and state agencies, local governments, and other interested persons;

(2) ensure that the provisions in the permit for siting, constructing, monitoring, maintaining, and managing an artificial reef are consistent with the criteria and standards established under this chapter and the National Fishing Enhancement Act;

(3) ensure that title to an artificial reef component or construction material is unambiguous; and

(4) consider the national artificial reef plan adopted under the National Fishing Enhancement Act and notify the Secretary of the United States Department of Commerce of any need to deviate from that plan.

Revised Law

Sec. 5055.0203. DEPARTMENT DUTIES REGARDING THIRD-PARTY PERMIT APPLICATION. The department shall review and comment on an application for an artificial reef permit submitted by a person other than the department to ensure that the conditions of the permit are consistent with the state artificial reef plan and the National Fishing Enhancement Act. (Parks & Wild. Code, Sec. 89.004.)

Source Law

Sec. 89.004. PERSON OTHER THAN DEPARTMENT AS PERMITTEE. The department shall review and comment on an application for an artificial reef permit by a person other than the department to ensure that the conditions of the permit are consistent with the state artificial reef plan and the National Fishing Enhancement Act.

Revised Law

Sec. 5055.0204. DUTIES AND AUTHORITY REGARDING USE OF BRIDGES, TUNNELS, AND CAUSEWAYS. (a) The Texas Department of Transportation shall coordinate with the Parks and Wildlife Department and local governments to use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The Parks and Wildlife Department, in cooperation with

the Texas Department of Transportation and local governments, may use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(c) To create artificial reefs:

(1) the Texas Department of Transportation may transfer obsolete bridges, tunnels, and causeways to the Parks and Wildlife Department; and

(2) the Parks and Wildlife Department may receive from the Texas Department of Transportation the transfer of obsolete bridges, tunnels, and causeways.

(d) The Parks and Wildlife Department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(e) Any money appropriated to the Parks and Wildlife Department for the artificial reef program under this chapter may be used for the purposes of this section. (Parks & Wild. Code, Sec. 89.005, as added Acts 77th Leg., R.S., Chs. 968, 1137.)

Source Law

[as added Acts 77th Leg., R.S., Ch. 968]

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS. (a) The department, in cooperation with the Texas Department of Transportation and local governments, may use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The department may receive from the Texas Department of Transportation the transfer of obsolete bridges, tunnels, and causeways to create artificial reefs.

(c) The department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

[as added Acts 77th Leg., R.S., Ch. 1137]

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS. (a) The Texas Department of Transportation shall coordinate with the department and local governments to use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The Texas Department of Transportation may transfer obsolete bridges, tunnels, and causeways to the department to create artificial reefs.

(c) The department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

Revised Law

Sec. 5055.0205. GRANTS, DONATIONS, AND OTHER ASSISTANCE. The department may accept grants, donations of money or materials, and other forms of assistance from private and public sources. (Parks & Wild. Code, Sec. 89.043.)

Source Law

Sec. 89.043. GRANTS, DONATIONS, AND OTHER ASSISTANCE. The department may accept grants, donations of money or materials, and other forms of assistance from private and public sources.

Revised Law

Sec. 5055.0206. DONATION OF REEF MATERIALS. The department may authorize a person to place a donation of reef materials in a permitted zone in accordance with this chapter and commission rules and guidelines. (Parks & Wild. Code, Sec. 89.006.)

Source Law

Sec. 89.006. REEF CONSTRUCTION BY OTHERS. The department may authorize a person to place a donation of reef materials in a permitted zone in accordance with this chapter and commission rules and guidelines.

SUBCHAPTER C. STATE ARTIFICIAL REEF PLAN

Revised Law

Sec. 5055.0301. STATE ARTIFICIAL REEF PLAN. (a) The department shall develop a state artificial reef plan that:

(1) meets the purpose of this chapter; and

(2) is consistent with the standards under Section 5055.0303.

(b) The department shall:

(1) administer and enforce the plan in accordance with this chapter and the National Fishing Enhancement Act; and

(2) develop any additional technical information needed to implement the plan.

(c) Except as provided by Section 5055.0104, money from the general revenue fund may not be spent to develop or implement the plan. (Parks & Wild. Code, Secs. 89.021, 89.041(c).)

Source Law

Sec. 89.021. STATE ARTIFICIAL REEF PLAN. (a) The department shall develop a state artificial reef plan that meets the purpose of this chapter and is consistent with the standards under Section 89.023 of this code.

(b) The department shall administer and enforce the plan in accordance with this chapter and the National Fishing Enhancement Act.

(c) The department shall develop any additional technical information needed to carry out the plan.

[Sec. 89.041]

(c) Except as provided by Section 89.042(b), general revenue funds may not be expended in the development or implementation of this plan.

Revisor's Note

Section 89.041(c), Parks and Wildlife Code, provides that general revenue funds may not be expended in the development or implementation of "this plan." It is clear from the context that the reference to "this plan" means the state artificial reef plan, and the revised law is drafted accordingly.

Revised Law

Sec. 5055.0302. REQUIRED PROVISIONS OF STATE ARTIFICIAL REEF PLAN. The state artificial reef plan must include:

(1) operational guidelines for the plan, including specific participant roles, and projected funding requirements for the plan;

(2) geographic, hydrographic, geological, biological, ecological, social, economic, and other criteria for permitting and siting artificial reefs;

(3) design, materials, and other criteria for establishing, constructing, and maintaining artificial reefs;

(4) mechanisms and methodologies for monitoring artificial reefs in compliance with the requirements of permits issued under the National Fishing Enhancement Act;

(5) mechanisms and methodologies for managing the use of artificial reefs;

(6) a map that depicts priority areas for artificial reef development consistent with this chapter and the National

Fishing Enhancement Act; and

(7) provisions for managing the artificial reef account in a manner that will assure successful implementation of the plan. (Parks & Wild. Code, Sec. 89.022.)

Source Law

Sec. 89.022. REQUIRED PROVISIONS. The state artificial reef plan must include:

(1) operational guidelines for the plan, including specific participant roles, and projected funding requirements for the plan;

(2) geographic, hydrographic, geological, biological, ecological, social, economic, and other criteria for permitting and siting artificial reefs;

(3) design, materials, and other criteria for establishing, constructing, and maintaining artificial reefs;

(4) mechanisms and methodologies for monitoring artificial reefs in compliance with the requirements of permits issued under the National Fishing Enhancement Act;

(5) mechanisms and methodologies for managing the use of artificial reefs;

(6) a map that depicts priority areas for artificial reef development consistent with this chapter and the National Fishing Enhancement Act; and

(7) provisions for managing the artificial reef account in a manner that will assure successful implementation of the plan.

Revised Law

Sec. 5055.0303. STATE ARTIFICIAL REEF PLAN STANDARDS. An artificial reef located in water to which this chapter applies must be sited, constructed, maintained, monitored, and managed in a manner that:

(1) enhances and conserves fishery resources to the maximum extent practicable;

(2) facilitates access and use by Texas recreational and commercial fishermen;

(3) minimizes conflicts among competing uses of water and water resources;

(4) minimizes environmental risks and risks to personal and public health and property;

(5) is consistent with generally accepted principles of international law and national fishing law;

(6) does not create any unreasonable obstruction to navigation;

(7) uses the best scientific information available; and

(8) conforms to the state artificial reef plan. (Parks & Wild. Code, Sec. 89.023.)

Source Law

Sec. 89.023. STANDARDS. An artificial reef located in water covered under this chapter must be sited, constructed, maintained, monitored, and managed in a manner that:

(1) enhances and conserves fishery resources to the maximum extent practicable;

(2) facilitates access and use by Texas recreational and commercial fishermen;

(3) minimizes conflicts among competing uses of water and water resources;

(4) minimizes environmental risks and risks to personal and public health and property;

(5) is consistent with generally accepted principles of international law and national fishing law and does not create any unreasonable obstruction to navigation;

(6) uses the best scientific information available; and

(7) conforms to the state artificial reef plan.

Revised Law

Sec. 5055.0304. CONSISTENCY WITH STATE ARTIFICIAL REEF PLAN. (a) An artificial reef developed in state water must be consistent with the state artificial reef plan.

(b) A comment or recommendation by a state agency regarding an artificial reef in federal water must be consistent with the state artificial reef plan. (Parks & Wild. Code, Sec. 89.025.)

Source Law

Sec. 89.025. REEFS CONSISTENT WITH PLAN. (a) All artificial reefs developed in state water must be consistent with the state artificial reef plan.

(b) Comments and recommendations by a state agency regarding artificial reefs in federal water must be consistent with the state artificial reef plan.

Revisor's Note
(End of Chapter)

Section 89.024, Parks and Wildlife Code, provides that the Parks and Wildlife Department must complete the state artificial reef plan on or before September 1, 1990. The revised law omits that provision as executed. The omitted law reads:

Sec. 89.024. COMPLETION DATE. The department must complete the state artificial reef plan on or before September 1, 1990.