PRELIMINARY DRAFT

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE C. HUNTING AND FISHING

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE C. HUNTING AND FISHING

CHAPTER 5101. WILDLIFE CONSERVATION ACT OF 1983

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5101.0101. TITLE. This chapter may be cited as the Wildlife Conservation Act of 1983. (Parks & Wild. Code, Sec. 61.001.)

Source Law

Sec. 61.001. TITLE. This chapter may be cited as the Wildlife Conservation Act of 1983.

Revised Law

Sec. 5101.0102. PURPOSE. (a) The purpose of this chapter is to provide a comprehensive method for the conservation of an ample supply of wildlife resources on a statewide basis to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources.

(b) This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources. (Parks & Wild. Code, Sec. 61.002.)

Source Law

Sec. 61.002. PURPOSE. The purpose of this chapter is to provide a comprehensive method for the conservation of an ample supply of wildlife resources on a statewide basis to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

Revised Law

Sec. 5101.0103. DEFINITIONS. In this chapter:

(1) "Depletion" means the reduction by any cause of a species below the species' immediate recuperative potential.

(2) "Waste" means the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would allow, promote, or optimize a healthy and self-sustaining population of a species.

(3) "Wildlife resource" means a wild animal, wild bird, or aquatic animal. (Parks & Wild. Code, Sec. 61.005.)

Source Law

Sec. 61.005. DEFINITIONS. In this chapter:

(1) "Wildlife resources" means all wild animals, wild birds, and aquatic animal life.

(2) "Depletion" means the reduction of a species below its immediate recuperative potential by any cause.

(3) "Waste" means the failure to provide for the regulated harvest of surplus wildlife

resources when that harvest would allow, promote, or optimize a healthy and self-sustaining population of a species.

Revisor's Note

Section 61.005(1), Parks and Wildlife Code, refers to "aquatic animal life." Throughout this chapter, the revised law omits the word "life" from the term "aquatic animal life" as unnecessary because the term "aquatic animal" has the same substantive meaning as the term "aquatic animal life" and the addition of the word "life" does not add to the clear meaning of the law.

Revised Law

Sec. 5101.0104. APPLICABILITY OF CHAPTER TO CRAYFISH. Except as provided by Chapter 5052 and Section 5101.0402, this chapter applies to crayfish only in public water. (Parks & Wild. Code, Sec. 61.006.)

Source Law

Sec. 61.006. CRAYFISH. Except for Section 61.022 and Chapter 68 of this code, this chapter does not apply to crayfish, other than in public water.

Revisor's Note

Section 61.006, Parks and Wildlife Code, refers to Section 61.022 of that code. Section 61.022 is revised in pertinent part as Section 5101.0402, and the revised law is drafted accordingly.

Revisor's Note
(End of Subchapter)

Section 61.003, Parks and Wildlife Code, provides that Chapter 61 of that code applies to every county, place, and wildlife resource in the state. The revised law omits that provision as unnecessary because the code applies to the entire state unless expressly provided otherwise. The omitted law reads:

> Sec. 61.003. APPLICABILITY OF CHAPTER. This chapter applies to every county, place, and wildlife resource in the state, except as otherwise provided by this code.

SUBCHAPTER B. REGULATION OF HUNTING, TAKING, AND POSSESSING CERTAIN WILDLIFE RESOURCES

Revised Law

Sec. 5101.0201. DUTY TO REGULATE. The commission shall regulate the periods when, the means and methods by which, and the places where a person may hunt, take, or possess a game animal, game bird, or aquatic animal. (Parks & Wild. Code, Sec. 61.052.)

Source Law

> Sec. 61.052. GENERAL REGULATORY DUTY. (a) The commission shall regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by this chapter.
>
> (b) The commission shall regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by this chapter.

Revisor's Note

Section 61.052, Parks and Wildlife Code, requires the Parks and Wildlife Commission to regulate the time, place, and manner of hunting, taking, or possessing certain wildlife "in or from the places covered by this chapter." Throughout this chapter, the revised law omits the quoted language and similar phrases as unnecessary because the entire state is covered by this chapter and the language does not add to the clear meaning of the law.

Revised Law

Sec. 5101.0202. REGULATION BY PROCLAMATION. Regulation of the hunting, taking, or possessing of a game animal, game bird, or aquatic animal under this chapter shall be by proclamation of the commission. (Parks & Wild. Code, Sec. 61.054(a).)

Source Law

> Sec. 61.054. PROCLAMATIONS OF THE COMMISSION. (a) Regulation of the hunting, taking, or possession of game animals, game birds, or aquatic animal life under this chapter shall be by proclamation of the commission.

Revised Law

Sec. 5101.0203. PROCLAMATION REQUIREMENTS. A commission proclamation that authorizes a person to hunt, take, or possess a game animal, game bird, or aquatic animal must specify:

(1) the species, quantity, age or size, and, to the extent possible, sex of the animal, bird, or aquatic animal that the person may hunt, take, or possess;

(2) the means or method by which the person may hunt, take, or possess the animal, bird, or aquatic animal; and

(3) the region, area, body of water, or county or portion of a county where the person may hunt, take, or possess the animal, bird, or aquatic animal. (Parks & Wild. Code, Sec. 61.054(b).)

Source Law

> (b) A proclamation of the commission authorizing the hunting, taking, or possession of game animals, game birds, or aquatic animal life must specify:
>
> (1) the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed;
>
> (2) the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and
>
> (3) the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

Revised Law

Sec. 5101.0204. PUBLIC HEARING ON PROCLAMATION. (a) If the executive director or the executive director's designee receives a petition for a public hearing signed by at least 25 persons who reside in a county that will be affected by a commission proclamation, the department must hold a public hearing in that county before the commission may adopt the proclamation.

(b) A hearing under Subsection (a) may be conducted by a commissioner or a designated department employee. This subsection does not require the presence of a commissioner at a local hearing. (Parks & Wild. Code, Sec. 61.101.)

Source Law

Sec. 61.101. LOCAL HEARING ON PROCLAMATION. (a) Before a proclamation of the commission may be adopted, the department shall hold public hearings in the county to be affected by the proclamation if the director or the director's designee receives a petition for a public hearing signed by not less than 25 persons who reside in the county.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any local hearing.

Revised Law

Sec. 5101.0205. NOTICE OF HEARING. Not later than the 10th day before the date of a hearing required by Section 5101.0204, notice of the hearing must be provided:

(1) in a newspaper published in the county in which the hearing is to be held; or

(2) if a newspaper is not published in the county in which the hearing is to be held, in a newspaper:

(A) published in a county adjacent to the county in which the hearing is to be held; and

(B) with wide circulation in the county in which the hearing is to be held. (Parks & Wild. Code, Sec. 61.102.)

Source Law

Sec. 61.102. NOTICE ON LOCAL HEARING. Notice of the hearing must be given in a newspaper published in the county in which the hearing is to be held at least 10 days before the date of the hearing. If no newspaper is published in the county in which the hearing is to be held, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.

Revisor's Note

Section 61.102, Parks and Wildlife Code, provides that notice of "the hearing" must be published in a newspaper. For the convenience of the reader, the revised law substitutes "a hearing required by Section 5101.0204" for the first reference to "the hearing" because it is clear from the context that "the hearing" refers to a hearing required by Section 61.101, Parks and Wildlife Code, revised as Section 5101.0204.

Revised Law

Sec. 5101.0206. ADOPTION OF PROCLAMATION. (a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) The commission may adopt a proclamation at a special or regular meeting of the commission held at a date and time designated by the commission.

(c) A person interested in a proclamation:

(1) is entitled to be heard at the commission meeting; and

(2) may introduce evidence on the imminence of depletion or waste. (Parks & Wild. Code, Secs. 61.103(a), (b), (c).)

Source Law

Sec. 61.103. ADOPTION OF PROCLAMATIONS. (a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

Revisor's Note

Section 61.103(d), Parks and Wildlife Code, provides that five members of the Parks and Wildlife Commission constitute a quorum for the purpose of adopting a proclamation. Section 311.013, Government Code (Code Construction Act), provides that a quorum of a public body is a majority of the number of members fixed by statute. Section 11.012(a), Parks and Wildlife Code, revised as Section 2002.0101, provides that the commission consists of nine members. The revised law omits Section 61.103(d) because it duplicates in substance Section 311.013, Government Code, as applied to the commission. The omitted law

reads:

> (d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is five members.

Revised Law

Sec. 5101.0207. AMENDMENT OR REVOCATION OF PROCLAMATION. (a) The commission may amend or revoke a proclamation if the commission finds that the facts warrant a change.

(b) If the commission finds that there is a danger of depletion or waste, the commission shall amend or revoke the commission's proclamations to:

(1) prevent the depletion or waste; and

(2) provide the people with the most equitable and reasonable privilege to hunt game animals or game birds or to catch aquatic animals. (Parks & Wild. Code, Sec. 61.055.)

Source Law

> Sec. 61.055. AMENDMENTS AND REVOCATIONS. (a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life.
>
> (b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

Revisor's Note

Section 61.055(b), Parks and Wildlife Code, provides that the Parks and Wildlife Commission may amend or revoke a proclamation "at any time" the commission finds the facts warrant a change. The revised law omits the quoted language as unnecessary because the power to take an action includes the power to do so at any time.

Revised Law

Sec. 5101.0208. EFFECTIVE DATE OF PROCLAMATION; DURATION. (a) Subject to Subsection (b) and except as provided by Subsection (c), a proclamation takes effect on the date designated by the commission.

(b) The commission may not designate a date for a proclamation to take effect that is earlier than the 20th day after the date the commission adopts the proclamation.

(c) If the commission finds that there is an immediate danger of depletion to a species in an area, the commission may declare a state of emergency. A proclamation issued under the state of emergency takes effect on issuance.

(d) A commission proclamation continues in effect until the proclamation:

(1) expires by the proclamation's terms; or

(2) is amended or revoked. (Parks & Wild. Code, Sec. 61.104.)

Source Law

Sec. 61.104. EFFECTIVE DATE AND DURATION OF PROCLAMATIONS. (a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commission may not be earlier than 20 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.

Revisor's Note

(1) Section 61.104(a), Parks and Wildlife Code, provides that a proclamation takes effect "at the time" determined by the Parks and Wildlife Commission. The revised law substitutes "on the date" for the quoted language because, in context, the phrases are synonymous and "on the date" is more commonly used.

(2) Section 61.104(c), Parks and Wildlife Code, provides that a proclamation of the Parks and Wildlife Commission continues in effect until it is amended or "repealed." The revised law substitutes "revoked" for "repealed" for consistency in terminology used in this chapter because Section 61.055, Parks and Wildlife

Code, revised as Section 5101.0207, provides that the commission may revoke a proclamation and no other provision of Chapter 61 of that code, revised as this chapter, refers to a proclamation being "repealed."

Revised Law

Sec. 5101.0209. JUDICIAL REVIEW OF PROCLAMATION. (a) Venue for a suit challenging the validity of a commission proclamation under this chapter is in Travis County.

(b) The party challenging a proclamation has the burden of proof to show that the proclamation is invalid. (Parks & Wild. Code, Sec. 61.106.)

Source Law

Sec. 61.106. JUDICIAL REVIEW OF PROCLAMATION. (a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.

Revisor's Note

Section 61.106(a), Parks and Wildlife Code, provides the venue for a suit "challenging" the validity of a proclamation. Section 61.106(b), Parks and Wildlife Code, refers to the party "complaining" of a proclamation. For consistency in terminology used in this section, the revised law substitutes "challenging" for "complaining" because, in this context, the terms are synonymous and "challenging" is more consistent with modern usage.

SUBCHAPTER C. OTHER POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Revised Law

Sec. 5101.0301. DUTY TO INVESTIGATE AND STUDY CERTAIN WILDLIFE RESOURCES. (a) The department shall conduct scientific studies and investigations of all species of game animals, game birds, and aquatic animals to determine:

(1) supply;

(2) economic value;

(3) environments;

(4) breeding habits;

(5) sex ratios; and

(6) effects of any factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be conducted periodically or continuously.

(c) The commission shall make findings of fact based on the department's studies and investigations. (Parks & Wild. Code, Sec. 61.051.)

Source Law

> Sec. 61.051. DUTY TO INVESTIGATE AND STUDY CERTAIN WILDLIFE RESOURCES. (a) The department shall conduct scientific studies and investigations of all species of game animals, game birds, and aquatic animal life to determine:
>
> (1) supply;
>
> (2) economic value;
>
> (3) environments;
>
> (4) breeding habits;
>
> (5) sex ratios; and
>
> (6) effects of any factors or conditions causing increases or decreases in supply.
>
> (b) The studies and investigations may be made periodically or continuously.
>
> (c) The commission shall make findings of fact based on the studies and investigations of the department.

Revised Law

Sec. 5101.0302. OPEN SEASON. The commission shall provide an open season for hunting, taking, or possessing a game animal, game bird, or aquatic animal if:

(1) the commission's investigations and findings of fact establish that an open season may be safely provided; or

(2) the threat of waste requires an open season to conserve a game animal, game bird, or aquatic animal. (Parks & Wild. Code, Sec. 61.053.)

Source Law

> Sec. 61.053. OPEN SEASONS. The commission shall provide open seasons for the hunting, taking, or possession of game animals, game birds, or aquatic animal life if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve game animals, game birds, or aquatic animal life.

Revised Law

Sec. 5101.0303. YOUTH HUNTING AND FISHING. (a) The commission may provide for a special open season when taking and possessing a game animal or game bird is restricted to persons younger than 17 years of age.

(b) The commission may provide for special means and methods for taking and possessing an aquatic animal by a person younger than 17 years of age.

(c) A special open season provided for under Subsection (a) may be combined with a special open season provided for under Section 5101.0304. (Parks & Wild. Code, Sec. 61.058.)

Source Law

> Sec. 61.058. YOUTH HUNTING AND FISHING. (a) The commission may provide for special open seasons during which the taking and possession of game animals and game birds are restricted to persons under 17 years old.
>
> (b) The commission may provide for special means and methods for the taking and possession of aquatic animal life by persons under 17 years old.
>
> (c) A special open season provided for by the commission under Subsection (a) may be combined with a special open season provided for by the commission under Section 61.059.

Revised Law

Sec. 5101.0304. SPECIAL OPEN SEASON ON CERTAIN BIRDS FOR VETERANS AND ACTIVE DUTY ARMED FORCES MEMBERS. (a) The commission may provide for a special open season when taking and possessing a duck, goose, merganser, coot, moorhen, or gallinule is restricted to:

(1) veterans, as defined by 38 U.S.C. Section 101; and

(2) active duty members of the United States armed forces, including members of the national guard and reserves on active duty other than for training.

(b) The commission by rule may prescribe the proof of veteran or active duty status required of a person to participate in a special open season provided for under this section.

(c) If the commission by rule requires that a person participating in a special open season provided for under this

section have in the person's immediate possession proof of the person's veteran or active duty status in accordance with commission rule, the rule must provide that it is a defense to prosecution under that rule that the person produces in court proof of the person's veteran or active duty status in accordance with commission rule.

(d) A special open season provided for under this section may be combined with a special open season provided for under Section 5101.0303. (Parks & Wild. Code, Sec. 61.059.)

Source Law

Sec. 61.059. HUNTING OF CERTAIN MIGRATORY GAME BIRDS BY VETERANS AND ACTIVE DUTY ARMED FORCES MEMBERS. (a) The commission may provide for special open seasons during which the taking and possession of ducks, geese, mergansers, coots, moorhens, and gallinules are restricted to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training.

(b) A special open season provided for by the commission under Subsection (a) may be combined with a special open season provided for by the commission under Section 61.058.

(c) The commission by rule may prescribe the proof of veteran or active duty status required of a person to participate in a special open season under this section.

(d) If the commission by rule requires that a person participating in a special open season under this section have in the person's immediate possession proof of the person's veteran or active duty status in accordance with commission rule, the rule must provide that it is a defense to prosecution under that rule that the person produces in court proof of the person's veteran or active duty status in accordance with commission rule.

SUBCHAPTER D. PROHIBITED ACTS GENERALLY

Revised Law

Sec. 5101.0401. CERTAIN HUNTING, CATCHING, OR POSSESSING PROHIBITED. Except as permitted under a commission proclamation issued under this chapter or as provided by Section 5101.0503, a person may not hunt, catch, or possess a game bird, game animal, or fish, marine animal, or other aquatic life. (Parks & Wild. Code, Sec. 61.021(a).)

Source Law

Sec. 61.021. TAKING WILDLIFE RESOURCES

PROHIBITED. (a) Except as provided by Subsection (b) or permitted under a proclamation issued by the commission under this chapter, no person may hunt, catch, or possess a game bird or game animal, fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

Revisor's Note

(1) Section 61.021(a), Parks and Wildlife Code, provides that a person may not hunt, catch, or possess certain wildlife except as provided by Section 61.021(b) of that code or under certain other circumstances. Section 61.021(b) is revised as Section 5101.0503, and the revised law is drafted accordingly. Although Section 5101.0503 contains a provision not derived from Section 61.021(b), it is appropriate to refer to Section 5101.0503 in its entirety because the entirety of that section provides an exception to Section 61.021(a).

(2) Section 61.021(a), Parks and Wildlife Code, provides that a person may not hunt, catch, or possess certain wildlife "at any time or in any place" covered by Chapter 61 of that code. The revised law omits the quoted language as unnecessary because the language does not limit or expand the prescribed prohibition and thus does not add to the clear meaning of the law.

Revised Law

Sec. 5101.0402. HUNTING, CATCHING, OR POSSESSING WILDLIFE RESOURCE WITHOUT LANDOWNER CONSENT PROHIBITED. A person may not hunt, catch, or possess a wildlife resource on land, including submerged land, or water without the consent of:

(1) the owner of the land or water; or

(2) the owner's agent. (Parks & Wild. Code, Sec. 61.022(a).)

Source Law

Sec. 61.022. TAKING WILDLIFE RESOURCES WITHOUT CONSENT OF LANDOWNER PROHIBITED. (a) No person may hunt or catch by any means or method or possess a wildlife resource at any time and at any place covered by this chapter unless the owner of the land, submerged

land, or water, or the owner's agent, consents.

Revisor's Note

Section 61.022(a), Parks and Wildlife Code, provides that a person may not hunt or catch "by any means or method" or possess a wildlife resource "at any time and at any place" covered by Chapter 61 of that code without certain consent. The revised law omits the quoted language for the reason stated in Revisor's Note (2) to Section 5101.0401.

Revised Law

Sec. 5101.0403. APPLYING CONTRACEPTIVE TO WILDLIFE RESOURCE PROHIBITED. A person may not intentionally apply a contraceptive to a vertebrate wildlife resource unless the person first obtains the department's written authorization. (Parks & Wild. Code, Sec. 61.023.)

Source Law

Sec. 61.023. APPLYING CONTRACEPTIVES TO WILDLIFE RESOURCES. No person may intentionally apply contraceptives to any vertebrate wildlife resource unless the person first obtains written authorization from the department.

Revised Law

Sec. 5101.0404. LIVINGSTON DAM FISHING PLATFORM. (a) A person may not permanently anchor a barge, boat, or other fishing platform on the Trinity River downstream from the Livingston Dam within the area between the restricted area boundary that is 1,000 feet from the dam and a point 1,500 feet downstream from the dam. A barge, boat, or other fishing platform is considered permanently anchored if it is anchored in the described area:

(1) for more than 10 hours in a 24-hour period without moving 100 feet or more during that time; or

(2) for five or more consecutive days, whether or not it has been moved.

(b) A person may not leave a barge, boat, or other fishing platform unattended for any period if the barge, boat, or platform is within the area described in Subsection (a).

(c) A barge, boat, or other fishing platform that is left unattended for any period within the area described in Subsection (a) may be impounded and may be reclaimed only by payment of:

(1) a fine imposed under this chapter; and

(2) the cost of impoundment.

(d) Property impounded under this section that has not been claimed within the period specified in Section 683.002, Transportation Code, for disposition of an abandoned motor vehicle is considered abandoned and may be disposed of in the same manner as an abandoned motor vehicle in accordance with Chapter 683 of that code.

(e) This section may be enforced by any peace officer listed in Article 2A.001, Code of Criminal Procedure. (Parks & Wild. Code, Sec. 61.201.)

Source Law

Sec. 61.201. LIVINGSTON DAM FISHING PLATFORM. (a) No person may permanently anchor a barge, boat, or other fishing platform on the Trinity River downstream from the Livingston Dam within the area between the restricted area boundary that is 1,000 feet from the dam and a point 1,500 feet downstream from the dam. A barge, boat, or other fishing platform is considered permanently anchored if it is anchored in the described area:

(1) for more than 10 hours in a 24-hour period without moving 100 feet or more during that time; or

(2) for five or more consecutive days, whether or not it has been moved.

(b) No person may leave a barge, boat, or other fishing platform unattended for any period of time if the barge, boat, or platform is within the area described in Subsection (a) of this section.

(c) A barge, boat, or other fishing platform that is left unattended for any period of time within the area described in Subsection (a) of this section may be impounded and may be reclaimed only by payment of both the fine imposed under this chapter and the cost of impoundment.

(d) Property impounded under this section that has not been claimed within the time period specified in Section 683.002, Transportation Code, for disposition of an abandoned automobile is considered abandoned and may be disposed of in the same manner as an abandoned automobile in accordance with Chapter 683 of that code.

(e) This section may be enforced by any peace officer listed in Article 2A.001, Code of Criminal Procedure.

Revisor's Note

Section 61.201(d), Parks and Wildlife Code, refers to an abandoned "automobile" for which a time period for disposition is specified in Section 683.002, Transportation Code. The revised law substitutes "motor vehicle" for "automobile" because the terms are synonymous and "motor vehicle" is the term used in Section 683.002.

SUBCHAPTER E. ANTLERLESS DEER AND ANTELOPE

Revised Law

Sec. 5101.0501. ANTLERLESS DEER OR ANTELOPE PERMIT REQUIRED; EXCEPTION. (a) Except as provided by Subsection (c) or Section 5101.0503, a person may not hunt an antlerless deer or antelope in this state unless the person holds an antlerless deer or antelope permit issued by the department on a form provided by the department.

(b) An antlerless deer or antelope permit may be distributed by the landowner or landowner's agent for land that is subject to an agreement under Section 5101.0502. A landowner or landowner's agent may distribute a permit only for land the person owns or for which the person is the landowner's agent.

(c) When conditions warrant, the commission may authorize hunting of antlerless deer or antelope without an antlerless deer or antelope permit. The proclamation authorizing hunting without an antlerless deer or antelope permit must specify the county or portion of a county to which the proclamation applies.

(d) A person may not sell or trade an antlerless deer or antelope permit for anything of value. (Parks & Wild. Code, Sec. 61.057.)

Source Law

Sec. 61.057. ANTLERLESS DEER AND ANTELOPE. (a) Except as provided by Section 61.021 and Subsection (c), no person may hunt an antlerless deer or antelope in this state without first having acquired an antlerless deer or antelope permit issued by the department on a form provided by the department.

(b) The permit may be distributed by the

landowner or landowner's agent for land which is subject to an agreement under Section 61.056 of this code. A landowner or landowner's agent may distribute permits only for the land the person owns or the land for which the person is an agent.

(c) When conditions warrant, the commission may allow hunting of antlerless deer or antelope in this state without a permit. The proclamation allowing hunting without a permit must be specific as to the county or portion of a county to which it applies.

(d) No person may sell or trade a permit authorized by this section for anything of value.

Revisor's Note

(1) Section 61.057(a), Parks and Wildlife Code, provides that, except as provided by Sections 61.021 and 61.057(c) of that code, a person may not hunt an antlerless deer or antelope in this state "without first having acquired" an antlerless deer or antelope permit. Section 61.021 is revised in pertinent part as Section 5101.0503, and the revised law is drafted accordingly. Additionally, throughout this chapter, the revised law substitutes "unless the person holds" for "without first having acquired" and similar phrases because, in the context of permits, the phrases are synonymous and "unless the person holds" is more consistent with modern usage.

(2) Section 61.057(c), Parks and Wildlife Code, provides that the Parks and Wildlife Commission may allow hunting of antlerless deer or antelope "in this state" without a permit. Throughout this chapter, in this and similar contexts, the revised law omits the quoted language as unnecessary because the commission's authority regarding this and other matters applies only within the boundaries of this state.

(3) Section 61.057(c), Parks and Wildlife Code, provides that the Parks and Wildlife Commission may authorize hunting of antlerless deer or antelope in this state without a "permit" under certain circumstances. For clarity, the revised law

substitutes "antlerless deer or antelope permit" for "permit" because it is clear from the context of the section that the permit referred to is an antlerless deer or antelope permit.

Revised Law

Sec. 5101.0502. PROCLAMATION NOT EFFECTIVE FOR TRACT WITHOUT LANDOWNER CONSENT. A commission proclamation that authorizes taking antlerless deer or antelope is not effective for a tract of land unless the landowner or the landowner's agent agrees in writing to the number of antlerless deer or antelope permits authorized for the tract. (Parks & Wild. Code, Sec. 61.056.)

Source Law

> Sec. 61.056. PROCLAMATIONS CONCERNING CERTAIN DEER AND ANTELOPE. A proclamation of the commission authorizing the taking of antlerless deer or antelope in this state is not effective for a specific tract of land unless the landowner or the landowner's agent agrees in writing to the number of antlerless deer or antelope permits authorized for the property.

Revised Law

Sec. 5101.0503. HUNTING ANTLERLESS WHITE-TAILED DEER BY MEMBER OF KICKAPOO TRADITIONAL TRIBE. (a) This section applies only to hunting on land that is:

(1) owned or leased by the Kickapoo Traditional Tribe of Texas; and

(2) located in a county that:

(A) borders the United Mexican States and has a population of more than 50,000 but less than 70,000; or

(B) is adjacent to a county described by Paragraph (A) and has a population of less than 8,000.

(b) A documented member of the Kickapoo Traditional Tribe of Texas who holds a hunting license under Section 5151.0201 may hunt antlerless white-tailed deer for religious ceremonial purposes between one-half hour before sunrise and one-half hour after sunset.

(c) A documented member of the Kickapoo Traditional Tribe of Texas hunting antlerless white-tailed deer under this section

shall:

(1) comply with all other provisions of this code and proclamations adopted under this code;

(2) notify a local game warden at least 24 hours before hunting antlerless white-tailed deer at a time of the year when a person who holds a hunting license under Section 5151.0201 but who is not a documented member of the Kickapoo Traditional Tribe of Texas may not hunt antlerless white-tailed deer; and

(3) notify the department not later than September 1 of each year that the member intends to hunt antlerless white-tailed deer during the following calendar year.

(d) A documented member of the Kickapoo Traditional Tribe of Texas hunting antlerless white-tailed deer under this section may not:

(1) hunt antlerless white-tailed deer outside an open hunting season in a chronic wasting disease containment or surveillance zone, as determined by the department; or

(2) receive a pecuniary gain from an action taken under this section. (Parks & Wild. Code, Secs. 61.021(b), (c).)

Source Law

(b) A documented member of the Kickapoo Traditional Tribe of Texas who holds a license under Section 42.002 may hunt antlerless white-tailed deer for religious ceremonial purposes on any day of the year between one-half hour before sunrise and one-half hour after sunset. A documented member of the Kickapoo Traditional Tribe of Texas hunting antlerless white-tailed deer under this subsection:

(1) shall comply with all other provisions of this code and proclamations adopted under this code;

(2) shall notify:

(A) a local game warden at least 24 hours before hunting antlerless white-tailed deer at a time of the year when a person who holds a license under Section 42.002 but who is not a documented member of the Kickapoo Traditional Tribe of Texas may not hunt antlerless white-tailed deer; and

(B) the department not later than September 1 of each year of the member's intent to hunt antlerless white-tailed deer for the following calendar year;

(3) may not hunt antlerless white-tailed deer outside an open hunting season in a chronic wasting disease containment or surveillance zone, as determined by the department; and

(4) may not receive a pecuniary gain from

an action taken under this subsection.

(c) Subsection (b) applies only to hunting on land that is:

(1) owned or leased by the Kickapoo Traditional Tribe of Texas; and

(2) located in a county that:

(A) borders the United Mexican States and has a population of more than 50,000 but less than 70,000; or

(B) is adjacent to a county described by Paragraph (A) and has a population of less than 8,000.

Revisor's Note

Section 61.021(b), Parks and Wildlife Code, refers to a license under Section 42.002 of that code. Section 42.002 is revised in pertinent part as Section 5151.0201, and the revised law is drafted accordingly.

SUBCHAPTER F. BIGHORN SHEEP

Revised Law

Sec. 5101.0601. BIGHORN SHEEP HUNTING PERMIT REQUIRED. (a) A person may not hunt a bighorn sheep unless the person holds a bighorn sheep hunting permit issued by the department on a form provided by the department.

(b) A bighorn sheep hunting permit holder may hunt only on land for which the permit is valid. (Parks & Wild. Code, Sec. 61.205(a).)

Source Law

Sec. 61.205. BIGHORN SHEEP HUNTING PERMITS. (a) No person may hunt a bighorn sheep without first having acquired a bighorn sheep hunting permit issued by the department on a form provided by the department. A holder of a bighorn sheep hunting permit may hunt only on those lands for which the permit is valid.

Revised Law

Sec. 5101.0602. COOPERATIVE AGREEMENTS. (a) The department may enter into a cooperative agreement with a landowner to restore, protect, and manage bighorn sheep.

(b) A cooperative agreement under Subsection (a) may provide that any person holding a bighorn sheep hunting permit may hunt on land that is:

(1) owned by the landowner who is a party to the agreement; and

(2) covered by the agreement. (Parks & Wild. Code, Sec. 61.204.)

Source Law

> Sec. 61.204. BIGHORN SHEEP COOPERATIVE AGREEMENTS. The department may enter into cooperative agreements with landowners for the purpose of restoring, protecting, and managing bighorn sheep. A cooperative agreement may provide that any person holding a valid bighorn sheep hunting permit may hunt on land owned by the landowner and covered by the cooperative agreement.

Revisor's Note

Section 61.204, Parks and Wildlife Code, refers to a "valid" bighorn sheep hunting permit. The revised law omits "valid" as unnecessary because the word does not add to the clear meaning of the law. A purported permit is not a permit if it is not valid.

Revised Law

Sec. 5101.0603. PERMIT DISTRIBUTION. (a) A bighorn sheep hunting permit may be distributed by the department or by a party to a cooperative agreement with the department for the restoration, protection, and management of bighorn sheep. A party to a cooperative agreement may distribute a permit only for land that the party owns or is in charge of or that is designated in the cooperative agreement.

(b) The department shall distribute bighorn sheep hunting permits to parties to a cooperative agreement and other members of the public by means of a fair method, subject to the limitations of the maximum number of permits to be issued. (Parks & Wild. Code, Secs. 61.205(b), (c).)

Source Law

> (b) The permit may be distributed by the department or by a party to a cooperative agreement with the department for the restoration, protection, and management of bighorn sheep. A party to a cooperative agreement may distribute permits only for land that he owns or is in charge of or that is designated in the cooperative agreement.
>
> (c) Permits distributed by the department shall be distributed to parties to a cooperative agreement and other members of the public by means of a fair method, subject to the limitations of the maximum number of permits to be issued.

Revised Law

Sec. 5101.0604. SALE OR OTHER DISPOSITION OF PERMIT. The department may authorize the sale, trade, auction, or donation of a bighorn sheep hunting permit if the proceeds of the sale, trade, auction, or donation are used to restore, protect, or manage bighorn sheep. (Parks & Wild. Code, Sec. 61.205(d).)

Source Law

(d) The department may authorize the sale, trade, auction, or donation of a bighorn sheep hunting permit if the proceeds of the sale, trade, auction, or donation are used to restore, protect, or manage bighorn sheep.

Revised Law

Sec. 5101.0605. REQUIRED IDENTIFICATION FOR POSSESSION OF BIGHORN SHEEP HEAD; FEES. (a) A person may not possess a mounted or unmounted head of a bighorn sheep taken in this state unless identification items and tags are attached as prescribed by the commission.

(b) The commission may establish fees for tags or other identification items issued under this section. (Parks & Wild. Code, Sec. 61.206.)

Source Law

Sec. 61.206. BIGHORN SHEEP IDENTIFICATION. A person may not possess a mounted or unmounted head of a bighorn sheep taken in this state unless identification items and tags are attached as prescribed by the commission. The commission may establish fees for tags or other identification items issued under this section.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5101.9901. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a commission proclamation or regulation issued under this chapter.

(b) Except as provided by Section 5101.9902, 5101.9903, or 5101.9904, an offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 61.901(a).)

Source Law

Sec. 61.901. PENALTIES. (a) Except as provided

in this section, a person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 61.901(a), Parks and Wildlife Code, provides that, except as provided in Section 61.901 of that code, a violation of any provision of Chapter 61 of that code or any Parks and Wildlife Commission proclamation or regulation issued under that chapter is a Class C Parks and Wildlife Code misdemeanor. The pertinent parts of Section 61.901 providing exceptions to that general criminal penalty are revised as Sections 5101.9902 and 5101.9903, and the revised law is drafted accordingly. For clarity and the convenience of the reader, the revised law adds a reference to Section 5101.9904 because that section also contains an exception to the general criminal penalty in Section 61.901.

Revised Law

Sec. 5101.9902. PENALTIES FOR VIOLATION OF PROCLAMATION RELATING TO TAKING OF RED DRUM OR SPECKLED SEA TROUT FOR NONCOMMERCIAL PURPOSE. (a) An offense under Section 5101.9901 for a violation of a commission proclamation relating to the daily catch, retention, and size limits for red drum or speckled sea trout taken for a noncommercial purpose 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 Section 5101.9901 for a violation described by this subsection.

(b) In addition to the penalty prescribed by Subsection (a) or Section 5101.9901, as applicable, a person who violates a commission proclamation described by Subsection (a) shall have:

(1) all of the equipment, other than vessels, in the

person's possession used for the taking of red drum or speckled sea trout seized; or

(2) all of the equipment, including vessels, in the person's possession used for the taking of red drum or speckled sea trout seized, if the person violates a proclamation issued under this chapter three or more times within a five-year period. (Parks & Wild. Code, Secs. 61.901(b), 66.2011, 66.218(b) (part).)

Source Law

[Sec. 61.901]

(b) A person who violates a proclamation of the commission relating to the daily catch, retention, and size limits for redfish or speckled sea trout taken for noncommercial purposes is guilty of an offense and is punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011(d) and 66.218 of this code.

Sec. 66.2011. RED DRUM AND SPECKLED SEA TROUT: PENALTIES. In addition to the penalty provided in Section 66.218, a person who violates a proclamation issued under Chapter 61 shall have all equipment, other than vessels, in the person's possession used for the taking of red drum or speckled sea trout confiscated. A person who violates a proclamation issued under Chapter 61 three or more times within a five-year period shall have all equipment, including vessels, in the person's possession used for the taking of redfish or speckled sea trout confiscated.

[Sec. 66.218]

(b) If it is shown at the trial for a violation of Section 66.2011, . . . 66.2014, or . . . 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

(1) Section 61.901(b), Parks and Wildlife Code, refers to a proclamation of the Parks and Wildlife Commission relating to the daily catch, retention, and size limits for "redfish" or speckled sea trout taken for noncommercial purposes. The revised law substitutes "red drum" for "redfish" for consistency in terminology used in this code and because "red drum" and "redfish" are both common names for the species Sciaenops ocellatus and "red drum" is the name more

commonly used by the commission and the Parks and Wildlife Department.

(2) Section 61.901(b), Parks and Wildlife Code, provides that a person who violates a proclamation of the Parks and Wildlife Commission relating to the daily catch, retention, and size limits for redfish or speckled sea trout taken for noncommercial purposes is "guilty of an offense and is punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011(d) and 66.218 of this code."

The revised law omits the portion of Section 61.901(b) providing that the violation is an offense because it duplicates in substance Section 61.901(a), Parks and Wildlife Code, revised as Section 5101.9901(a), which creates an offense for violating any provision of Chapter 61 of that code or a commission proclamation or regulation issued under that chapter.

For clarity and the convenience of the reader, the revised law substitutes for "punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011(d) and 66.218 of this code" the applicable substance of those provisions. Although Section 61.901(b) refers to Section 66.2011(d), the revised law includes the substance of all of Section 66.2011, Parks and Wildlife Code, because Section 107, Chapter 1256 (H.B. 2542), Acts of the 75th Legislature, Regular Session, 1997, amended Section 66.2011 by removing the division of the section into subsections and retaining only the content of Subsection (d). With respect to the punishments provided by Section 66.218, the revised law includes only the portion of Section 66.218(b) providing for a Class B Parks and Wildlife Code

misdemeanor for a violation of a proclamation because that is the only portion of that provision applicable to a violation of a proclamation described by Section 61.901(b). The revised law does not include the substance of Section 66.218(a), which provides in pertinent part that a violation of certain proclamations is a Class C Parks and Wildlife Code misdemeanor, because that provision duplicates in substance Section 61.901(a), Parks and Wildlife Code, revised as Section 5101.9901, which creates a Class C Parks and Wildlife Code misdemeanor for violating any commission proclamation issued under Chapter 61 of that code.

(3) Section 66.2011, Parks and Wildlife Code, provides that a violation of a proclamation issued under Chapter 61 of that code results in the confiscation of all equipment, other than vessels, used for the taking of "red drum" or speckled sea trout and further provides that three or more violations of a proclamation issued under that chapter within a five-year period results in the confiscation of all equipment, including vessels, used for the taking of "redfish" or speckled sea trout. The revised law substitutes "red drum" for "redfish" for the reasons stated in Revisor's Note (1) to this section.

(4) Section 66.2011, Parks and Wildlife Code, provides that a person who violates certain proclamations shall have certain equipment "confiscated." The revised law substitutes "seized" for "confiscated" for consistency in terminology used in this code and because, in context, the terms are synonymous and "seized" is the term used in Section 12.1106, Parks and Wildlife Code, revised in Subchapter E, Chapter 5953, of this code, which

governs the seizure and disposition of contraband, including equipment subject to Section 66.2011.

(5) Section 66.218(b), Parks and Wildlife Code, refers to a violation of Section 66.2011 or 66.2014 of that code or a proclamation adopted under those sections. The revised law omits the reference to Section 66.2011 because that section does not include a provision that can be violated, nor does it provide for the adoption of a proclamation. Additionally, the revised law omits the reference to Section 66.2014 because that section was repealed by Chapter 73, Acts of the 71st Legislature, Regular Session, 1989.

Revised Law

Sec. 5101.9903. PENALTY FOR REPEATED VIOLATION OF PROCLAMATION RELATING TO USE AND POSSESSION OF CERTAIN DEVICES USED FOR CATCHING AQUATIC LIFE. An offense under Section 5101.9901 for a violation of a commission proclamation that regulates the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state 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 Section 5101.9901 for a violation of that proclamation. (Parks & Wild. Code, Sec. 61.901(d).)

Source Law

(d) If it is shown at the trial of the defendant for a violation of a proclamation of the commission that regulates the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state that he has been convicted within five years before the trial date of a violation of the proclamation for which he is being prosecuted, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5101.9904. PENALTY FOR TAKING WILDLIFE RESOURCE

WITHOUT LANDOWNER CONSENT. (a) This section applies only to an offense under Section 5101.9901 for a violation of Section 5101.0402.

(b) An offense to which this section applies is a Class A Parks and Wildlife Code misdemeanor, except that the offense is:

(1) except as provided by Subdivision (2), a Parks and Wildlife Code state jail felony if the defendant:

(A) violates Section 5101.0402 by killing a desert bighorn sheep, pronghorn antelope, mule deer, or white-tailed deer; or

(B) has previously been convicted one time of an offense to which this section applies; or

(2) a Parks and Wildlife Code felony if the defendant has previously been convicted:

(A) of an offense punishable under Subdivision (1)(A); or

(B) two or more times of an offense to which this section applies. (Parks & Wild. Code, Secs. 61.022(b), (c), (d), (e).)

Source Law

(b) Except as provided by Subsection (c), a person who violates Subsection (a) the first time commits an offense that is a Class A Parks and Wildlife Code misdemeanor and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(c) A person who violates Subsection (a) the first time by killing a desert bighorn sheep, pronghorn antelope, mule deer, or white-tailed deer commits an offense that is a Parks and Wildlife Code state jail felony and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(d) A second violation of Subsection (a) shall be classified as one category higher than the first violation or a Parks and Wildlife Code felony, whichever is lesser, and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(e) A third or subsequent violation of Subsection (a) shall be classified as a Parks and Wildlife Code felony and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

Revisor's Note

(1) Sections 61.022(b) and (c), Parks and Wildlife Code, provide that a person who violates Section 61.022(a) of that code "commits an offense" and provide the penalties for such an offense. The revised law omits the portion of Sections 61.022(b) and (c) providing that the violation is an offense for the reason stated in Revisor's Note (2) to Section 5101.9902.

(2) Sections 61.022(b), (c), (d), and (e), Parks and Wildlife Code, establish a criminal penalty for certain violations of Section 61.022(a) of that code and further provide that each of those violations "is punishable in addition by the revocation or suspension under Section 12.5015 [of that code] of hunting and fishing licenses and permits." The revised law omits the quoted language as unnecessary because the provisions for revocation or suspension of hunting and fishing licenses and permits under Section 12.5015 apply on their own terms to a conviction of an offense for the described violation.

Revised Law

Sec. 5101.9905. DISPOSITION OF PROPERTY USED IN COMMISSION OF CERTAIN OFFENSES. (a) If a person is finally convicted of an offense under Section 5101.9901 for a violation of Section 5101.0402, the court entering judgment may order that a weapon or other personal property used in the commission of the offense, other than a vehicle, aircraft, vessel, or dog, be destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court under this section, the department may:

(1) use the property in the department's normal operations;

(2) sell or transfer the property; or

(3) destroy the property.

(c) The department shall deposit money from the sale of forfeited property under this section in the game, fish, and water safety account. (Parks & Wild. Code, Secs. 61.0221, 62.017(a) (part), (b), (c), (d).)

Source Law

Sec. 61.0221. DISPOSITION OF SEIZED PROPERTY. (a) If a person is finally convicted of an offense under Section 61.022, the court entering judgment may order that a weapon or other personal property used in the commission of the offense be destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court under this section, the department may:

(1) use the property in the department's normal operations;

(2) sell or transfer the property; or

(3) destroy the property.

(c) The department shall deposit money from the sale of forfeited property under this section in the game, fish, and water safety account.

(d) This section does not apply to a vehicle, aircraft, or vessel.

Sec. 62.017. DISPOSITION OF SEIZED PROPERTY. (a) If a person is finally convicted of an offense under Section 61.022, . . . the court entering judgment of conviction may order any weapon or other personal property used in the commission of the offense or violation destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court as authorized by this section, the department may:

(1) use the property in its normal operation;

(2) sell or transfer the property; or

(3) destroy the property.

(c) This section does not apply to a vehicle, aircraft, vessel, or dog.

(d) If the disposition of property under this section is by sale of the property, the sale proceeds shall be deposited in the game, fish, and water safety account.

Revisor's Note

Sections 61.0221(a) and 62.017(a), Parks and Wildlife Code, refer to a person finally convicted of an "offense under Section 61.022" of that code. The revised law substitutes "offense under Section 5101.9901 for a violation of Section 5101.0402" for the quoted language because Section 61.901(a), Parks and Wildlife Code, revised as Section 5101.9901,

creates an offense for violating a provision of Chapter 61, Parks and Wildlife Code, and the provision of Section 61.022 prohibiting certain conduct is revised as Section 5101.0402.

Revised Law

Sec. 5101.9906. DEFENSE TO PROSECUTION FOR HUMANE KILLING OF CERTAIN GAME ANIMALS AND BIRDS. (a) In this section:

(1) "Game animal" has the meaning assigned by Section 5201.0101.

(2) "Game bird" has the meaning assigned by Section 5202.0101.

(b) It is a defense to prosecution for an offense under Section 5101.9901 that the actor killed by a humane method a game animal or game bird that:

(1) was mortally wounded, not through the actor's conduct; or

(2) behaved in a manner that:

(A) is inconsistent with the manner in which a game animal or game bird that is not diseased typically behaves; and

(B) would lead a reasonable person to believe that the game animal or game bird poses a substantial risk of serious harm to itself, a person, or other wildlife.

(c) The commission may adopt rules to implement this section, including rules concerning the disposition of a game animal or game bird that was killed by a humane method under this section. (Parks & Wild. Code, Sec. 61.060.)

Source Law

Sec. 61.060. DEFENSE TO PROSECUTION: HUMANE DISPATCH OF CERTAIN GAME ANIMALS AND BIRDS. (a) In this section:

(1) "Dispatch" means to kill by any humane method.

(2) "Game animal" has the meaning assigned by Section 63.001.

(3) "Game bird" has the meaning assigned by Section 64.001.

(b) It is a defense to prosecution for a violation of this chapter or of a regulation adopted or proclamation issued under the authority of this chapter by the commission that the actor dispatched a

game animal or game bird that:

(1) was mortally wounded, not through the actor's conduct; or

(2) behaved in a manner that:

(A) is inconsistent with the manner in which a game animal or game bird that is not diseased typically behaves; and

(B) leads a reasonable person to believe that the game animal or game bird poses a substantial risk of serious harm to itself, a person, or other wildlife.

(c) The commission may adopt rules, including rules concerning the disposition of a game animal or a game bird that has been dispatched under this section, to implement this section.

Revisor's Note

(1) Section 61.060(a)(1), Parks and Wildlife Code, defines "dispatch" to mean "to kill by any humane method." For clarity, the revised law omits the definition of "dispatch" and substitutes the substance of that definition for the defined term.

(2) Section 61.060(b), Parks and Wildlife Code, provides a defense to prosecution for "a violation of [Chapter 61 of that code] or of a regulation adopted or proclamation issued under the authority of [that chapter] by the [Parks and Wildlife Commission]." For brevity, the revised law substitutes "an offense under Section 5101.9901" for the quoted language because Section 61.901(a), Parks and Wildlife Code, revised as Section 5101.9901, creates an offense for a violation of Chapter 61, Parks and Wildlife Code, or a commission regulation or proclamation issued under Chapter 61.

Revised Law

Sec. 5101.9907. DISMISSAL OF CERTAIN CHARGES RELATED TO PROHIBITED HUNTING ON COMPLETION OF HUNTER EDUCATION COURSE. (a) In this section, "hunter education course" means a hunter education course established under Subchapter B, Chapter 5103.

(b) This section applies only to an alleged offense for the violation of a provision of this code, or a commission proclamation or regulation issued under this code, that prohibits the hunting of certain mule deer or white-tailed deer based on the inside or

outside spread measurement of the deer's antlers, where the violation is based on a difference of one inch or less from the spread measurement prescribed by the provision.

(c) A court having proper jurisdiction of an offense to which this section applies may, without entering an adjudication of guilt, defer proceedings against a defendant for a period not to exceed 180 days if the defendant:

(1) reported the defendant's commission of the offense to a game warden before the defendant left the location where the conduct occurred and was subsequently charged with the offense;

(2) did not retain possession of the deer carcass or otherwise disposed of the carcass in the manner prescribed by the department;

(3) has not previously:

(A) been convicted of an offense to which this section applies; or

(B) had a charge dismissed under this section;

(4) pleads nolo contendere or guilty to the offense in open court; and

(5) presents to the court an oral or written request to attend a hunter education course.

(d) The court shall dismiss a defendant's charge that the court deferred under Subsection (c) if the defendant presents satisfactory evidence that the defendant:

(1) has successfully completed the hunter education course before the last day of the deferral period; and

(2) during the deferral period, has not violated a provision of this code or a commission proclamation or regulation issued under this code.

(e) The court shall enter an adjudication of guilt and impose the penalty for the offense if the defendant fails to satisfy the conditions for dismissal of the charge described by Subsection (d).

(f) Notwithstanding any other law, a charge dismissed under

this section may not be:

(1) considered a conviction for the purposes of any disqualifications or disabilities imposed by this code or other law for conviction of an offense; or

(2) used as grounds for denying issuance of a professional or occupational license or certificate to, or suspending or revoking the professional or occupational license or certificate of, the defendant otherwise entitled to or qualified for the license or certificate.

(g) A court may transfer a case in which proceedings have been deferred under this section to a different court if that court consents to the transfer and has jurisdiction over the case.

(h) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the court may require a defendant who requests a hunter education course to pay a reimbursement fee in an amount not to exceed $10 to cover the costs of administering this section. Money collected by the court shall be deposited in the county treasury of the county in which the court is located.

(i) In addition to the reimbursement fee authorized by Subsection (h), the court may require a defendant who requests a hunter education course to pay a $10 reimbursement fee to cover the course provider's cost for performing duties under this section. The court shall pay the fee to the course provider, and the course provider must account to the court for the receipt and disbursal of the fee.

(j) A defendant who pays a fee under Subsection (h) or (i) is not entitled to a refund of the fee, regardless of whether the defendant successfully completes the hunter education course.

(k) A court may not require an indigent defendant for whom proceedings are deferred under this section to pay a reimbursement fee described by this section. (Parks & Wild. Code, Sec. 61.902.)

Source Law

Sec. 61.902. DISMISSAL OF CERTAIN CHARGES

RELATED TO PROHIBITED HUNTING ON COMPLETION OF HUNTER EDUCATION COURSE. (a) In this section, "hunter education course" means a hunter education course established under Section 62.014.

(b) This section applies only to an alleged offense for the violation of a provision of this code, or a proclamation or regulation of the commission issued under the authority of this code, that prohibits the hunting of certain mule deer or white-tailed deer based on the inside or outside spread measurement of the deer's antlers, where the violation is based on a difference of one inch or less from the spread measurement prescribed by the provision.

(c) A court having proper jurisdiction of an offense to which this section applies may, without entering an adjudication of guilt, defer proceedings against a defendant for a period not to exceed 180 days if the defendant:

(1) reported the defendant's commission of the offense to a game warden before the defendant left the location where the conduct occurred and was subsequently charged with the offense;

(2) did not retain possession of the deer carcass or otherwise disposed of the carcass in the manner prescribed by the department;

(3) has not previously:

(A) been convicted of an offense to which this section applies; or

(B) had a charge dismissed under this section;

(4) pleads nolo contendere or guilty to the offense in open court; and

(5) presents to the court an oral or written request to attend a hunter education course.

(d) The court shall dismiss a defendant's charge that the court deferred under Subsection (c) if the defendant presents satisfactory evidence that the defendant:

(1) has successfully completed the hunter education course before the last day of the deferral period; and

(2) during the deferral period, has not violated a provision of this code or a proclamation or regulation of the commission issued under the authority of this code.

(e) The court shall enter an adjudication of guilt and impose the penalty for the offense if the defendant fails to satisfy the conditions for dismissal of the charge described by Subsection (d).

(f) Notwithstanding any other law, a charge dismissed under this section may not be:

(1) considered a conviction for the purposes of any disqualifications or disabilities imposed by this code or other law for conviction of an offense; or

(2) used as grounds for denying issuance of a professional or occupational license or certificate to, or suspending or revoking the professional or occupational license or certificate of, the defendant otherwise entitled to or qualified for the license or certificate.

(g) A court may transfer a case in which proceedings have been deferred under this section to a different court if that court consents to the transfer and has jurisdiction over the case.

(h) In addition to court costs and fees authorized or imposed by a law of this state and

applicable to the offense, the court may require a defendant who requests a hunter education course to pay a reimbursement fee in an amount not to exceed $10 to cover the costs of administering this section. Money collected by the court shall be deposited in the county treasury of the county in which the court is located.

(i) In addition to the reimbursement fee authorized by Subsection (h), the court may require a defendant who requests a hunter education course to pay a $10 reimbursement fee to cover the course provider's cost for performing duties under this section. The court shall pay the fee to the course provider, and the course provider must account to the court for the receipt and disbursal of the fee.

(j) A defendant who pays a fee under Subsection (h) or (i) is not entitled to a refund of the fee, regardless of whether the defendant successfully completes the hunter education course.

(k) A court may not require an indigent defendant for whom proceedings are deferred under this section to pay a reimbursement fee described by this section.

CHAPTER 5102. SPORTSMAN'S RIGHTS ACT

Revised Law

Sec. 5102.0101. DEFINITIONS. In this chapter:

(1) "Process of hunting or catching" means any act directed at the lawful hunting or catching of wildlife, including camping or other acts preparatory to hunting or catching of wildlife that occur on land or water on which the affected person has the right or privilege of hunting or catching that wildlife.

(2) "Wildlife" means all species of wild mammals, birds, fish, reptiles, or amphibians. (Parks & Wild. Code, Sec. 62.0125(b).)

Source Law

(b) In this section:

(1) "Wildlife" means all species of wild mammals, birds, fish, reptiles, or amphibians.

(2) "Process of hunting or catching" means any act directed at the lawful hunting or catching of wildlife, including camping or other acts preparatory to hunting or catching of wildlife that occur on land or water on which the affected person has the right or privilege of hunting or catching that wildlife.

Revised Law

Sec. 5102.0102. APPLICABILITY OF CHAPTER. This chapter does not apply to the following persons while actually discharging an official duty:

(1) a peace officer of this state;

(2) a law enforcement officer of the United States;

(3) a member of the armed forces of the United States or of this state; or

(4) an employee of the department or another state or federal agency with statutory responsibility to manage wildlife or land. (Parks & Wild. Code, Sec. 62.0125(f).)

Source Law

> (f) This section does not apply to a peace officer of this state, a law enforcement officer of the United States, a member of the armed forces of the United States or of this state, or employees of the department or other state or federal agencies having statutory responsibility to manage wildlife or land during the time that the officer, member, or employee is in the actual discharge of official duties.

Revised Law

Sec. 5102.0103. HARASSMENT OF HUNTERS, TRAPPERS, AND FISHERMEN PROHIBITED. (a) A person may not intentionally:

(1) interfere with another person lawfully engaged in the process of hunting or catching wildlife; or

(2) harass, drive, or disturb any wildlife for the purpose of disrupting a person lawfully engaged in the process of hunting or catching wildlife.

(b) A person may not, with the intent to disrupt another person lawfully engaged in the process of hunting or catching wildlife, enter or remain on:

(1) public land; or

(2) private land without the consent of the landowner or the landowner's agent. (Parks & Wild. Code, Secs. 62.0125(c), (d), (e).)

Source Law

> (c) No person may intentionally interfere with another person lawfully engaged in the process of hunting or catching wildlife.
>
> (d) No person may intentionally harass, drive, or disturb any wildlife for the purpose of disrupting a person lawfully engaged in the process of hunting or catching wildlife.
>
> (e) No person may enter or remain on public land or enter or remain on private land without the landowner's or his agent's consent if the person intends to disrupt another person lawfully engaged in the process of hunting or catching wildlife.

Revised Law

Sec. 5102.0104. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is an affirmative defense to prosecution under this section that the defendant's conduct is protected by the right to freedom of speech under the constitution of this state or the United States. (Parks & Wild. Code, Secs. 62.0125(g), (h).)

Source Law

> (g) A person who violates this section commits an offense. An offense under this section is a Class B misdemeanor.
>
> (h) It is an affirmative defense to prosecution that the defendant's conduct is protected by the right to freedom of speech under the constitution of this state or the United States.

Revisor's Note
(End of Chapter)

Section 62.0125(a), Parks and Wildlife Code, provides a short title for that section. The revised law omits the short title because Section 62.0125 is not a statute of wide application that is frequently referred to by its short title, and the heading to this chapter is sufficient to describe the revised law to the reader. The omitted law reads:

> Sec. 62.0125. HARASSMENT OF HUNTERS, TRAPPERS, AND FISHERMEN. (a) This section may be cited as the Sportsman's Rights Act.

CHAPTER 5103. HUNTING

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5103.0101. 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.

(3) "Public road or right-of-way" means a public

street, alley, road, right-of-way, or other public way, including a berm, ditch, or shoulder. (Parks & Wild. Code, Sec. 62.001.)

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.
>
> (3) "Public road or right-of-way" means a public street, alley, road, right-of-way, or other public way, including a berm, ditch, or shoulder.

SUBCHAPTER B. HUNTER EDUCATION PROGRAM

Revised Law

Sec. 5103.0201. DEFINITIONS. In this subchapter:

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

(2) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. (Parks & Wild. Code, Sec. 62.014(a).)

Source Law

> Sec. 62.014. HUNTER EDUCATION PROGRAM. (a) In this section:
>
> (1) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.
>
> (2) "Archery equipment" means a long bow, recurved bow, or compound bow.

Revised Law

Sec. 5103.0202. STATEWIDE HUNTER EDUCATION PROGRAM. The department may establish and administer a statewide hunter education program. The program must include instruction concerning:

(1) the safe handling and use of firearms, archery equipment, and crossbows;

(2) wildlife conservation and management;

(3) hunting laws and applicable rules; and

(4) hunting safety and ethics, including landowners' rights. (Parks & Wild. Code, Sec. 62.014(b).)

Source Law

(b) The department may establish and administer a statewide hunter education program. The program must include but is not limited to instruction concerning:

(1) the safe handling and use of firearms, archery equipment, and crossbows;

(2) wildlife conservation and management;

(3) hunting laws and applicable rules and regulations; and

(4) hunting safety and ethics, including landowners' rights.

Revisor's Note

(1) Section 62.014(b), Parks and Wildlife Code, refers to topics of instruction the hunter education program "must include but is not limited to" including. The revised law omits "but is not limited to" because Section 311.005(13), Government Code (Code Construction Act), provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

(2) Section 62.014(b)(3), Parks and Wildlife Code, requires the hunter education program to include instruction concerning hunting laws and applicable "rules and regulations." The revised law omits "regulations" for the reasons stated in Revisor's Note (2) to Section 5053.0108.

Revised Law

Sec. 5103.0203. MANDATORY HUNTER EDUCATION PROGRAM. (a) If money is available for its implementation, the commission may establish a mandatory hunter education program and may require a person to successfully complete a training course before the person may hunt with firearms, archery equipment, or crossbows in this state.

(b) If the commission requires the successful completion of the mandatory hunter education program under Subsection (a), a

person must possess a certificate or other evidence of completion of the program while hunting with firearms, archery equipment, or crossbows.

(c) The commission may provide that residents or nonresidents who successfully complete the training course described by Subsection (a) or a comparable hunter education course and possess a certificate or other evidence of completion have satisfied the requirements of this section.

(d) The department is responsible for offering mandatory hunter education courses that are accessible to persons who are required to take the course. The department shall provide hunter education opportunities in each county at least once each year or when a substantial number of residents request a course.

(e) The commission may establish a minimum age for participation in the mandatory hunter education program.

(f) A person who does not meet the minimum age under Subsection (e) or is otherwise ineligible to participate in the mandatory hunter education program may hunt with firearms, archery equipment, or crossbows in this state only if the person is accompanied by a person who is at least 17 years of age and licensed to hunt in this state.

(g) A person younger than 17 years of age who is hunting with a person who is at least 17 years of age and licensed to hunt in this state is not required to complete the mandatory hunter education program.

(h) The commission may implement the mandatory hunter education program by age group.

(i) A person is exempt from the requirements imposed under this section if the person is at least 17 years of age on the later of:

(1) September 1, 1988; or

(2) the date a mandatory hunter education course is implemented. (Parks & Wild. Code, Sec. 62.014(d).)

Source Law

(d) If funds are available for its implementation the commission may establish a mandatory hunter education program and may require a person to have successfully completed a training course before the person may hunt with firearms, archery equipment as defined in Subsection (a) of this section, or crossbows in Texas. If the certificate is so required, the person must possess the certificate or other evidence of completion of the program while hunting with firearms, archery equipment as defined in Subsection (a) of this section, or crossbows. The commission may provide that residents or nonresidents who have successfully completed the same or a comparable hunter education course and possess a certificate or other evidence of completion have satisfied the requirements imposed under this subsection. The commission may establish a minimum age for participation in the program. Those persons who cannot participate in the hunter education program because they do not meet the minimum age or other requirements established by the commission can only hunt with firearms, archery equipment as defined in Subsection (a) of this section, or crossbows in Texas if they are accompanied by a person who is 17 years of age or older and licensed to hunt in Texas. Additionally, a person under 17 years of age hunting with a person licensed to hunt in Texas who is 17 years of age or older is not required to have certification under this Act.

The commission may implement the program by age group. Persons who are 17 years of age or older on September 1, 1988, or on the date on which a mandatory hunter education course is implemented, whichever is later, are exempt from the requirements imposed under this subsection.

The department is responsible for offering mandatory hunter education courses that are accessible to those persons required to take this course. To this end, the department shall provide hunter education opportunities in each county of the state when a substantial number of residents request a class or at least once a year.

Revisor's Note

Section 62.014(d), Parks and Wildlife Code, refers to "funds" available for the hunter education program. The revised law substitutes "money" for "funds" for the reason stated in Revisor's Note (3) to Section 5054.0302.

Revised Law

Sec. 5103.0204. CERTIFICATE OF COMPLETION. The department shall issue a certificate to a person who successfully completes a hunter education course. The department shall prescribe the form of the certificate. (Parks & Wild. Code, Sec. 62.014(c).)

Source Law

(c) The department shall issue a certificate to a person who has successfully completed a hunter education course. The department shall prescribe the form of the certificate.

Revised Law

Sec. 5103.0205. EXEMPTIONS. A person is exempt from a requirement to complete a hunter education course under this subchapter if the person:

(1) is an active duty member or honorably discharged veteran of the United States armed forces;

(2) is on active duty or has previously served as a member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(3) is a current or former peace officer described by Article 2A.001(1), (2), (3), or (4), Code of Criminal Procedure. (Parks & Wild. Code, Sec. 62.014(n).)

Source Law

(n) The following persons are exempt from any requirement to complete a hunter education course under this section:

(1) an honorably discharged veteran of the United States armed forces or a person who is on active duty as a member of the United States armed forces;

(2) a person who is on active duty or has previously served as a member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(3) a person who is serving or has previously served as a peace officer described by Article 2A.001(1), (2), (3), or (4), Code of Criminal Procedure.

Revised Law

Sec. 5103.0206. INSTRUCTORS AND FEES. (a) The commission may:

(1) maximize the utilization of volunteer instructors to minimize the costs of the course;

(2) charge a fee in an amount not greater than $15 to defray administrative costs;

(3) by rule establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by the instructor under this subsection to cover the instructor's actual

and necessary out-of-pocket expenses; and

(4) establish an incentive program to encourage citizens to participate in the program as instructors.

(b) The department shall:

(1) determine qualifications for instructors in the hunter education program; and

(2) recruit, train, and certify instructors for the program.

(c) Fees collected under Subsection (a), less any instructor expenses approved by the department, shall be deposited to the credit of the game, fish, and water safety account. (Parks & Wild. Code, Secs. 62.014(e), (f), (i).)

Source Law

> (e) The commission may maximize the utilization of volunteer instructors to minimize the costs of the course and is authorized to charge a fee not to exceed $15 to defray administrative costs. Fees collected under this subsection, less any instructor expenses approved by the department, shall be deposited to the credit of the game, fish, and water safety account. The commission by rule may establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by the instructor under this subsection to cover the instructor's actual and necessary out-of-pocket expenses.
>
> (f) The department shall determine qualifications for instructors in the hunter education program and shall recruit, train, and certify instructors for the program.
>
> (i) The commission may establish an incentive program to encourage citizens to participate in the program as instructors.

Revised Law

Sec. 5103.0207. COOPERATION WITH INTERESTED PARTIES. The department may cooperate with educational institutions, local governments, individuals, or organizations interested in hunter education in administering this subchapter. (Parks & Wild. Code, Sec. 62.014(g) (part).)

Source Law

> (g) The department may cooperate with educational institutions, local governments, individuals, or organizations interested in hunter education in administering this section. . . .

Revised Law

Sec. 5103.0208. GIFTS, GRANTS, AND DONATIONS. The department may accept gifts, grants, and donations for use in administering this subchapter. (Parks & Wild. Code, Sec. 62.014(g) (part).)

Source Law

> (g) . . . The department may accept gifts, grants, and donations to be used in administering this section.

Revised Law

Sec. 5103.0209. COMMISSION RULES. The commission shall adopt rules to implement the hunter education program. (Parks & Wild. Code, Sec. 62.014(h).)

Source Law

> (h) The commission shall adopt rules to implement the hunter education program.

Revised Law

Sec. 5103.0210. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a commission proclamation or regulation issued under this subchapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 62.013(a) (part), 62.014(j).)

Source Law

> [Sec. 62.013]
> (a) . . . a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> [Sec. 62.014]
> (j) A person who violates any provision of this section or any proclamation or regulation of the commission issued under the authority of this section commits an offense.

Revised Law

Sec. 5103.0211. FAILURE TO POSSESS REQUIRED CERTIFICATE. (a) It is a defense to prosecution under Section 5103.0210 for failure to possess a certificate required by the commission under this subchapter that the person charged produces in court a certificate issued to the person that was valid on the date of the

alleged offense.

(b) A person charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess a certificate required by the commission under this subchapter may present to the court not later than the 10th day after the date of the alleged offense an oral request or written motion to take a hunter safety training course.

(c) If a person requests a hunter safety training course as provided by Subsection (b), the court shall defer proceedings and allow the person 90 days to present written evidence that the person successfully completed a hunter safety training course approved by the department after being charged with failure to possess the certificate. The court shall dismiss the charge if:

(1) the person successfully completes the course; and

(2) the court accepts the evidence presented. (Parks & Wild. Code, Secs. 62.014(k), (l), (m).)

Source Law

> (k) If the commission requires a person to possess a certificate issued under this section and if the person is charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess the required certificate, the person may present to the court not later than the 10th day after the date of the alleged offense an oral request or written motion to take a hunter safety training course.
>
> (l) If a person requests a hunter safety training course as provided by Subsection (d) of this section, the court shall defer proceedings and allow the person 90 days to present written evidence that, after being charged with failure to possess the certificate, the person has successfully completed a hunter safety training course approved by the department. If a person successfully completes the course and the evidence presented is accepted by the court, the court shall dismiss the charge.
>
> (m) It is a defense to prosecution under this section for failure to possess a certificate that the person charged produces in court a certificate issued to that person that was valid on the date of the alleged offense.

Revisor's Note

Section 62.014(l), Parks and Wildlife Code, refers to a person who requests a hunter safety training course as provided by "Subsection (d)" of Section 62.014 of that code. It is clear from the context of Section 62.014 that the reference to

"Subsection (d)" is a drafting error and that the legislature intended to refer to "Subsection (k)" of that section, which authorizes a person charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess a certificate required by the Parks and Wildlife Commission under that section to present to the court a request to take a hunter safety training course. Section 62.014(k) is revised as Subsection (b) of this section, and the revised law is drafted accordingly.

SUBCHAPTER C. RESTRICTIONS ON HUNTING GENERALLY

Revised Law

Sec. 5103.0301. COMPUTER-ASSISTED REMOTE HUNTING. (a) In this section:

(1) "Archery equipment" and "firearm" have the meanings assigned by Section 5103.0201.

(2) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of archery equipment, a crossbow, or a firearm to hunt an animal or bird.

(3) "Facility for computer-assisted remote hunting" includes real property and improvements on the property associated with hunting, including hunting blinds, offices, and rooms equipped to facilitate computer-assisted remote hunting.

(b) A person may not engage in computer-assisted remote hunting, or provide or operate facilities for computer-assisted remote hunting, to hunt an animal or bird located in this state.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor, except that the offense is 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 of an offense under this subsection.

(d) It is an exception to the application of this section

that a person provides only:

(1) general-purpose equipment, including a computer, a camera, fencing, or building materials;

(2) general-purpose computer software, including an operating system or communications program; or

(3) general telecommunications hardware or networking services for computers, including an adapter, modem, server, router, or other facility associated with Internet access. (Parks & Wild. Code, Sec. 62.002.)

Source Law

Sec. 62.002. COMPUTER-ASSISTED REMOTE HUNTING. (a) In this section:

(1) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment, or software, to remotely control the aiming and discharge of archery equipment, a crossbow, or a firearm to hunt an animal, including a bird.

(2) "Firearm" and "archery equipment" have the meanings assigned by Section 62.014.

(b) A person may not engage in computer-assisted remote hunting or provide or operate facilities for computer-assisted remote hunting if the animal being hunted is located in this state.

(c) For purposes of this section, facilities for computer-assisted remote hunting include real property and improvements on the property associated with hunting, including hunting blinds, offices, and rooms equipped to facilitate computer-assisted remote hunting.

(d) A person who violates this section commits an offense that is a Class B Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant that the defendant has been convicted one or more times before the trial date of a violation of this section, in which case the offense is a Class A Parks and Wildlife Code misdemeanor.

(e) It is an exception to the application of this section that a person provides only:

(1) general-purpose equipment, including a computer, camera, fencing, and building materials;

(2) general-purpose computer software including an operating system and communications programs; or

(3) general telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with Internet access.

Revisor's Note

Section 62.002(d), Parks and Wildlife Code, provides that an offense under that provision is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial that the defendant has been

convicted "one or more times" of a violation of Section 62.002 of that code. Throughout this subchapter, in this and similar contexts, the revised law omits the quoted language as unnecessary because the phrase does not limit or expand the enhanced penalty for the offense.

Revised Law

Sec. 5103.0302. HUNTING FROM VEHICLES. (a) Except as provided by Subsection (b), a person may not hunt a wild bird or wild animal, other than an alligator, frog, or turtle, from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat or any other floating device.

(b) A person may hunt an animal or bird not classified as migratory from a motor vehicle, powerboat, or sailboat or any other floating device on private property or private water if the person:

(1) is legally on the property or water for the purpose of hunting; and

(2) does not attempt to hunt a wild bird or wild animal on any part of the road system of this state.

(c) 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, except that the offense is a Parks and Wildlife Code state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this subsection. (Parks & Wild. Code, Secs. 62.003, 62.013(b) (part).)

Source Law

Sec. 62.003. HUNTING FROM VEHICLES. (a) Except as provided in Subsection (b), no person may hunt any wild bird or wild animal, other than an alligator, frog, or turtle, from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any other floating device.

(b) Animals and birds not classified as migratory may be hunted from a motor vehicle, powerboat, or sailboat, or from any other floating device within the boundaries of private property or upon private water by a person who is legally on the property or water for the purpose of hunting if no attempt is made to hunt any wild bird or wild animal on

any part of the road system of this state.

[Sec. 62.013]

(b) A person who violates Section 62.003, . . . commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or . . . that the defendant has been convicted one or more times before the trial date of a violation of that section or . . . in which case the offense is a Parks and Wildlife Code state jail felony.

Revised Law

Sec. 5103.0303. HUNTING FROM PUBLIC ROAD OR RIGHT-OF-WAY PROHIBITED; EXCEPTIONS. (a) Except as provided by Subsections (b) and (c), a person may not hunt a wild animal or bird when the person is on a public road or right-of-way.

(b) This section does not apply to:

(1) the trapping of a raptor for educational or sporting purposes as provided by Subchapter M, Chapter 5159; or

(2) a department employee taking wildlife as provided by Section 5002.0202(a).

(c) A person may capture by nonlethal means reptiles and amphibians on the shoulder of a road, as defined by Section 541.302, Transportation Code, or the unpaved area of a public right-of-way if the person:

(1) possesses a reptile and amphibian stamp issued to the person by the department and does not use a trap; or

(2) is described by Section 5152.0302.

(d) A person must wear reflective clothing when engaging in the capture by nonlethal means of a reptile or amphibian under a stamp issued by the department. The clothing must have at least 144 square inches of reflective material on both the front and back of the clothing.

(e) A person may not use an artificial light from a motor vehicle in locating, capturing, or attempting to capture a reptile or amphibian under Subsection (c).

(f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 62.0031,

62.013(a) (part).)

Source Law

Sec. 62.0031. HUNTING FROM PUBLIC ROAD OR RIGHT-OF-WAY PROHIBITED. (a) Except as provided by Subsections (b) and (c), a person may not hunt a wild animal or bird when the person is on a public road or right-of-way.

(b) This section does not apply to:

(1) the trapping of a raptor for educational or sporting purposes as provided by Chapter 49; or

(2) an employee of the department taking wildlife as provided by Section 12.013(c).

(c) A person may capture by nonlethal means reptiles and amphibians on the shoulder of a road, as defined by Section 541.302, Transportation Code, or the unpaved area of a public right-of-way if the person:

(1) possesses a reptile and amphibian stamp issued to the person by the department and does not use a trap; or

(2) is described by Section 43.905.

(d) A person must wear reflective clothing when engaging in the capture by nonlethal means of a reptile or amphibian under a stamp issued by the department. The clothing must have at least 144 square inches of reflective material on both the front and back of the clothing.

(e) A person may not use an artificial light from a motor vehicle in locating, capturing, or attempting to capture a reptile or amphibian under Subsection (c).

[Sec. 62.013]

(a) . . . a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5103.0304. HUNTING AT NIGHT. (a) A person may not hunt a wild bird, wild game bird, wild fowl, or wild game animal protected by this code between one-half hour after sunset and one-half hour before sunrise.

(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, except that the offense is a Parks and Wildlife Code state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this subsection. (Parks & Wild. Code, Secs. 62.004, 62.013(b) (part).)

Source Law

Sec. 62.004. HUNTING AT NIGHT. No person may

hunt any wild bird, wild game bird, wild fowl, or wild game animal protected by this code at any season of the year between one-half hour after sunset and one-half hour before sunrise.

[Sec. 62.013]

(b) A person who violates Section . . . 62.004, . . . commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or . . . that the defendant has been convicted one or more times before the trial date of a violation of that section or . . . in which case the offense is a Parks and Wildlife Code state jail felony.

Revisor's Note

Section 62.004, Parks and Wildlife Code, prohibits hunting at certain times of day "at any season of the year." The revised law omits the quoted language as unnecessary because the prohibition on hunting at certain times of day necessarily applies regardless of the season in the absence of qualifying language.

Revised Law

Sec. 5103.0305. HUNTING WITH LIGHT. (a) Except as provided by Section 5103.0306 or 5103.0307, a person may not hunt a game animal or bird protected by this code with the aid of an artificial light that casts or reflects a beam of light onto or otherwise illuminates the game animal or bird, including the headlights of a motor vehicle.

(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, except that the offense is a Parks and Wildlife Code state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this subsection. (Parks & Wild. Code, Sec. 62.005, 62.013(b) (part).)

Source Law

Sec. 62.005. HUNTING WITH LIGHT. Except as provided by Section 62.0055 or 62.0056, no person may hunt a game animal or bird protected by this code with the aid of an artificial light that casts or reflects a beam of light onto or otherwise illuminates the game animal or bird, including the headlights of a motor vehicle.

[Sec. 62.013]

(b) A person who violates Section . . . 62.005, . . . commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or . . . that the defendant has been convicted one or more times before the trial date of a violation of that section or . . . in which case the offense is a Parks and Wildlife Code state jail felony.

Revised Law

Sec. 5103.0306. HUNTING WITH LASER SIGHTING DEVICE BY HUNTER WHO IS LEGALLY BLIND. (a) In this section, "legally blind" has the meaning assigned by Section 62.104, Government Code.

(b) A hunter who is legally blind may use a laser sighting device during regular hunting hours when assisted by a person who:

(1) is not legally blind;

(2) holds a hunting license; and

(3) is at least 13 years of age.

(c) A hunter who uses a laser sighting device under Subsection (b) must carry proof of being legally blind.

(d) Subchapter B applies to a hunter under this section. (Parks & Wild. Code, Sec. 62.0055.)

Source Law

Sec. 62.0055. HUNTING WITH LASER SIGHTING DEVICE BY LEGALLY BLIND HUNTER. (a) In this section, "legally blind" has the meaning assigned by Section 62.104, Government Code.

(b) A legally blind hunter may use a laser sighting device during regular hunting hours when assisted by a person who:

(1) is not legally blind;

(2) has a hunting license; and

(3) is at least 13 years of age.

(c) The legally blind hunter must carry proof of being legally blind.

(d) Section 62.014 applies to a hunter under this section.

Revised Law

Sec. 5103.0307. HUNTING WITH LASER SIGHTING DEVICE BY HUNTER WITH CERTAIN DISABILITIES. (a) In this section, "physical disability" means a documented permanent physical disability that renders a person incapable of using a traditional firearm sighting device.

(b) A hunter with a physical disability may use a laser

sighting device during lawful hunting hours in an open season when assisted by a person who:

(1) does not have a physical disability;

(2) holds a hunting license; and

(3) is at least 13 years of age.

(c) A hunter who uses a laser sighting device under Subsection (b) must carry proof of the disability.

(d) For purposes of this section, a physician's or optometrist's statement certifying the extent of a physical disability is sufficient documentation of the disability.

(e) Subchapter B applies to a hunter under this section. (Parks & Wild. Code, Sec. 62.0056.)

Source Law

> Sec. 62.0056. HUNTING WITH LASER SIGHTING DEVICE BY HUNTERS WITH CERTAIN DISABILITIES. (a) In this section, "person with a physical disability" means a person with a documented permanent physical disability that renders the person incapable of using a traditional firearm sighting device. A physician's or optometrist's statement certifying the extent of the disability is sufficient documentation.
>
> (b) A hunter who is a person with a physical disability may use a laser sighting device during lawful hunting hours in open seasons when assisted by a person who:
>
> (1) is not a person with a physical disability;
>
> (2) has a hunting license; and
>
> (3) is at least 13 years of age.
>
> (c) The hunter who is a person with a physical disability must carry proof of the disability.
>
> (d) Section 62.014 applies to a hunter under this section.

Revised Law

Sec. 5103.0308. HUNTING FOR HIRE. (a) Except as provided by Subsection (b), a person may not employ or be employed by another person for compensation or the promise of compensation to hunt a bird, wild fowl, or game animal protected by this code.

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

(1) an entity described by Section 5159.0901(b) that employs a person for compensation or the promise of compensation to control by lethal means white-tailed deer as authorized under a permit issued under Subchapter I, Chapter 5159; or

(2) a person employed as described by Subdivision (1).

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

(d) All prosecutions against a person in a case shall be dismissed if the person testifies in the case against another person who employed the testifying person in violation of this section. (Parks & Wild. Code, Secs. 62.006, 62.013(a) (part).)

Source Law

> Sec. 62.006. HUNTING FOR HIRE. (a) No person may employ another person or be employed by another person for compensation or promise of compensation to hunt any bird, wild fowl, or game animal protected by this code.
>
> (b) If a person testifies against another person who employed him in violation of this section, all prosecutions against him in the case in which he testifies shall be dismissed.
>
> (c) This section does not apply to:
>
> (1) an entity described by Section 43.151(b) that employs a person for compensation or promise of compensation to control by lethal means white-tailed deer as authorized under a permit issued under Subchapter H, Chapter 43; or
>
> (2) a person employed as described by Subdivision (1).
>
> [Sec. 62.013]
>
> (a) . . . a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5103.0309. HUNTING ON OR OVER CERTAIN SUBMERGED LAND. (a) Except as provided by Subsection (b), a person may not hunt or take a wild animal or wild bird when the person is on or over privately owned land that is:

(1) submerged under:

(A) public fresh water due to seasonal or occasional inundation; or

(B) public salt water and is located above the mean high tide line of the Gulf of Mexico and its bays and estuaries; and

(2) conspicuously marked as privately owned by a sign or signs that are substantially similar to the following:

POSTED. PRIVATE PROPERTY. NO HUNTING.

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

(1) fishing or to fish and other aquatic life;

(2) a person who:

(A) owns the submerged land; or

(B) obtains the landowner's consent;

(3) land that is dedicated to the permanent school fund and located within:

(A) the tidewater limits of this state; or

(B) the gradient boundaries of a navigable river or stream in this state; or

(4) land that is:

(A) submerged under public water; and

(B) located below the mean high tide line of the Gulf of Mexico and its bays and estuaries.

(c) This section does not authorize a person to fish by any means or method or at any time or place that is otherwise prohibited by this code.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 62.0061, 62.013(a) (part).)

Source Law

Sec. 62.0061. HUNTING ON OR OVER CERTAIN SUBMERGED LAND. (a) Except as provided by Subsection (b), a person may not hunt or take any wild animal or wild bird when the person is on or over privately owned land that is:

(1) submerged under:

(A) public fresh water due to seasonal or occasional innundation; or

(B) public salt water and located above the mean high tide line of the Gulf of Mexico and its bays and estuaries; and

(2) conspicuously marked as privately owned by a sign or signs that are substantially similar to the following:

POSTED. PRIVATE PROPERTY. NO HUNTING.

(b) This section does not apply to:

(1) fishing or to fish and other aquatic life;

(2) a person who:

(A) owns the submerged land; or

(B) obtains the landowner's consent;

(3) land that is dedicated to the permanent school fund and that is located within:

(A) the tidewater limits of this state; or

(B) the gradient boundaries of a navigable river or stream in this state; or

(4) land that is:

(A) submerged by public water; and

(B) located below the mean high tide line of the Gulf of Mexico and its bays and estuaries.

(c) This section does not authorize a person to fish by any means or method or at any time or place that is otherwise prohibited by this code.

[Sec. 62.013]

(a) . . . a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5103.0310. HUNTING DEER WITH DOGS. (a) Except as provided by Subsection (b), a person may not recklessly use a dog to hunt or pursue a deer in this state.

(b) The commission by rule may authorize the use of dogs to trail wounded deer.

(c) Subject to Subsection (a), the commission by rule may prescribe the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker County.

(d) A person commits an offense if the person violates this section or a rule adopted under this section. An offense under this subsection is a Class A Parks and Wildlife Code misdemeanor, except that the offense is a Parks and Wildlife Code state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this subsection.

(e) It is not a defense to prosecution for an offense under this section that:

(1) the defendant was not the owner or in immediate possession of the dog; or

(2) the offense was committed without the effective

consent of the dog's owner. (Parks & Wild. Code, Secs. 62.0065, 62.013(b) (part).)

Source Law

> Sec. 62.0065. HUNTING DEER WITH DOGS. (a) Except as provided by Subsection (d), a person may not recklessly use a dog to hunt or pursue a deer in this state.
>
> (b) Subject to Subsection (a), the commission by rule may prescribe the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker County.
>
> (c) It is not a defense to prosecution under Subsection (a) or to prosecution for violation of a rule adopted under Subsection (b) that the defendant was not the owner or in immediate possession of the dog or that the offense or violation was committed without the effective consent of the dog's owner.
>
> (d) The commission by rule may authorize the use of dogs to trail wounded deer.
>
> [Sec. 62.013]
>
> (b) A person who violates Section . . . 62.0065, . . . or a rule adopted under Section 62.0065 commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or rule, as appropriate, that the defendant has been convicted one or more times before the trial date of a violation of that section or rule, as appropriate, in which case the offense is a Parks and Wildlife Code state jail felony.

Revised Law

Sec. 5103.0311. SEASONAL LIMITS ON HUNTING. (a) A person may not:

(1) kill or take more than the daily, weekly, or seasonal bag limit for a game bird or animal as provided by this code;

(2) hunt a game bird or animal at any time of the year other than during the open season provided by this code; or

(3) kill, take, capture, wound, or shoot at a game bird or animal for which no open season is provided by this code.

(b) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 62.010(a), (b), (c), 62.013(a) (part).)

Source Law

Sec. 62.010. EXCEEDING BAG LIMITS, HUNTING DURING CLOSED SEASON, ETC.; PENALTY. (a) No person may kill or take more than the daily, weekly, or seasonal bag limits for game birds or animals as set out in this code.

(b) No person may hunt any game bird or animal at any time of the year other than during the open season provided by this code.

(c) No person may kill, take, capture, wound, or shoot at any game bird or animal for which no open season is set out by this code.

[Sec. 62.013]

(a) . . . a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5103.0312. RETRIEVAL AND WASTE OF GAME. (a) In this section:

(1) "Edible condition" means fit for human consumption. The term does not include any part of a game bird, game animal, or fish that is:

(A) bruised by bullet, shot, or arrow or otherwise destroyed as a result of harvest;

(B) decayed or rotting; or

(C) obviously infected or diseased.

(2) "Edible parts" means the meaty portions of a carcass that are retained for consumption after quartering as defined by Section 5053.0201(7).

(b) Except as provided by Subsection (d), a person commits an offense if the person:

(1) while hunting kills or wounds a game bird or game animal; and

(2) intentionally or knowingly fails to make a reasonable effort to retrieve the bird or animal and include it in the person's daily or seasonal bag limit.

(c) Except as provided by Subsection (d), a person commits an offense if the person:

(1) intentionally takes or possesses a game bird, game animal, or fish; and

(2) intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible parts of the bird, animal, or fish in an edible condition.

(d) Subsections (b) and (c) do not apply to conduct described by Subsection (e).

(e) A person commits an offense if the person:

(1) while hunting kills or wounds a desert bighorn sheep, pronghorn antelope, mule deer, or white-tailed deer in violation of Section 5101.0402, 5103.0302, 5103.0303, 5103.0304, or 5103.0305; and

(2) either:

(A) intentionally or knowingly fails to make a reasonable effort to retrieve the animal; or

(B) intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible parts of the animal in an edible condition.

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

(g) An offense under Subsection (e) is a Class A Parks and Wildlife Code misdemeanor, except that the offense is a Parks and Wildlife Code state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection. (Parks & Wild. Code, Secs. 62.011, 62.013(a), (b) (part).)

Source Law

Sec. 62.011. RETRIEVAL AND WASTE OF GAME. (a) Except as provided by Subsection (c), it is an offense if a person while hunting kills or wounds a game bird or game animal and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or bird and include it in the person's daily or seasonal bag limit.

(b) Except as provided by Subsection (c), it is an offense if a person intentionally takes or possesses a game bird, game animal, or fish and intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible portions of the bird, animal, or fish in an edible condition.

(c) It is an offense if a person while hunting kills or wounds a desert bighorn sheep, pronghorn antelope, mule deer, or white-tailed deer in violation of Section 61.022, 62.003, 62.0031, 62.004, or 62.005

and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible parts of the animal in an edible condition.

(d) In this section:

(1) "Edible condition" means fit for human consumption. The term does not include any portion of a game bird, game animal, or fish that is:

(A) bruised by bullet, shot, or arrow, or otherwise destroyed as a result of harvest;

(B) decayed or rotting; or

(C) obviously infected or diseased.

(2) "Edible parts" means the meaty portions of a carcass that are retained for consumption after quartering as defined in Section 42.001(8).

Sec. 62.013. PENALTIES. (a) Except as provided by Subsections (b) and (c) of this section, a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section . . . 62.011(c), or 350.001 or . . . commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or . . . that the defendant has been convicted one or more times before the trial date of a violation of that section or . . . , in which case the offense is a Parks and Wildlife Code state jail felony.

Revisor's Note

(1) Section 62.011(b), Parks and Wildlife Code, refers to the "edible portions" of a game bird, game animal, or fish. For clarity and consistency in terminology used in this section, the revised law substitutes "edible parts" for "edible portions" because "edible parts" is the defined term for this section under Section 62.011(d)(2), Parks and Wildlife Code, revised as Subsection (a)(2) of this section.

(2) Section 62.011(c), Parks and Wildlife Code, refers to a violation of Section 61.022 of that code. Section 61.022 is revised in pertinent part as Section 5101.0402, and the revised law is drafted accordingly.

(3) Section 62.013(a), Parks and Wildlife Code, refers to "Subsections (b) and (c) of this section," meaning Sections 62.013(b) and (c) of that code. The revised law omits the reference to Subsection (c) as unnecessary because that subsection is omitted from

the revised law by the revisor's note to the end of this subchapter.

(4) Section 62.013(b), Parks and Wildlife Code, provides for a Class A Parks and Wildlife Code misdemeanor for violating certain sections of that code, including Section 350.001. Throughout this subchapter, the revised law omits references to Section 350.001, Parks and Wildlife Code, because that section was repealed by Chapter 729, Acts of the 86th Legislature, Regular Session, 2019.

Revised Law

Sec. 5103.0313. CERTAIN HUNTING OR TARGET SHOOTING WITHOUT LANDOWNER'S WRITTEN CONSENT PROHIBITED. (a) This section applies only to a county with a population of 3.3 million or more. This section does not apply to a person hunting or target shooting on a public or private shooting range.

(b) Except as provided by Subsection (d), a person possessing a firearm may not hunt a wild animal or wild bird or engage in target shooting on land owned by another person unless the person has in the person's immediate possession the landowner's written consent to hunt or engage in target shooting on the land.

(c) To be valid, the written consent required by Subsection (b) must:

(1) contain the name of the person permitted to hunt or engage in target shooting on the land;

(2) identify the land on which hunting or target shooting is permitted;

(3) be signed by the landowner or the landowner's lessee, agent, or legal representative; and

(4) show the address and phone number of the person signing the consent.

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

(1) the landowner's lessee, agent, or legal representative; or

(2) a person hunting or target shooting with the landowner or the landowner's lessee, agent, or legal representative. (Parks & Wild. Code, Sec. 62.012.)

Source Law

Sec. 62.012. WRITTEN CONSENT TO HUNT OR TARGET SHOOT REQUIRED. (a) This section applies only to a county having a population of 3.3 million or more. This section does not apply to a person hunting or target shooting on a public or private shooting range.

(b) Except as provided by Subsection (d) of this section, no person possessing a firearm may hunt a wild animal or wild bird, or engage in target shooting on land owned by another unless the person has in his immediate possession the written consent of the owner of the land to hunt or engage in target shooting on the land.

(c) To be valid, the written consent required by Subsection (b) of this section must:

(1) contain the name of the person permitted to hunt or engage in target shooting on the land;

(2) identify the land on which hunting or target shooting is permitted;

(3) be signed by the owner of the land or by an agent, lessee, or legal representative of the owner; and

(4) show the address and phone number of the person signing the consent.

(d) The owner of the land on which hunting or target shooting occurs, the landowner's lessee, agent, or legal representative, and a person hunting or target shooting with the landowner or the landowner's lessee, agent, or legal representative are not required to have in their possession the written consent required by Subsection (b) of this section.

Revisor's Note

Section 62.012(d), Parks and Wildlife Code, provides that "[t]he owner of the land on which hunting or target shooting occurs" and certain other persons are not required to have in their possession the written consent required by Section 62.012(b) of that code. The revised law omits the quoted language as unnecessary because Section 62.012(b), revised as Subsection (b) of this section, only requires written consent if hunting or target shooting on land owned by another person.

Revised Law

Sec. 5103.0314. CERTAIN HUNTING OF EXOTIC ANIMALS PROHIBITED. (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.

(b) A person may not hunt an exotic animal when the person is on:

(1) a public road or the right-of-way of a public road; or

(2) the land of another, unless the person has the express consent of the landowner to hunt for exotic animals.

(c) 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. (Parks & Wild. Code, Secs. 62.015(a), (b), (c), (g).)

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.
>
> (b) No person on a public road or on the right-of-way of a public road may hunt an exotic animal.
>
> (c) No person may hunt on the land of another for an exotic animal without the express consent of the owner of the land to hunt for exotic animals.
>
> (g) A person who violates this section commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5103.0315. DISCHARGE OF FIREARM ACROSS PROPERTY LINE. (a) In this section, "firearm" has the meaning assigned by Section 5103.0201.

(b) A person commits an offense if:

(1) the person knowingly discharges a firearm while hunting or engaging in recreational shooting; and

(2) the projectile from the firearm travels across a property line.

(c) It is a defense to prosecution under this section that the person:

(1) owns the property on both sides of each property line crossed by the projectile; or

(2) has a written agreement with any person who owns property on either side of each property line crossed by the projectile that allows the person to discharge a firearm on, over, or across the property or property line.

(d) The written agreement described by Subsection (c)(2) must:

(1) contain the name of the person allowed to hunt or engage in recreational shooting in a manner described by Subsection (b);

(2) identify the property on either side of the property line crossed by the projectile; and

(3) be signed by any person who owns the property on either side of the line crossed by the projectile.

(e) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(f) If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the person may be prosecuted under either section or both sections. (Parks & Wild. Code, Sec. 62.0121.)

Source Law

Sec. 62.0121. DISCHARGE OF FIREARM ACROSS PROPERTY LINE. (a) In this section, "firearm" has the meaning assigned by Section 62.014(a).

(b) A person commits an offense if:

(1) the person, while hunting or engaging in recreational shooting, knowingly discharges a firearm; and

(2) the projectile from the firearm travels across a property line.

(c) It is a defense to prosecution under this section that the person:

(1) owns the property on both sides of each property line crossed by the projectile; or

(2) has a written agreement with any person who owns property on either side of each property line crossed by the projectile that allows the person to discharge a firearm on, over, or across the property or property line.

(d) The written agreement required under Subsection (c)(2) must:

(1) contain the name of the person allowed to hunt or engage in recreational shooting in a manner described by Subsection (b);

(2) identify the property on either side of the property line crossed by the projectile; and

(3) be signed by any person who owns the property on either side of the line crossed by the

projectile.

(e) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(f) If conduct constituting an offense under this section constitutes an offense under a section of the Penal Code, the person may be prosecuted under either section or both sections.

Revised Law

Sec. 5103.0316. DISPOSITION OF PROPERTY USED IN COMMISSION OF CERTAIN OFFENSES. (a) If a person is finally convicted of an offense under Section 5103.0302, 5103.0304, 5103.0305, 5103.0310, or 5103.0312(e) or a violation of a rule adopted under Section 5103.0310, the court entering judgment of conviction may order any weapon or other personal property used in the commission of the offense or violation, other than a vehicle, aircraft, vessel, or dog, destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court under this section, the department may:

(1) use the forfeited property in the department's normal operation;

(2) sell or transfer the forfeited property; or

(3) destroy the forfeited property.

(c) If property forfeited under this section is disposed of by sale of the property, the sale proceeds shall be deposited in the game, fish, and water safety account. (Parks & Wild. Code, Secs. 62.017(a) (part), (b), (c), (d).)

Source Law

Sec. 62.017. DISPOSITION OF SEIZED PROPERTY. (a) If a person is finally convicted of an offense under Section . . . 62.003, 62.004, 62.005, 62.0065, or 62.011(c), or violation of a rule adopted under Section 62.0065, the court entering judgment of conviction may order any weapon or other personal property used in the commission of the offense or violation destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court as authorized by this section, the department may:

(1) use the property in its normal operation;

(2) sell or transfer the property; or

(3) destroy the property.

(c) This section does not apply to a vehicle, aircraft, vessel, or dog.

(d) If the disposition of property under this section is by sale of the property, the sale proceeds shall be deposited in the game, fish, and water safety

account.

Revisor's Note
(End of Subchapter)

Section 62.013(c), Parks and Wildlife Code, provides that a violation of certain provisions "is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits" in addition to the criminal penalty provided by Sections 62.013(a) and (b). The revised law omits Section 62.013(c) for the reason stated in Revisor's Note (2) to Section 5101.9904. The omitted law reads:

> (c) In addition to the punishments provided in Subsections (a) and (b), a person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

SUBCHAPTER D. HUNTING IN STATE PARKS

Revised Law

Sec. 5103.0401. PROHIBITED ACTS. A person may not hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the department's jurisdiction except as authorized by the commission under this subchapter. (Parks & Wild. Code, Sec. 62.061.)

Source Law

> Sec. 62.061. PROHIBITED ACTS. Except as authorized by the commission under this subchapter, no person may hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the jurisdiction of the department.

Revised Law

Sec. 5103.0402. SEASON. As sound biological practices warrant, the commission may prescribe an open season for recreational hunting in state parks, forts, or sites where size, location, physical conditions, safety, and other uses permit hunting. (Parks & Wild. Code, Sec. 62.062(b).)

Source Law

> (b) After August 31, 1995, as sound biological practices warrant, and after it has established a

classification system for parks in accordance with Section 13.001(b) of this code, the commission may prescribe an open season for recreational hunting in state parks, forts, or sites where size, location, physical conditions, safety, and other uses permit hunting.

Revisor's Note

(1) Section 62.062(a), Parks and Wildlife Code, authorizes the Parks and Wildlife Commission to prescribe an open season in certain areas under certain conditions before August 31, 1995. The revised law omits that provision because that date has passed and any action taken would now take place under Section 62.062(b), Parks and Wildlife Code, revised as this section, which provides the conditions under which the commission may take such action after August 31, 1995. The omitted law reads:

> Sec. 62.062. SEASON. (a) As sound biological management practices warrant and until August 31, 1995, the commission may prescribe an open season for hunting in state parks, forts, or sites where size, location, and other physical conditions permit hunting.

(2) Section 62.062(b), Parks and Wildlife Code, authorizes the Parks and Wildlife Commission to prescribe an open season in certain areas under certain conditions "[a]fter August 31, 1995" and "after it has established a classification system for parks in accordance with Section 13.001(b) of this code." The revised law omits the quoted language as executed because it is after 1995 and the commission established the specified classification system for parks under Subchapter D, Chapter 59, Title 31, Texas Administrative Code, effective January 2, 1997.

Revised Law

Sec. 5103.0403. REGULATORY AUTHORITY. The commission may prescribe the number, size, kind, and sex of wildlife that may be taken and the means and methods of taking wildlife during an open season in a state park, fort, or historic site. (Parks & Wild. Code,

Sec. 62.063.)

Source Law

> Sec. 62.063. REGULATORY AUTHORITY. The commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site.

Revised Law

Sec. 5103.0404. SEA RIM STATE PARK. (a) The commission may provide an open season for recreational hunting in Sea Rim State Park consistent with sound biological management practices normally exercised to protect or use the wildlife resources occurring in the park.

(b) The commission's regulations under this section may not provide for a longer season, a greater seasonal or daily bag limit, or less restrictive means or methods of taking any wildlife resource than are provided in the commission's regulations adopted under Chapter 5101 and Subchapter D, Chapter 5202, for the same year applicable to the remainder of Jefferson County.

(c) The limitations provided in Section 5103.0402 do not apply to commission regulations adopted under this section. (Parks & Wild. Code, Sec. 62.0631.)

Source Law

> Sec. 62.0631. SEA RIM STATE PARK. (a) The commission may provide an open season for recreational hunting in Sea Rim State Park that is not inconsistent with sound biological management practices normally exercised to protect or utilize the wildlife resources occurring therein.
>
> (b) The regulations of the commission under this section may not provide for a longer season, a greater seasonal or daily bag limit, or less restrictive means or methods of taking any wildlife resource than are provided in the regulations of the commission promulgated under the Wildlife Conservation Act of 1983 (Chapter 61 of this code), and Subchapter C, Chapter 64, of this code for the same year applicable to the remainder of Jefferson County.
>
> (c) The limitations provided in Subsections (a) and (b) of Section 62.062 of this code do not apply to the regulations of the commission under this section.

Revisor's Note

Section 62.0631(b), Parks and Wildlife Code, refers to certain regulations "promulgated" by the

Parks and Wildlife Commission. The revised law substitutes "adopted" for "promulgated" for the reasons stated in Revisor's Note (2) to Section 5054.0302.

Revised Law

Sec. 5103.0405. MANAGEMENT OF RESOURCES. The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites. (Parks & Wild. Code, Sec. 62.066.)

Source Law

Sec. 62.066. MANAGEMENT OF RESOURCES. The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites.

Revised Law

Sec. 5103.0406. HUNTING LICENSE REQUIRED. This subchapter does not waive the requirement to hold a hunting license under this code. (Parks & Wild. Code, Sec. 62.067.)

Source Law

Sec. 62.067. GENERAL HUNTING LICENSE. The provisions of this subchapter do not waive the requirement of a hunting license under this code.

Revised Law

Sec. 5103.0407. ARREST. A peace officer or commissioned state park employee may arrest without a warrant a person found committing a violation of this subchapter. (Parks & Wild. Code, Sec. 62.068.)

Source Law

Sec. 62.068. ARREST. A peace officer, game warden, or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

Revisor's Note

Section 62.068, Parks and Wildlife Code, refers to a "peace officer, game warden, or commissioned state park employee." The revised law omits "game

warden" as included in the meaning of "peace officer" because a game warden is a law enforcement officer commissioned under Section 11.019, Parks and Wildlife Code, revised as Sections 2004.0101 and 2004.0102, and commissioned law enforcement officers of the Parks and Wildlife Department are defined as peace officers under Article 2A.001(10), Code of Criminal Procedure.

Revised Law

Sec. 5103.0408. 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. 62.069.)

Source Law

Sec. 62.069. PENALTY. A person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5103.9801. PUBLIC HUNTING DRAWING. (a) The department may conduct public drawings to select applicants for public hunting privileges. In addition to any fee for issuing a hunting permit or license, the department may charge each person who participates in a public drawing a nonrefundable participation fee. The commission shall set the participation fee in an amount sufficient to pay the costs of operating the drawing.

(b) The commission may approve participation fees for drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event. Participation fees under this subsection may not exceed $25 per species for each participant on an application. (Parks & Wild. Code, Sec. 11.0271.)

Source Law

Sec. 11.0271. PUBLIC HUNTING DRAWING; FEES. (a)

The department may conduct public drawings to select applicants for public hunting privileges. The department may charge each person who participates in the drawing a nonrefundable participation fee in addition to any fee for issuing a hunting permit or license. The participation fee shall be set by the commission in an amount sufficient to pay the costs of operating the drawing.

(b) The commission may approve participation fees, not to exceed $25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event.

Revised Law

Sec. 5103.9802. COMPETITIVE HUNTING DOG EVENTS. The department may permit a person to hold or participate in a competitive hunting dog field trial in an area controlled by the department and designated by the commission as a public hunting area if:

(1) a participant in the event is prohibited from:

(A) using a firearm in the event; or

(B) taking the wildlife that is the object of the event; and

(2) the event does not deter other persons from hunting during a designated hunting season. (Parks & Wild. Code, Sec. 62.016.)

Source Law

Sec. 62.016. COMPETITIVE HUNTING DOG EVENTS. The department may permit a person to hold or participate in a competitive hunting dog field trial, in an area controlled by the department and designated by the commission as a public hunting area if:

(1) a participant in the event is prohibited from:

(A) using a firearm in the event; or

(B) taking the wildlife that is the object of the event; and

(2) the event does not deter other persons from hunting during a designated hunting season.

CHAPTER 5104. FISHING

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5104.0101. DEFINITION. In this chapter, "fresh water" means lakes, lagoons, rivers, and streams to their mouths, but does

not include coastal or tidal water. (Parks & Wild. Code, Sec. 66.001(1).)

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.

SUBCHAPTER B. RESTRICTIONS ON FISHING GENERALLY

Revised Law

Sec. 5104.0201. TAKING AQUATIC ANIMAL LIFE FROM PRIVATE WATER WITHOUT CONSENT. (a) A person may not catch, take, or attempt to catch or take any aquatic animal life from privately owned waters without the consent of the landowner or the landowner's agent.

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

(c) In a prosecution for an offense under this section, the burden of proof to show consent is on the defendant. (Parks & Wild. Code, Secs. 66.002, 66.012(a) (part).)

Source Law

Sec. 66.002. CONSENT TO TAKE FISH FROM PRIVATE WATER. (a) No person may catch, take, or attempt to catch or take any aquatic animal life by any means or method from any privately owned waters without the consent of the landowner or the landowner's agent.
(b) In a prosecution under this section, the burden of proof to show consent is on the person charged.

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

Revisor's Note

(1) Section 66.002(a), Parks and Wildlife Code, provides that a person may not catch, take, or attempt to catch or take any aquatic animal life "by any means or method" from privately owned waters without the landowner's consent. The revised law omits the quoted language as unnecessary because the language does not

limit or expand the prescribed prohibition and thus does not add to the clear meaning of the law.

(2) Section 66.002(b), Parks and Wildlife Code, provides that in a prosecution under Section 66.002 of that code, the "person charged" has the burden of proof to show consent. The revised law substitutes "defendant" for "person charged" because, in this context, the terms are synonymous and "defendant" is the more commonly used term.

Revised Law

Sec. 5104.0202. FISHING FROM BRIDGE OR CAUSEWAY. (a) On a road maintained by the Texas Department of Transportation, a person may not:

(1) fish from the deck or road surface of a bridge or causeway on the road; or

(2) deposit or leave dead fish, crab, or bait on the deck or road surface of a bridge or causeway on the road.

(b) The Texas Department of Transportation shall post appropriate signs on all bridges and causeways affected by this section.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.008, 66.012(a) (part).)

Source Law

Sec. 66.008. FISHING FROM BRIDGE. (a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the Texas Department of Transportation.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any bridge or causeway on a road maintained by the Texas Department of Transportation.

(c) The Texas Department of Transportation shall post appropriate signs on all bridges and causeways affected by this section.

[Sec. 66.012]

(a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5104.0203. LEAVING FISH TO DIE. (a) A person commits an offense if the person:

(1) leaves an edible fish or bait fish taken from public water of this state to die; and

(2) does not intend to retain the fish for consumption or bait.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.011, 66.012(a) (part).)

Source Law

> Sec. 66.011. LEAVING FISH TO DIE. A person commits an offense if the person leaves edible fish or bait fish taken from the public waters of this state to die without the intent to retain the fish for consumption or bait.
>
> [Sec. 66.012]
> (a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5104.0204. CATCHING AND RETAINING CERTAIN FISH ON COMMERCIAL FISHING BOAT. (a) A person on board a boat licensed or required to be licensed for a commercial fishing activity under Chapter 5158, 5251, 5253, or 5304 or any other chapter of this code may not catch and retain a fish species whose sale is prohibited when taken from water of this state unless:

(1) the person is on board a boat licensed under Chapter 5158, 5251, 5253, or 5304; and

(2) no commercial fishing plates are on board the boat.

(b) While commercial fishing plates are on board a boat, all commercial fishing regulations, size limits, bag limits, possession limits, and the prohibited possession of noncommercial fish species apply.

(c) While commercial fishing plates are not on board a boat, all recreational fishing regulations, size limits, bag limits, and

possession limits apply.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.012(a) (part), 66.016.)

Source Law

[Sec. 66.012]

(a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Sec. 66.016. COMMERCIAL FISHING REGULATIONS APPLICABLE IF COMMERCIAL PLATES ON BOARD. (a) A person on board a boat licensed or required to be licensed for a commercial fishing activity under Chapter 47, 76, 77, or 78, or any other chapter of this code may not catch and retain any fish species whose sale is prohibited when taken from Texas waters. While commercial fishing plates are on board, all commercial fishing regulations, size limits, bag limits, possession limits, and the prohibited possession of noncommercial fish species apply.

(b) Subsection (a) of this section does not apply to a person on board a boat licensed under Chapter 47, 76, 77, or 78 of this code if no commercial fishing plates are on board. While no commercial fishing plates are on board, all recreational fishing regulations, size limits, bag limits, and possession limits apply.

Revisor's Note

Section 66.016, Parks and Wildlife Code, refers to a boat licensed or required to be licensed under Chapter 47, 76, 77, or 78 of that code. The pertinent parts of Chapters 47, 76, 77, and 78 providing for the licensing of a boat are revised as Chapters 5158, 5304, 5251, and 5253, respectively, and the revised law is drafted accordingly.

Revised Law

Sec. 5104.0205. PLACING EXPLOSIVE OR HARMFUL SUBSTANCE IN WATER. (a) Except as provided by Subsection (b), a person may not place in water of this state an explosive, poison, or other substance or thing harmful to fish.

(b) Subsection (a) does not apply to the use of an explosive necessary for construction purposes if the use is authorized in writing by the department.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.003, 66.012(b) (part).)

Source Law

> Sec. 66.003. PLACING EXPLOSIVES OR HARMFUL SUBSTANCES IN WATER. (a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.
>
> (b) Subsection (a) of this section does not apply to the use of explosives necessary for construction purposes when the use is authorized in writing by the department.
>
> [Sec. 66.012]
>
> (b) A person who violates Section 66.003, . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 66.003(a), Parks and Wildlife Code, provides that a person may not place in the water of this state a substance or thing "deleterious" to fish. The revised law substitutes "harmful" for "deleterious" because, in context, the terms are synonymous and "harmful" is more consistent with modern usage.

Revised Law

Sec. 5104.0206. PROHIBITED CONDUCT IN FISHING TOURNAMENTS. (a) In this section, "fishing tournament" means a contest in which a prize is to be awarded to one or more participants based on the weight, length, number, or type of fish caught by the participants or based on any other criteria applicable to the fish caught.

(b) A person commits an offense if, with intent to affect the outcome of a fishing tournament, the person:

(1) provides, sells, or offers to provide or sell a fish to a participant in the tournament for the purpose of representing that the fish was caught by the participant in the course of the tournament;

(2) alters the length or weight of a fish for the purpose of representing that the fish as entered in the tournament

was that length or weight when caught; or

(3) enters a fish in the tournament that was taken in violation of any provision of this code or a proclamation or regulation of the commission adopted under this code.

(c) A fishing tournament participant commits an offense if, with intent to affect the outcome of the tournament, the participant:

(1) accepts or agrees to accept a fish from another person for the purpose of representing that the fish was caught by the participant in the course of the tournament; or

(2) represents that a fish was caught by the participant in the course of the tournament if the fish was not actually caught:

(A) by that participant; or

(B) during the course of that tournament.

(d) A person commits an offense if the person:

(1) sponsors or conducts a fishing tournament;

(2) knows of the occurrence in the tournament of an activity prohibited by Subsection (b) or (c); and

(3) does not immediately notify a peace officer commissioned by the executive director of the occurrence.

(e) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense occurred during a tournament in which the value in money or goods of a prize or combination of prizes to be awarded to an individual or a team in a single award category is $10,000 or more. (Parks & Wild. Code, Sec. 66.023.)

Source Law

Sec. 66.023. FRAUD IN FISHING TOURNAMENTS. (a) In this section, "fishing tournament" means a contest in which a prize is to be awarded to one or more participants in the contest based on the weight, length, number, or type of fish caught by the participants or based on any other criteria applicable to the fish caught.

(b) A person commits an offense if, with intent to affect the outcome of a fishing tournament:

(1) the person provides, offers to provide, sells, or offers to sell a fish to a

participant in the tournament for the purpose of representing that the fish was caught by the participant in the course of the tournament;

(2) the person, as a participant in the tournament, accepts or agrees to accept a fish from another person for the purpose of representing that the fish was caught by the participant in the course of the tournament;

(3) the person, as a participant in the tournament, represents that a fish was caught by the person in the course of the tournament when in fact the fish was not caught by that person or the fish was not caught in the course of that tournament;

(4) the person alters the length or weight of a fish for the purpose of representing that the fish as entered in the tournament was that length or weight when caught; or

(5) the person enters a fish in the tournament that was taken in violation of any provision of this code or a proclamation or regulation of the commission adopted under this code.

(c) A person commits an offense if the person sponsors or conducts a fishing tournament and knows of the occurrence in the tournament of activity prohibited by Subsection (b) of this section and does not immediately notify a law enforcement officer commissioned by the director of its occurrence.

(d) An offense under this section is a Class A misdemeanor, except that if the offense occurred during a tournament in which any prize or combination of prizes to be awarded for any one category for which an award is given, whether the prize or prizes are to an individual or a team, is worth $10,000 or more in money or goods, the offense is a felony of the third degree.

Revisor's Note

Section 66.023(c), Parks and Wildlife Code, refers to a "law enforcement officer" commissioned by the executive director of the Parks and Wildlife Department. The revised law substitutes "peace officer" for "law enforcement officer" because the terms are synonymous and "peace officer" is more commonly used.

SUBCHAPTER C. USE OF CERTAIN DEVICES AND FISHING EQUIPMENT

Revised Law

Sec. 5104.0301. POSSESSION OF UNLAWFUL FISHING DEVICES IN PUBLIC WATER. (a) Except as provided by Subsection (b), a person may not possess a device designed to catch fish or other aquatic wildlife in or on public water of this state if the use of the device is not permitted by:

(1) this code; or

(2) a commission proclamation under this code.

(b) Subsection (a) does not apply to a device that is on board a vessel that is:

(1) in public coastal water; and

(2) either:

(A) in port; or

(B) in a marked channel and traveling directly to or from public water in this state where the use of the device is permitted.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.006(a), 66.012(a) (part).)

Source Law

> Sec. 66.006. POSSESSION OF ILLEGAL FISHING DEVICES. (a) No person may possess a device designed to catch fish or other aquatic wildlife in or on the public water of this state where the use of the device is not permitted by this code or by a proclamation of the commission under this code unless the device is on board a vessel that is in public coastal water and is:
>
> (1) in port; or
>
> (2) in a marked channel and the vessel is going directly to or from public water in this state where the use of the device is permitted.
>
> [Sec. 66.012]
>
> (a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

> Section 66.006(a), Parks and Wildlife Code, refers to a vessel in a marked channel "going" to or from certain public water. The revised law substitutes "traveling" for "going" because, in context, the terms are synonymous and "traveling" is more commonly used.

Revised Law

Sec. 5104.0302. POSSESSION OF UNLAWFUL SEINE, STRIKE NET, GILL NET, OR TRAMMEL NET ON OR NEAR PUBLIC COASTAL WATER. (a) A person may not possess a seine, strike net, gill net, or trammel net

on or within 500 yards of public coastal water of this state if the use of the seine or net for catching fish is not permitted by:

(1) this code; or

(2) a commission proclamation under this code.

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

(c) It is a defense to prosecution under this section that the person possessed the seine, strike net, gill net, or trammel net within 500 yards of public coastal water of this state for a lawful fishing activity. (Parks & Wild. Code, Secs. 66.006(c), 66.012(b) (part), (c) (part).)

Source Law

> [Sec. 66.006]
> (c)(1) No person may possess a seine, strike net, gill net, or trammel net on or within 500 yards of any public coastal water of this state where the use of the seine or net for the catching of fish is not permitted by this code or by a proclamation of the commission under this code.
> (2) It is a defense to prosecution under this subsection that the seine, strike net, gill net, or trammel net was possessed within 500 yards of a public coastal water of this state for a lawful fishing activity.
>
> [Sec. 66.012]
> (b) A person who violates Section . . . 66.006(c), . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.
> (c) An offense under Section . . . 66.006(c), or . . . 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.

Revised Law

Sec. 5104.0303. USE OF CERTAIN FISHING DEVICES IN CERTAIN NAVIGATION DISTRICTS PROHIBITED. (a) A person may not use a seine, net, trotline, or other mechanical or physical device, except a hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water

Code.

(b) Possession of a mechanical device described by Subsection (a) in a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of that subsection.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.009, 66.012(b) (part).)

Source Law

> Sec. 66.009. NAVIGATION DISTRICTS. (a) No person may use a seine or net of any type, trotline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.
>
> (b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.
>
> [Sec. 66.012]
>
> (b) A person who violates Section . . . 66.009, . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5104.0304. USE OF NETS IN CERTAIN CANALS AND WATERWAYS PROHIBITED. (a) This section applies only to a county in which:

(1) 60 percent or more of the total area of the county is regularly covered by water; and

(2) the majority of the total area of a wildlife refuge for species of wildlife on the federal endangered species list is located.

(b) A person may not:

(1) use a net, except a hand-cast net or a minnow seine, to take or attempt to take fish from a canal or other artificial or man-made waterway within a subdivision platted under Subchapter A, Chapter 212, Local Government Code, if two or more residences are adjacent to the canal or waterway; or

(2) set a net in the mouth of a canal or waterway

described by Subdivision (1) that interferes with or impedes the free movement of fish into or out of the canal or waterway.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.0091, 66.012(b) (part).)

Source Law

> Sec. 66.0091. FISHING IN CERTAIN MAN-MADE WATERWAYS. (a) This section applies to a county in which at least 60 percent of the total area of the county is regularly covered by water and in which the majority of the total area of a wildlife refuge for species of wildlife on the federal endangered species list is located.
>
> (b) No person may take or attempt to take fish of any variety by the use of nets, except hand-cast nets or minnow seines, from any canal or other artificial or man-made waterway within any platted subdivision platted under Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), if two or more residences abut onto the canal or waterway.
>
> (c) No person may set any net in the mouth of a canal or waterway described in this section that interferes with or impedes the free movement of fish into or out of the canal or waterway.
>
> [Sec. 66.012]
>
> (b) A person who violates Section . . . 66.0091 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Revisor's Note

(1) Section 66.0091(b), Parks and Wildlife Code, prohibits a person from taking or attempting to take "fish of any variety" under certain circumstances. The revised law omits "of any variety" as unnecessary because, in this context, the phrase is included in the meaning of "fish" and the language does not add to the clear meaning of the law.

(2) Section 66.0091(b), Parks and Wildlife Code, refers to Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes). Article 974a was codified by Chapter 149, Acts of the 70th Legislature, Regular Session, 1987, as Subchapter A, Chapter 212,

Local Government Code. The revised law is drafted accordingly.

(3) Section 66.0091(b), Parks and Wildlife Code, refers to residences that "abut onto" a canal or waterway. The revised law substitutes "are adjacent to" for "abut onto" because the phrases have the same meaning and "are adjacent to" is more consistent with modern usage.

Revised Law

Sec. 5104.0305. REQUIRED FLOATS FOR SEINE, STRIKE NET, GILL NET, OR TRAMMEL NET TO CATCH FINFISH. (a) A person may not possess or use for the purpose of catching a finfish a seine, strike net, gill net, or trammel net in or on public water of this state unless the seine or net is equipped with floats that are:

(1) placed at intervals of six feet or less; and

(2) sufficiently buoyant to maintain the seine or net in an upright position in the water so that the floats are visible on the surface of the water thereby avoiding a hazard to motorboat traffic.

(b) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.006(b), 66.012(a) (part).)

Source Law

[Sec. 66.006]

(b) No person may possess or use for the purpose of catching finfish a seine, strike net, gill net, or trammel net in or on the public water of this state unless the seine, strike net, gill net, or trammel net is equipped with floats at intervals of six feet or less and of sufficient buoyancy to maintain the seine, strike net, gill net, or trammel net in an upright position in the water so that the floats are visible on the surface of the water thereby avoiding a hazard to motorboat traffic.

[Sec. 66.012]

(a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5104.0306. REQUIRED TAGS FOR CERTAIN NETS AND SEINES. (a) Except as provided by Subsection (b), a person may not place or use a net or seine in coastal water of this state unless the net or seine has attached to it a tag that discloses the name and address of the owner of the net or seine.

(b) This section does not apply to a person who holds a commercial fishing license under Chapter 5158.

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

(d) An authorized department employee may:

(1) seize a net or seine in coastal water that is in violation of this section; and

(2) retain the net or seine as evidence.

(e) If the owner of a net or seine seized under Subsection (d) is not identified before the 91st day after the date of the seizure, the net or seine may be disposed of under Section 2053.0403 or as provided by other law. (Parks & Wild. Code, Secs. 66.215, 66.218(a) (part).)

Source Law

Sec. 66.215. TAGS FOR NONCOMMERCIAL NETS AND SEINES. (a) Except as provided in Subsection (b) of this section, no person may place or use in the coastal water of this state a net or seine unless there is attached to the net or seine a tag that discloses the name and address of the owner of the net or seine.

(b) This section does not apply to a person who holds a commercial fishing license under Chapter 47 of this code or to a net or seine on which there is attached the license required by Section 47.015 of this code.

(c) Authorized employees of the department may seize a net or seine in coastal water in violation of this section and retain the net or seine as evidence. If the owner of the net or seine seized under this subsection is not identified before the expiration of 90 days after its seizure, the net or seine may be disposed of under Section 12.011 of this code or as provided by other law.

[Sec. 66.218]

(a) . . . a person who violates a provision of this subchapter or . . . commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 66.215(b), Parks and Wildlife Code, provides that Section 66.215 of that code does not apply to "a net or seine on which there is attached the license required by Section 47.015 of [that] code." The revised law omits the quoted language because Section 16, Chapter 723, Acts of the 72nd Legislature, Regular Session, 1991, repealed Section 47.015, which required a seine or net license under certain circumstances, and no other provision of the Parks and Wildlife Code contains a similar license requirement.

Revised Law

Sec. 5104.0307. REQUIRED TAGS FOR CERTAIN TROTLINES; TROTLINE REGULATIONS. (a) In this section, "salt water" means all coastal or tidal water.

(b) This section does not apply to a person fishing trotlines who holds a commercial finfish fisherman's license.

(c) The department shall issue numbered trotline tags for trotlines used in public salt water.

(d) A person may not use a trotline in public salt water unless the trotline has attached to it a trotline tag issued under this section for each 300 feet of trotline or fractional part of 300 feet.

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

(f) The department shall collect for each trotline tag issued under this section a fee of $2 or a greater amount set by the commission.

(g) The commission may adopt regulations for the safe use of trotlines and to implement this section. (Parks & Wild. Code, Secs. 66.001(3), 66.206, 66.218(a) (part).)

Source Law

Sec. 66.001. DEFINITIONS. In this chapter:

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

Sec. 66.206. TROTLINE TAGS. (a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet. The department shall collect a fee of $2 for each tag issued or an amount set by the commission, whichever amount is more.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) This section does not apply to a person fishing trotlines under a commercial finfish fisherman's license.

[Sec. 66.218]

(a) . . . 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.

Revised Law

Sec. 5104.0308. WILFUL DESTRUCTION OF FISHING DEVICE. (a) A person may not wilfully, with intent to injure the owner of a boat, seine, net, or other fishing device, take the device into prohibited water or use the device to take fish unlawfully, so as to cause the destruction of the device.

(b) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.005, 66.012(b) (part).)

Source Law

Sec. 66.005. WILFUL DESTRUCTION OF BOAT, SEINE, OR NET. No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

[Sec. 66.012]

(b) A person who violates Section . . . 66.005, . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

SUBCHAPTER D. MANUFACTURE, SALE, OR USE OF CERTAIN ELECTRICITY-PRODUCING DEVICES

Revised Law

Sec. 5104.0401. DEFINITION. In this subchapter, "electricity-producing device" includes any device that:

(1) produces or directs an electrical current; and

(2) is used to shock, stun, disorient, or kill fish. (Parks & Wild. Code, Sec. 66.004(f).)

Source Law

(f) For purposes of this section, an "electricity-producing device" includes any device that produces or directs an electrical current and is used to shock, stun, disorient, or kill fish.

Revised Law

Sec. 5104.0402. MANUFACTURE, SALE, OR USE PROHIBITED; OFFENSE. (a) A person may not:

(1) manufacture or sell an electricity-producing device designed to shock fish; or

(2) except as provided by Section 5104.0403:

(A) possess an electricity-producing device commonly used to shock fish, including:

(i) in a boat; or

(ii) within one-half mile of any water of this state; or

(B) catch fish by using an electricity-producing device designed to shock fish.

(b) A person commits an offense if the person violates this section. An offense under this subsection 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 subsection; 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 subsection. (Parks & Wild. Code, Secs. 66.004(a), (b), (c), 66.012(b) (part), (c) (part), (d) (part).)

Source Law

> Sec. 66.004. TAKING OF FISH BY ELECTRIC SHOCK PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (d) of this section, no person may catch fish by using an electricity-producing device designed to shock fish.
>
> (b) No person may manufacture or sell an electricity-producing device designed to shock fish.
>
> (c) Except as provided by Subsection (d) of this section, no person may possess an electricity-producing device commonly used to shock fish. The possession of an electricity-producing device commonly used to shock fish, in a boat or within one-half mile of any water of this state, is a violation of this section by the person in possession of the device.
>
> [Sec. 66.012]
>
> (b) A person who violates Section . . . 66.004, . . . of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.
>
> (c) An offense under Section 66.004, . . . 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 66.004 or . . . 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.

Revised Law

Sec. 5104.0403. EXEMPTION. This subchapter does not prohibit the use of an electricity-producing device if:

(1) the device is:

(A) not more than three volts; and

(B) connected to a shrimp trawl used:

(i) by an operator of a licensed commercial gulf shrimp boat;

(ii) in the outside water of this state; and

(iii) at depths more than seven fathoms; and

(2) the shrimp trawl and the commercial gulf shrimp boat are operated in compliance with the provisions of Chapter 5251 relating to the taking of shrimp. (Parks & Wild. Code, Sec.

66.004(d).)

Source Law

> (d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

Revised Law

Sec. 5104.0404. NUISANCE. Possession or use of an electricity-producing device in violation of this subchapter is a nuisance. (Parks & Wild. Code, Sec. 66.004(e) (part).)

Source Law

> (e) An electricity-producing device used or possessed in violation of this section is a nuisance, and . . .

Revised Law

Sec. 5104.0405. AUTHORITY OF OFFICER ON PROBABLE CAUSE OF VIOLATION. A department officer who has probable cause to believe that an electricity-producing device is being possessed or used in violation of this subchapter may:

(1) search a boat, vehicle, campsite, or person;

(2) seize the device; and

(3) hold the device as evidence for the trial of the person in possession of the device. (Parks & Wild. Code, Sec. 66.004(e) (part).)

Source Law

> (e) . . . an officer of the department who has probable cause to believe that a device is used or possessed in violation of this section may search a boat, vehicle, campsite, or person and seize the device and hold it as evidence for the trial of the person in possession of the device. . . .

Revised Law

Sec. 5104.0406. DESTRUCTION OF DEVICE. If a person is found guilty of an offense under Section 5104.0402, the department shall destroy the person's electricity-producing device unless:

(1) the device may be used by the department for

research purposes; or

(2) on request, the department releases the device to a state-supported college or university for use in marine or aquatic research. (Parks & Wild. Code, Sec. 66.004(e) (part).)

Source Law

> (e) . . . If the person is found guilty of a violation of this section, the department shall be responsible for the destruction of the device unless it can be utilized by the department for research purposes, or upon request the device may be released to a state-supported college or university for use in marine or aquatic research. . . .

Revised Law

Sec. 5104.0407. IMMUNITY FROM LIABILITY. (a) A department officer who seizes or destroys an electricity-producing device is immune from liability for any damages resulting from the seizure or destruction.

(b) The department is immune from liability for any damages resulting from the seizure, destruction, or disposition of an electricity-producing device. (Parks & Wild. Code, Sec. 66.004(e) (part).)

Source Law

> (e) . . . An officer of the department who seizes or destroys a device is immune from liability for any damages resulting from seizure or destruction, and the department is likewise immune from liability for any damages resulting from seizure, destruction, or disposition thereof.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5104.9801. PUBLIC FISHING DRAWING. (a) The department may conduct public drawings to select applicants for public fishing or other special events privileges. In addition to any fee for issuing a permit or fishing license, the department may charge each person who participates in a public drawing a nonrefundable participation fee. The commission shall set the participation fee in an amount sufficient to pay the costs of operating the drawing.

(b) The commission may approve participation fees for

drawings for special fishing or other special programs, packages, or events that exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event. Participation fees under this subsection may not exceed $25 per species or event for each participant on an application. (Parks & Wild. Code, Sec. 11.0272.)

Source Law

> Sec. 11.0272. PUBLIC FISHING AND SPECIAL EVENTS DRAWING; FEES. (a) The department may conduct public drawings to select applicants for public fishing or other special events privileges. The department may charge each person who participates in the drawing a nonrefundable participation fee in addition to any fee for issuing a permit or fishing license. The participation fee shall be set by the commission in an amount sufficient to pay the costs of operating the drawing.
>
> (b) The commission may approve participation fees, not to exceed $25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event.

Revised Law

Sec. 5104.9802. EXPIRATION, TRANSFER, AND REPLACEMENT OF CERTAIN TAGS. (a) A tag issued under this chapter is valid only during the yearly period for which the tag is issued without regard to the date the tag is acquired.

(b) Each yearly period for a tag 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 tag issued under this chapter may not be transferred to another person.

(d) The commission by regulation may prescribe a form to be used and fee to be charged for a duplicate or replacement tag.

(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 . . . tags, and . . . issued under the authority of Chapter 66 of this code may not be transferred to another person . . . . The commission, . . . may prescribe, by regulation, forms to be used and fees to be charged . . . for duplicate or replacement . . . tags, and . . . .

Revisor's Note

(1) Section 66.017, Parks and Wildlife Code, refers to tags 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 tags under that chapter are revised in this chapter. Although this chapter also includes the revision of Section 11.0272, Parks and Wildlife Code, revised as Section 5104.9801, it is appropriate to refer to the chapter in its entirety because Section 11.0272 does not provide for the issuance of tags or otherwise relate to tags.

(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 tags 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 tags are acquired, and the revised law is drafted accordingly.

Revised Law

Sec. 5104.9803. HANDFISHING. (a) In this section, "handfishing" means fishing for catfish by the use of hands only and without any other fishing device such as a gaff, pole hook, trap, or spear.

(b) A person may engage in handfishing in public fresh water if the person has the required fishing license and freshwater fishing stamp issued by the department.

(c) The commission may adopt rules related to handfishing. (Parks & Wild. Code, Sec. 66.115.)

Source Law

> Sec. 66.115. HANDFISHING. (a) In this section, "handfishing" means fishing for catfish by the use of hands only and without any other fishing device such as a gaff, pole hook, trap, or spear.
>
> (b) A person holding the required fishing license and freshwater fishing stamp issued to the person by the department may engage in handfishing in the public fresh water of this state.
>
> (c) The commission may adopt rules related to handfishing.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5104.9901. CRIMINAL PENALTY FOR RULE VIOLATION. (a) A person commits an offense if the person violates a commission rule adopted under this chapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.012(a) (part), 66.121 (part).)

Source Law

> [Sec. 66.012]
>
> (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.
>
> Sec. 66.121. PENALTY. A person who violates . . . a regulation adopted under Section 66.115 of this code 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 Subchapter A, Chapter 66, of that code commits a Class C Parks and Wildlife Code misdemeanor. Section 66.121, Parks and Wildlife Code, provides that a person who violates a "regulation" adopted under Section 66.115 of that code commits an offense that is a Class C Parks and Wildlife Code misdemeanor. The revised law substitutes "rule" for "regulation" for consistency in terminology used in this chapter because Section 66.115, Parks and Wildlife Code, revised as Section 5104.9803, authorizes the commission to adopt certain "rules" and under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. Additionally, the revised law applies the general criminal penalty for a rule violation provided under this section to the entire chapter because Subchapter A, Chapter 66, and Section 66.115 are revised in this chapter. Although this chapter also includes the revision of other provisions, it is appropriate to refer to the chapter in its entirety because those other provisions do not contain rulemaking authority.

Revised Law

Sec. 5104.9902. CERTAIN PROHIBITED DEVICES PLACED IN PUBLIC FRESH WATER. (a) A device designed to catch fish or other aquatic wildlife resources that is placed in the public fresh water of this state in violation of a law or a commission proclamation is a nuisance.

(b) A peace officer:

(1) shall confiscate and dispose of a device that is a nuisance under Subsection (a) as provided by Subchapter D, Chapter 5953; and

(2) is immune from liability for the destruction of a device that is a nuisance under Subsection (a). (Parks & Wild.

Code, Sec. 66.102.)

Source Law

Sec. 66.102. PLACING PROHIBITED DEVICES IN PUBLIC WATER. A device designed to catch fish or other aquatic wildlife resources that is placed in the public fresh water of this state in violation of a law or commission proclamation is a nuisance, and a game warden or other peace officer shall confiscate and dispose of the device as provided by Section 12.1104 or 12.1105, as applicable. A game warden or other peace officer is immune from liability for the destruction of devices found in violation of this section.

Revisor's Note

Section 66.102, Parks and Wildlife Code, refers to a "game warden or other peace officer." The revised law omits "game warden" for the reason stated in the revisor's note to Section 5103.0407.