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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE F. PROVISIONS RELATING TO SPECIFIC TYPES OF AQUATIC WILDLIFE

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE F. PROVISIONS RELATING TO SPECIFIC TYPES OF AQUATIC WILDLIFE

CHAPTER 5251. SHRIMP

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5251.0101. DEFINITIONS. In this chapter:

(1) "Bait bay" includes a major bay, Copano Bay east of a line running from Rattlesnake Point to the northeastern boundary of the Bayside township, Nueces Bay from the bridge at State Highway 181 west to the second overhead power line dissecting the bay, Upper Laguna Madre, Baffin Bay, Alazan Bay, Carlos Bay, Baroom Bay, Lower Laguna Madre, and the Gulf Intracoastal Waterway exclusive of all tributaries.

(2) "Bait shrimp dealer" means a person who operates an established place of business in a coastal county of this state for compensation or profit for the purpose of handling shrimp caught for use as bait from inside water. The term does not include a person who holds a wholesale fish dealer's license under Subchapter H, Chapter 5158.

(3) "Coastal water" means the salt water of this state, including any portion of the Gulf of Mexico within the jurisdiction of this state.

(4) "Commercial bait shrimp boat" means a boat that is:

(A) required to be numbered or registered under the laws of the United States or this state; and

(B) used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from inside water for compensation or for the purpose of sale, barter, or exchange.

(5) "Commercial bay shrimp boat" means a boat that is:

(A) required to be numbered or registered under the laws of the United States or this state; and

(B) used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from inside water for compensation or for the purpose of sale, barter, or exchange.

(6) "Commercial gulf shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products for compensation or for the purpose of sale, barter, or exchange from outside water or from salt water outside this state, and that unloads at a port or other point in this state without having been previously unloaded outside this state.

(7) "Individual bait shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(8) "Inside water" means every bay, inlet, outlet, pass, river, stream, and other body of water:

(A) landward from the shoreline of this state along the Gulf of Mexico;

(B) contiguous to or connected with the Gulf of Mexico and not a part of the Gulf of Mexico;

(C) within which the tide regularly rises and falls; and

(D) within which saltwater shrimp are found or into which saltwater shrimp migrate.

(9) "Major bay" means the deeper, major bay areas of inside water, exclusive of tributary bays, bayous, and inlets, lakes, and rivers. The term includes:

(A) Aransas Bay;

(B) Ayres Bay;

(C) Carlos Bay;

(D) Corpus Christi Bay;

(E) East Galveston Bay;

(F) Espiritu Santo Bay;

(G) Galveston Bay;

(H) Lavaca Bay seaward of State Highway 35;

(I) Matagorda Bay, including East Matagorda Bay;

(J) Mesquite Bay;

(K) Sabine Lake north of Cameron Causeway;

(L) San Antonio Bay seaward of a line from McDowell Point to Grassy Point to Marker 32 on the Victoria Barge Canal;

(M) Tres Palacios Bay south of a line from Grassy Point to the mouth of Pilkerton Bayou;

(N) Trinity Bay; and

(O) West Galveston Bay.

(10) "Nursery area" includes a tributary bay, bayou, inlet, lake, and river that is proven to serve as a significant growth and development environment for postlarval and juvenile shrimp. The term does not include outside water, a major bay, or a bait bay.

(11) "Outside water" means:

(A) the salt water of this state contiguous to and seaward from the shoreline of this state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and

(B) any portion of the Gulf of Mexico extending from the shoreline seaward that is within the jurisdiction of this state.

(12) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another. (Parks & Wild. Code, Secs. 77.001(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (14), (15).)

Source Law

Sec. 77.001. DEFINITIONS. In this chapter:

(1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.

(2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.

(3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of the state.

(4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake north of Cameron Causeway, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay (including East Matagorda Bay), Tres Palacios Bay south of a line from Grassy Point to the mouth of Pilkerton Bayou, Espiritu Santo Bay, Lavaca Bay seaward of State Highway 35, San Antonio Bay seaward of a line from McDowell Point to Grassy Point to Marker 32 on the Victoria Barge Canal, Ayres Bay, Carlos Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets, lakes, and rivers.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit

for the purpose of handling shrimp caught for use as bait from the inside water of this state, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(14) "Bait bays" includes major bays, Copano Bay east of a line running from Rattlesnake Point to the northeastern boundary of the Bayside township, Nueces Bay from the bridge at State Highway 181 west to the second overhead power line dissecting the bay, Upper Laguna Madre, Baffin Bay, Alazan Bay, Carlos Bay, Baroom Bay, Lower Laguna Madre, and the Gulf Intracoastal Waterway exclusive of all tributaries.

(15) "Nursery areas" includes tributary bays, bayous, inlets, lakes, and rivers, which are proven to serve as significant growth and development environments for postlarval and juvenile shrimp not including the outside waters, major bays, or bait bays as defined in this section.

Revisor's Note

(1) Section 77.001(6), Parks and Wildlife Code, refers to the "outside water of the state." The revised law omits "of the state" because "outside water" is the defined term for this chapter and includes the concept that the water described by the definition is located within the jurisdiction of the state.

(2) Sections 77.001(7) and (10), Parks and Wildlife Code, refer to the "inside water of this state" and Section 77.001(8) refers to the "inside water of the state." The revised law omits "of this state" and "of the state" because "inside water" is the defined term for this chapter and includes the concept that the water described by the definition is located within the jurisdiction of the state.

(3) Section 77.001(12), Parks and Wildlife Code, defines the terms "second offense" and "third and subsequent offenses" for purposes of Chapter 77 of that code. The revised law omits the definitions as unnecessary because those terms are not used elsewhere in Chapter 77. The omitted law reads:

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

SUBCHAPTER B. REGULATION OF SHRIMP GENERALLY

Revised Law

Sec. 5251.0201. REGULATION BY PROCLAMATION; OFFENSE. (a) The commission by proclamation may regulate the catching, possession, purchase, and sale of shrimp.

(b) A proclamation issued under Subsection (a) must contain findings by the commission that support the need for the proclamation. In determining the need for a proclamation, the commission shall consider:

(1) measures to prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery;

(2) measures based on the best scientific information available;

(3) measures to manage shrimp throughout their range;

(4) measures, where practicable, that will promote efficiency in utilizing shrimp resources, except that economic allocation may not be the sole purpose of the measures;

(5) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(6) measures that will enhance enforcement.

(c) A proclamation issued under Subsection (a) may:

(1) prescribe the time, place, conditions, and means and manner of catching shrimp; and

(2) limit the quantity and size of shrimp that may be caught, possessed, sold, or purchased.

(d) A measure concerning the sale and purchase of shrimp under Subsection (c)(2) may only be implemented at the first sale or exchange transaction.

(e) A proclamation issued under Subsection (a) prevails over:

(1) any conflicting provision of this chapter to the

extent of the conflict; and

(2) a proclamation of the commission issued under Chapter 5101.

(f) A person commits an offense if the person violates a proclamation issued under Subsection (a). An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 77.007(a), (b), (c), (d), (e), 77.020(a) (part).)

Source Law

Sec. 77.007. REGULATION OF CATCHING, POSSESSION, PURCHASE, AND SALE OF SHRIMP. (a) The commission by proclamation may regulate the catching, possession, purchase, and sale of shrimp. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery;

(2) measures based on the best scientific information available;

(3) measures to manage shrimp throughout their range;

(4) measures, where practicable, that will promote efficiency in utilizing shrimp resources, except that economic allocation may not be the sole purpose of the measures;

(5) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(6) measures which will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of shrimp that may be caught, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of catching shrimp. However, measures dealing with sale and purchase may only be implemented at first sale or exchange transaction.

(d) A proclamation of the commission under this section prevails over:

(1) any conflicting provision of this chapter to the extent of the conflict; and

(2) a proclamation of the commission issued under the Wildlife Conservation Act of 1983 (Chapter 61 of this code).

(e) A person who violates a proclamation issued under Subsection (a) of this section commits an offense. An offense under this section is punishable as provided by Subsection (a) of Section 77.020 of this code.

[Sec. 77.020]

(a) [A person who violates . . . commits an

offense that is] a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

(1) Sections 77.007(a) and (d), Parks and Wildlife Code, refer to a proclamation issued under "this section," meaning Section 77.007 of that code. For consistency in terminology used in this section, the revised law substitutes "Subsection (a)" for "this section" because the provision of Section 77.007 authorizing issuance of a proclamation is revised as that subsection.

(2) Section 77.007(e), Parks and Wildlife Code, provides that a person who violates a proclamation issued under Subsection (a) commits an offense that is "punishable as provided by Subsection (a) of Section 77.020 of this code." For clarity and the convenience of the reader, the revised law substitutes "a Class C Parks and Wildlife Code misdemeanor" for the quoted language because Section 77.020(a) provides that an offense under that provision is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5251.0202. SHRIMP MANAGEMENT PLAN REQUIRED FOR PROCLAMATION. The commission may issue a proclamation under this chapter only if:

(1) the commission has approved and adopted a shrimp management plan and economic impact analysis prepared by the department as provided by Section 5251.0203; and

(2) the proclamation is shown to be consistent with the shrimp management plan. (Parks & Wild. Code, Sec. 77.007(f).)

Source Law

(f) The commission shall make no proclamation under this chapter until it has approved and adopted a shrimp management plan and economic impact analysis prepared by the department as provided in Section 77.004 and unless such proclamation is shown to be consistent with the shrimp management plan.

Revisor's Note

Section 77.007(f), Parks and Wildlife Code, refers to "a shrimp management plan and economic impact analysis prepared by the department as provided in Section 77.004." Section 77.004 requires the Parks and Wildlife Department to conduct continuous research of the shrimp population and the shrimp industry, but does not expressly require the department to prepare a shrimp management plan or economic impact analysis as described in Section 77.007(f). Section 77.005(a), Parks and Wildlife Code, refers to "the shrimp management plan required by Section 77.007 and the research conducted under Section 77.004" in requiring the department to study shrimp resources and the shrimp industry and report to the Parks and Wildlife Commission and the legislature. Because Section 77.005(a) indicates that the research required under Section 77.004 is distinct from the shrimp management plan contemplated in Sections 77.005(a) and 77.007(f), and it is not clear which provision requires the preparation of the shrimp management plan, the revised law retains the reference to Section 77.004, revised as Section 5251.0203, to preserve any ambiguity.

Revised Law

Sec. 5251.0203. SHRIMP RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of shrimp;

(2) factors affecting the increase or decrease in shrimp stocks in both an annual and long-term cycle;

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

(4) industrial and other pollution of the water

naturally frequented by shrimp;

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in this state;

(6) environmental parameters in the bay and estuary areas that may serve as limiting factors of shrimp population abundance;

(7) other factors that, based on the best scientific information available, may affect the health and well-being of the economically important shrimp resources; and

(8) alternative management measures for shrimp that may be considered for implementation in the management regime.

(b) The department or an agency designated by the department may conduct the research. (Parks & Wild. Code, Sec. 77.004.)

Source Law

> Sec. 77.004. RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:
>
> (1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of shrimp;
>
> (2) factors affecting the increase or decrease in shrimp stocks in both an annual and long-term cycle;
>
> (3) the use and effectiveness of trawls, nets, and other devices for the taking of shrimp;
>
> (4) industrial and other pollution of the water naturally frequented by shrimp;
>
> (5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state;
>
> (6) environmental parameters in the bay and estuary areas that may serve as limiting factors of shrimp population abundance;
>
> (7) other factors that, based on the best scientific information available, may affect the health and well-being of the economically important shrimp resources; and
>
> (8) alternative management measures for shrimp that may be considered for implementation in the management regime.
>
> (b) The research may be conducted by the department or an agency designated by the department.

Revised Law

Sec. 5251.0204. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. (a) Using the shrimp management plan required by Section 5251.0202 and the research conducted under Section

5251.0203, the department shall comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. The study shall analyze:

(1) the status of the shrimp population in coastal water, including the size and projected growth of shrimping beds;

(2) the economic health of the shrimp industry;

(3) the status of conservation measures, including department regulations and license buybacks; and

(4) the status of marine resources and habitats affected by shrimping.

(b) In conducting the study, the department shall solicit and consider input from:

(1) the public;

(2) the shrimp industry;

(3) other businesses affected by the shrimp industry;

(4) any other persons interested in marine resources; and

(5) the comptroller regarding economic data.

(c) The department shall report on the status of the study to:

(1) the commission;

(2) the presiding officer of each house of the legislature; and

(3) the committees of each house of the legislature that have primary oversight jurisdiction over the department.

(d) The department may repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources.

(e) The commission shall base policies and rules relating to shrimping on the results of the most recent study completed under this section. (Parks & Wild. Code, Sec. 77.005.)

Source Law

Sec. 77.005. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. (a) Using the shrimp management plan required by Section 77.007 and the

research conducted under Section 77.004, the department shall comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. The study shall analyze:

(1) the status of the shrimp population in coastal water, including the size and projected growth of shrimping beds;

(2) the economic health of the shrimp industry;

(3) the status of conservation measures, including department regulations and license buybacks; and

(4) the status of marine resources and habitats affected by shrimping.

(b) In conducting the study, the department shall solicit and consider input from:

(1) the public;

(2) the shrimp industry;

(3) other businesses affected by the shrimp industry;

(4) any other persons interested in marine resources; and

(5) the comptroller regarding economic data.

(c) The department shall report on the status of the study to:

(1) the commission;

(2) the presiding officer of each house of the legislature; and

(3) the committees of each house of the legislature that have primary oversight jurisdiction over the department.

(d) The department may repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources.

(e) The commission shall base policies and rules relating to shrimping on the results of the most recent study completed under this section.

Revisor's Note

Section 77.005(a), Parks and Wildlife Code, requires the Parks and Wildlife Department to use "the shrimp management plan required by Section 77.007" to comprehensively study shrimp resources and the shrimp industry. Section 77.007 does not expressly require a shrimp management plan but Subsection (f) of that section prohibits the Parks and Wildlife Commission from making a proclamation under Chapter 77, Parks and Wildlife Code, until it has approved and adopted "a shrimp management plan and economic impact analysis prepared by the department as provided in Section 77.004" of that code. Section 77.004 requires the Parks and Wildlife Department to conduct continuous research of the shrimp population and the shrimp

industry, but does not expressly require the department to prepare a shrimp management plan or economic impact analysis. Because it is not clear which provision requires the preparation of the shrimp management plan, the revised law retains the reference to Section 77.007, revised in pertinent part as Section 5251.0202, to preserve any ambiguity.

Revised Law

Sec. 5251.0205. REGULATIONS IN CONTIGUOUS ZONE. (a) In this section, "contiguous zone" means the area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of this state, in which shrimp of the genus Penaeus are found.

(b) The department may negotiate a reciprocal agreement with another state with respect to the application of one state's shrimping regulations in the state's contiguous zone to citizens of the other state. (Parks & Wild. Code, Secs. 77.001(13), 77.071.)

Source Law

Sec. 77.001. DEFINITIONS. In this chapter:

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus Penaeus are found.

Sec. 77.071. REGULATIONS IN CONTIGUOUS ZONE. (b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.

Revised Law

Sec. 5251.0206. SALE OF CATCH GENERALLY PROHIBITED. Except as provided by Sections 5251.0606 and 5251.1006, a person, including a crew member of a licensed commercial shrimp boat, may not sell the catch of shrimp or other aquatic products taken incidental to lawful shrimping. (Parks & Wild. Code, Sec. 77.0352(e).)

Source Law

(e) No person, including a crew member of a licensed commercial shrimp boat, may sell the catch of shrimp or other aquatic products taken incidental to the legal shrimping operation, except as provided by

this section.

Revisor's Note

(1) Section 77.0352(e), Parks and Wildlife Code, refers to shrimp or other aquatic products taken incidental to "the legal shrimping operation." For consistency in terminology used in this chapter, the revised law substitutes "lawful shrimping" for the quoted language because, in context, the phrases have the same meaning and "lawful shrimping" is more commonly used.

(2) Section 77.0352(e), Parks and Wildlife Code, prohibits a person from selling the catch of shrimp and certain other aquatic products except as provided by Section 77.0352 of that code. The pertinent parts of Section 77.0352 providing for the sale of those products are revised as Sections 5251.0606 and 5251.1006, and the revised law is drafted accordingly.

SUBCHAPTER C. COMMERCIAL BAY SHRIMP BOAT LICENSE

Revised Law

Sec. 5251.0301. COMMERCIAL BAY SHRIMP BOAT LICENSE REQUIRED. A person may not operate a commercial bay shrimp boat to catch or assist in catching shrimp and other edible aquatic products from inside water unless the boat's owner holds a commercial bay shrimp boat license. (Parks & Wild. Code, Sec. 77.031(a).)

Source Law

Sec. 77.031. COMMERCIAL BAY SHRIMP BOAT LICENSE. (a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

Revisor's Note

Section 77.031(a), Parks and Wildlife Code, prohibits a person from operating a commercial bay shrimp boat for certain activities unless the boat's

owner "has obtained" a commercial bay shrimp boat license. Throughout this chapter, for consistency in terminology used in this code, the revised law substitutes "holds" for the quoted language and similar language when the meaning is the same in context.

Revised Law

Sec. 5251.0302. LICENSE APPLICATION; AFFIDAVIT REQUIRED. An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant:

(1) intends to derive the major portion of the applicant's livelihood from the commercial fishery; and

(2) will maintain adequate facilities to conduct the business. (Parks & Wild. Code, Sec. 77.031(c).)

Source Law

> (c) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from the commercial fishery and that he will maintain adequate facilities to conduct the business.

Revised Law

Sec. 5251.0303. LICENSE FEE. (a) Except as provided by Subsection (b), the fee for a commercial bay shrimp boat license is $170 or a greater amount set by the commission.

(b) The fee for a commercial bay shrimp boat license for a boat that is not numbered under Chapter 4052 or does not have a United States Coast Guard certificate of documentation that lists an address in this state for the boat owner or other criteria established by the commission is $500 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 77.031(b) (part), (d).)

Source Law

> (b) The fee for a commercial bay shrimp boat license is $170 or an amount set by the commission, whichever amount is more. . . .
>
> (d) The fee for a commercial bay shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard

that lists an address in Texas for the boat owner or other criteria established by the commission is $500 or an amount set by the commission, whichever amount is more.

Revisor's Note

(1) Section 77.031(b), Parks and Wildlife Code, authorizes the executive director of the Parks and Wildlife Department to set reduced fees for licenses issued between December 16, 1993, and August 31, 1994, which expire on August 31, 1994. The revised law omits that provision as unnecessary because those dates have passed and the provision does not add to the clear meaning of the law. The omitted law reads:

> (b) . . . The executive director may set a fee lower than $170 for licenses issued from December 16, 1993, through August 31, 1994, and which expire on August 31, 1994.

(2) Section 77.031(d), Parks and Wildlife Code, refers to a boat that is not numbered under "Chapter 31" of that code. Throughout this chapter, in this and similar contexts, the revised law substitutes "Chapter 4052" for "Chapter 31" because the pertinent parts of Chapter 31 relating to the numbering of a boat are revised in Chapter 4052 of this code.

SUBCHAPTER D. COMMERCIAL BAIT SHRIMP BOAT LICENSE

Revised Law

Sec. 5251.0401. COMMERCIAL BAIT SHRIMP BOAT LICENSE REQUIRED. A person may not operate a commercial bait shrimp boat to catch or assist in catching shrimp for use as bait only and other edible aquatic products from inside water unless the owner of the boat holds a commercial bait shrimp boat license. (Parks & Wild. Code, Sec. 77.033(a).)

Source Law

> Sec. 77.033. COMMERCIAL BAIT-SHRIMP BOAT LICENSE. (a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

Revised Law

Sec. 5251.0402. LICENSE FEE. (a) Except as provided by Subsection (b), the fee for a commercial bait shrimp boat license is $170 or a greater amount set by the commission.

(b) The fee for a commercial bait shrimp boat license for a boat that is not numbered under Chapter 4052 or does not have a United States Coast Guard certificate of documentation that lists an address in this state for the boat owner or other criteria established by the commission is $500 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 77.033(b), (c).)

Source Law

> (b) The fee for a commercial bait-shrimp boat license is $170 or an amount set by the commission, whichever amount is more.
>
> (c) The fee for a commercial bait-shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $500 or an amount set by the commission, whichever amount is more.

SUBCHAPTER E. COMMERCIAL GULF SHRIMP BOAT LICENSE

Revised Law

Sec. 5251.0501. COMMERCIAL GULF SHRIMP BOAT LICENSE REQUIRED. Except as provided by Section 5251.0601, unless the owner of a commercial gulf shrimp boat holds a commercial gulf shrimp boat license, a person may not:

(1) operate the boat for catching or assisting in catching shrimp and other edible aquatic products from outside water; or

(2) have on board the boat, unload, or allow to be unloaded at a port or point in this state shrimp and other edible aquatic products caught or taken from outside water or salt water outside this state that have not been previously unloaded outside this state. (Parks & Wild. Code, Sec. 77.035(a).)

Source Law

> Sec. 77.035. COMMERCIAL GULF SHRIMP BOAT LICENSE. (a) Except as permitted under Section 77.034, no person may operate a commercial gulf shrimp

boat for catching or assisting in catching shrimp and other edible aquatic products from the outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

Revisor's Note

Section 77.035(a), Parks and Wildlife Code, provides that except as permitted under Section 77.034 of that code, a person may not engage in certain activities with respect to a commercial gulf shrimp boat unless the owner of the boat holds a commercial gulf shrimp boat license. Section 77.034 is revised in pertinent part as Section 5251.0601, and the revised law is drafted accordingly.

Revised Law

Sec. 5251.0502. LICENSE FEE. (a) Except as provided by Subsection (b), the fee for a commercial gulf shrimp boat license is $250 or a greater amount set by the commission.

(b) The fee for a commercial gulf shrimp boat license for a boat that is not numbered under Chapter 4052 or does not have a United States Coast Guard certificate of documentation that lists an address in this state for the boat owner or other criteria established by the commission is $1,000 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 77.035(b), (c).)

Source Law

(b) The fee for a commercial gulf shrimp boat license is $250 or an amount set by the commission, whichever amount is more.

(c) The fee for a commercial gulf shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $1,000 or an amount set by the commission, whichever amount is more.

Revised Law

Sec. 5251.0503. LICENSE TRANSFER TO ANOTHER VESSEL OR OWNER. A commercial gulf shrimp boat license may be transferred to:

(1) another vessel; or

(2) the new owner of the same vessel. (Parks & Wild. Code, Sec. 77.0361(b) (part).)

Source Law

(b) . . . A license issued under the authority of Section 77.035 may be transferred to another vessel or to the new owner of the same vessel.

Revisor's Note

Section 77.0361(b), Parks and Wildlife Code, refers to a "license issued under the authority of Section 77.035" of that code. For clarity and the convenience of the reader, the revised law substitutes "commercial gulf shrimp boat license" for the quoted language because a commercial gulf shrimp boat license is the only license issued under the authority of Section 77.035.

Revised Law

Sec. 5251.0504. TRANSFER OF LICENSE OF LOST OR DESTROYED BOAT. (a) On application of a commercial gulf shrimp boat license holder, the license may be transferred from a boat that has been destroyed or lost to a boat acquired by the license holder as a replacement.

(b) The commission by regulation may prescribe:

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

(2) a form to be used and fee to be charged for a license transfer authorized under this section. (Parks & Wild. Code, Sec. 77.037.)

Source Law

Sec. 77.037. TRANSFER OF LICENSE. A commercial gulf shrimp boat license issued under this subchapter may be transferred on the application of the licensee from a boat that has been destroyed or lost to a boat acquired by the licensee as a replacement. The commission, by regulation, may prescribe requirements necessary to clarify license transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses authorized by this subsection.

Revisor's Note

Section 77.037, Parks and Wildlife Code, refers to the transfer of licenses authorized by "this subsection." That reference was added to Section 77.037 by Chapter 365 (H.B. 1659), Acts of the 73rd Legislature, Regular Session, 1993. It is clear from the context that the reference to "this subsection" is a typographical error and that the legislature intended to refer to "this section." The revised law is drafted accordingly.

SUBCHAPTER F. COMMERCIAL GULF SHRIMP UNLOADING LICENSE

Revised Law

Sec. 5251.0601. COMMERCIAL GULF SHRIMP UNLOADING LICENSE REQUIRED. Except as provided by Section 5251.0602, a person may not unload or allow to be unloaded at a port or point in this state shrimp or other aquatic products caught or taken from outside water or from salt water outside this state that have not been previously unloaded outside this state, unless the person holds:

(1) a commercial gulf shrimp unloading license; and

(2) a federal commercial vessel permit for gulf shrimp from the National Oceanic and Atmospheric Administration. (Parks & Wild. Code, Sec. 77.034(a).)

Source Law

Sec. 77.034. COMMERCIAL GULF SHRIMP UNLOADING LICENSE. (a) Except as provided by Subsection (b), no person may unload or allow to be unloaded at a port or point in this state shrimp or other aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the person has obtained:

(1) a commercial gulf shrimp unloading license; and

(2) a federal commercial vessel permit for gulf shrimp from the National Oceanic and Atmospheric Administration.

Revised Law

Sec. 5251.0602. EXEMPTION. The holder of a resident or nonresident commercial gulf shrimp boat license is exempt from the requirement to hold a commercial gulf shrimp unloading license.

(Parks & Wild. Code, Sec. 77.034(b).)

Source Law

> (b) A person holding a valid resident or nonresident commercial gulf shrimp boat license is exempt from the requirement to hold a commercial gulf shrimp unloading license.

Revisor's Note

Section 77.034(b), Parks and Wildlife Code, refers to a "valid" resident or nonresident commercial gulf shrimp boat license. The revised law omits "valid" for the reasons stated in Revisor's Note (1) to Section 5151.0302.

Revised Law

Sec. 5251.0603. LICENSE FEE. The fee for a commercial gulf shrimp unloading license is $1,485 or a greater amount set by the commission. (Parks & Wild. Code, Sec. 77.034(d) (part).)

Source Law

> (d) The fee for a commercial gulf shrimp unloading license is $1485, or an amount set by the commission, whichever amount is more. . . .

Revisor's Note

Section 77.034(d), Parks and Wildlife Code, requires that the revenue from the fee for a commercial gulf shrimp unloading license be deposited in the game, fish, and water safety account. The revised law omits that provision because it duplicates in substance Section 11.032(b)(1), Parks and Wildlife Code, revised in pertinent part as Section 2052.0302(2), which requires that revenue from all types of shrimping licenses be deposited in that account. The omitted law reads:

> (d) . . . Revenue from the fee shall be deposited to the credit of the game, fish, and water safety account established under Section 11.032.

Revised Law

Sec. 5251.0604. LICENSE DESIGN. A commercial gulf shrimp unloading license must be:

(1) a sign or emblem at least 32 square inches in size; and

(2) constructed of a durable material. (Parks & Wild. Code, Sec. 77.039(a) (part).)

Source Law

> Sec. 77.039. LICENSE DESIGN. (a) A . . . commercial gulf shrimp unloading license issued under this subchapter must be a sign or emblem at least 32 square inches in size and be constructed of a durable material.

Revisor's Note

Section 77.039(a), Parks and Wildlife Code, refers to a commercial gulf shrimp unloading license issued under Subchapter C, Chapter 77, of that code. The revised law omits the reference to the license being issued under that subchapter because a commercial gulf shrimp unloading license is not issued under any other provision of the Parks and Wildlife Code or any other code.

Revised Law

Sec. 5251.0605. VESSEL PROGRESSION TO PLACE OF UNLOADING. (a) A vessel operating under a commercial gulf shrimp unloading license must make a nonstop progression through outside waters to a place of unloading.

(b) The commission shall adopt rules for the requirements of trawl gear storage for a vessel operating under a commercial gulf shrimp unloading license while that vessel is making a nonstop progression through outside waters to a place of unloading. (Parks & Wild. Code, Sec. 77.034(c).)

Source Law

> (c) A vessel operating under a commercial gulf shrimp unloading license must make a nonstop progression through outside waters to a place of unloading. The commission shall adopt rules for the requirements of trawl gear storage for a vessel who holds a commercial gulf shrimp unloading license while that vessel is making a nonstop progression through outside waters to a place of unloading.

Revisor's Note

Section 77.034(c), Parks and Wildlife Code, refers to a vessel "who holds" a commercial gulf shrimp unloading license. The revised law substitutes "operating under" for "who holds" for consistency in terminology used in this section.

Revised Law

Sec. 5251.0606. SALE OF CATCH. A commercial gulf shrimp unloading license holder may sell only:

(1) the catch of shrimp from the vessel to which the commercial gulf shrimp unloading license applies; and

(2) aquatic products other than shrimp if those aquatic products:

(A) were taken incidental to lawful shrimping on the vessel to which the commercial gulf shrimp unloading license applies; and

(B) comply with all applicable provisions of this code or commission regulations. (Parks & Wild. Code, Secs. 77.0352(a) (part), (b) (part).)

Source Law

> Sec. 77.0352. SALE OF CATCH. (a) The holder of a . . . commercial gulf shrimp unloading license may sell only the catch of shrimp from the vessel to which the . . . commercial gulf shrimp unloading license applies.
>
> (b) The holder of a . . . commercial gulf shrimp unloading license may sell aquatic products other than shrimp if those aquatic products:
>
> (1) were taken incidental to lawful shrimping on the vessel to which the . . . commercial gulf shrimp unloading license applies; and
>
> (2) comply with all applicable provisions of this code or commission regulations.

SUBCHAPTER G. COMMERCIAL SHRIMP BOAT CAPTAIN'S LICENSE

Revised Law

Sec. 5251.0701. COMMERCIAL SHRIMP BOAT CAPTAIN'S LICENSE REQUIRED. Unless the person holds a commercial shrimp boat captain's license issued by the department, a person may not operate a licensed commercial shrimp boat as the captain of the boat while catching or attempting to catch shrimp from the public water

of this state or unloading or attempting to unload in this state shrimp and other aquatic products taken from salt water outside this state for compensation or for purposes of sale. (Parks & Wild. Code, Sec. 77.0351(a).)

Source Law

> Sec. 77.0351. COMMERCIAL SHRIMP BOAT CAPTAIN'S LICENSE. (a) No captain of a licensed commercial shrimp boat may operate a licensed commercial shrimp boat while catching or attempting to catch shrimp from the public water of this state or unloading or attempting to unload in this state shrimp and other aquatic products taken from saltwater outside this state for pay or for purposes of sale, unless the person holds a commercial shrimp boat captain's license issued by the department.

Revised Law

Sec. 5251.0702. LICENSE FEE. (a) For purposes of this section:

(1) a person is considered a resident if the person is an individual who has resided continuously in this state for more than six months immediately before applying to the department for a commercial shrimp boat captain's license; and

(2) a person is considered a nonresident if the person is an individual not described by Subdivision (1).

(b) The fee for a resident commercial shrimp boat captain's license must be at least $25 and may not exceed $50.

(c) The fee for a nonresident commercial shrimp boat captain's license is $100 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 47.001(12), (13), 77.0351(b), (c), (d).)

Source Law

> Sec. 47.001. DEFINITIONS. In this chapter:
>
> (12) "Resident" means an individual who has resided continuously in this state for more than six months immediately before applying for a license required by this chapter from the department.
>
> (13) "Nonresident" means an individual who is not a resident.
>
> [Sec. 77.0351]
>
> (b) Except as provided by Subsection (c), the fee for a resident commercial shrimp boat captain's license shall be no less than $25 and no more than $50.
>
> (c) The fee for a nonresident commercial shrimp boat captain's license is $100 or an amount set by the commission, whichever amount is more.

(d) In this section, "resident" and "nonresident" have the meanings assigned by Section 47.001.

Revisor's Note

(1) Section 77.0351(b), Parks and Wildlife Code, sets the minimum and maximum amount of the fee charged for a resident commercial shrimp boat captain's license "[e]xcept as provided by Subsection (c)" of that section. The revised law omits the quoted language as unnecessary because Section 77.0351(c), Parks and Wildlife Code, applies only to the fee for a nonresident commercial shrimp boat captain's license.

(2) Section 77.0351(d), Parks and Wildlife Code, defines the terms "resident" and "nonresident" for purposes of the section by means of a cross-reference to Section 47.001 of that code. The revised law is drafted to include the substance of those definitions, which are more appropriately drafted as substantive law.

Revised Law

Sec. 5251.0703. APPLICABILITY OF OTHER LAW TO CERTAIN VIOLATIONS. Chapter 5954 does not apply to a violation of this subchapter unless a separate violation of this chapter or a rule adopted under this chapter exists at the time of the violation. (Parks & Wild. Code, Sec. 77.0351(e).)

Source Law

(e) Subchapter D, Chapter 12, does not apply to a violation of this section if another violation of this chapter or a rule adopted under this chapter does not exist at the time of the violation.

SUBCHAPTER H. BAIT SHRIMP DEALER'S LICENSE

Revised Law

Sec. 5251.0801. BAIT SHRIMP DEALER'S LICENSE REQUIRED. A person may not engage in business as a bait shrimp dealer unless the person holds a bait shrimp dealer's license issued by the department for each bait stand or place of business the person maintains. (Parks & Wild. Code, Sec. 77.043(a).)

Source Law

Sec. 77.043. BAIT-SHRIMP DEALER LICENSE. (a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

Revised Law

Sec. 5251.0802. EXEMPTIONS. A bait shrimp dealer's license is not required for:

(1) a grocery store in a coastal county that does not unload or purchase shrimp directly from a commercial bait shrimp boat; or

(2) a bait dealer in a coastal county who:

(A) holds a bait dealer's license under Subchapter L, Chapter 5158; and

(B) does not sell, offer for sale, or handle shrimp for sale or resale for bait purposes. (Parks & Wild. Code, Sec. 77.046.)

Source Law

Sec. 77.046. EXEMPTIONS FROM BAIT-SHRIMP DEALER'S LICENSE. A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

Revised Law

Sec. 5251.0803. INELIGIBILITY FOR LICENSE. A wholesale fish dealer's license holder may not also hold a bait shrimp dealer's license. (Parks & Wild. Code, Sec. 77.044(b).)

Source Law

(b) A bait-shrimp dealer's license may not be held by a person who also holds a wholesale fish dealer's license.

Revised Law

Sec. 5251.0804. LICENSE FEE. The fee for a bait shrimp dealer's license is $60 or a greater amount set by the commission. (Parks & Wild. Code, Sec. 77.043(b).)

Source Law

(b) The fee for a bait-shrimp dealer's license is $60 or an amount set by the commission, whichever amount is more.

Revised Law

Sec. 5251.0805. LICENSE ISSUANCE. The department may issue a bait shrimp dealer's license only after determining that the applicant is a bona fide bait shrimp dealer. (Parks & Wild. Code, Sec. 77.044(a).)

Source Law

Sec. 77.044. ISSUANCE OF BAIT-SHRIMP DEALER'S LICENSE. (a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

Revised Law

Sec. 5251.0806. LICENSE EXPIRATION. A bait shrimp dealer's license expires August 31 following the date of issuance. (Parks & Wild. Code, Sec. 77.043(c).)

Source Law

(c) A bait-shrimp dealer's license expires August 31 following the date of issuance.

Revised Law

Sec. 5251.0807. LICENSE PRIVILEGES. (a) A bait shrimp dealer's license holder may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in a coastal county of this state.

(b) A bait shrimp dealer's license holder is not required to obtain a bait dealer's license issued under Subchapter L, Chapter 5158, unless the license holder engages in the business in a county other than a coastal county. (Parks & Wild. Code, Sec. 77.045.)

Source Law

Sec. 77.045. RIGHTS AND DUTIES OF BAIT-SHRIMP DEALER. (a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a

coastal county.

Revised Law

Sec. 5251.0808. LICENSE VALID FOR LOCATION AFTER BUSINESS OWNERSHIP OR NAME CHANGE. A bait shrimp dealer's license issued in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs. (Parks & Wild. Code, Sec. 77.0361(b) (part).)

Source Law

> (b) . . . A license issued under the authority of Section 77.043 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs. . . .

Revisor's Note

Section 77.0361(b), Parks and Wildlife Code, refers to a "license issued under the authority of Section 77.043" of that code. For clarity and the convenience of the reader, the revised law substitutes "bait shrimp dealer's license" for the quoted language because a bait shrimp dealer's license is the only license issued under the authority of Section 77.043.

SUBCHAPTER I. INDIVIDUAL BAIT SHRIMP TRAWL LICENSE

Revised Law

Sec. 5251.0901. INDIVIDUAL BAIT SHRIMP TRAWL LICENSE REQUIRED. A person may not possess or have on board a boat in coastal water an individual bait shrimp trawl unless the owner of the trawl holds an individual bait shrimp trawl license from the department. (Parks & Wild. Code, Sec. 77.048(a).)

Source Law

> Sec. 77.048. INDIVIDUAL BAIT-SHRIMP TRAWL LICENSE. (a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

Revised Law

Sec. 5251.0902. LICENSE FEE. The fee for the individual bait shrimp trawl license is $15 or a greater amount set by the commission. (Parks & Wild. Code, Sec. 77.048(b).)

Source Law

(b) The fee for the individual bait-shrimp trawl license is $15 or an amount set by the commission, whichever amount is more.

Revised Law

Sec. 5251.0903. LICENSE EXPIRATION. An individual bait shrimp trawl license expires August 31 following the date of issuance. (Parks & Wild. Code, Sec. 77.048(c).)

Source Law

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance.

SUBCHAPTER J. PROVISIONS APPLICABLE TO COMMERCIAL SHRIMP BOAT LICENSES GENERALLY

Revised Law

Sec. 5251.1001. EXEMPTIONS FROM REQUIREMENTS TO HOLD CERTAIN OTHER LICENSES. (a) The holder of a commercial shrimp boat license issued under this chapter is not required to hold a commercial fishing boat license under Subchapter E, Chapter 5158.

(b) The captain of a commercial shrimp boat who holds a commercial shrimp boat captain's license under Section 5251.0701 and each paid member of the crew of a boat issued a commercial shrimp boat license under this chapter may catch and unload aquatic products lawfully taken incidental to lawful shrimping, regardless of whether the captain or crew hold:

(1) a general commercial fisherman's license issued under Subchapter C, Chapter 5158;

(2) a commercial finfish fisherman's license issued under Subchapter D, Chapter 5158; or

(3) a bait dealer's license issued under Subchapter L, Chapter 5158. (Parks & Wild. Code, Secs. 77.040(a), (b).)

Source Law

Sec. 77.040. OTHER LICENSES REQUIRED. (a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain of a commercial shrimp boat who holds a commercial shrimp boat captain's license and each paid member of the crew of a boat having a

commercial shrimp boat license issued under this subchapter are not required to have a general commercial fisherman's license issued under Section 47.002 of this code, a commercial finfish fisherman's license issued under Section 47.003 of this code, or a bait dealer's license issued under Section 47.014 of this code to catch and unload aquatic products lawfully taken incidental to lawful shrimping.

Revisor's Note

Section 77.040(b), Parks and Wildlife Code, refers to "a commercial shrimp boat license issued under this subchapter," meaning Subchapter C, Chapter 77, of that code. The quoted language does not refer to a specific class of license and may refer to a license for a commercial bay shrimp boat issued under Section 77.031, a commercial bait shrimp boat issued under Section 77.033, or a commercial gulf shrimp boat issued under Section 77.035. Each of those sections is revised in this chapter, and throughout this chapter the revised law is drafted accordingly.

Revised Law

Sec. 5251.1002. APPLICATION REQUIREMENTS. An applicant for a commercial shrimp boat license issued under this chapter that is not a renewal of the preceding year's license must submit to the department:

(1) the boat's United States Coast Guard certificate of documentation; or

(2) the certificate of number issued by this state for a vessel or the certificate of number issued by another state for a motorboat. (Parks & Wild. Code, Sec. 77.036(a).)

Source Law

Sec. 77.036. OFFICIAL REGISTRATION. (a) An applicant for a commercial shrimp boat license, which is not a renewal of the previous year's license, issued under this subchapter must submit to the department the boat's United States Coast Guard certificate of documentation or the Texas certificate of number for a vessel or other state's certificate of number for a motorboat.

Revisor's Note

Section 77.036(a), Parks and Wildlife Code,

refers to a license issued under "this subchapter," meaning Subchapter C, Chapter 77, of that code. The revised law substitutes "this chapter" for the quoted language because the pertinent parts of Subchapter C are revised throughout this chapter.

Revised Law

Sec. 5251.1003. CERTIFICATE OF LICENSE. The certificate of license issued by the department for a commercial shrimp boat must contain:

(1) the name of the boat, if the boat is registered with the United States Coast Guard; and

(2) the number that appears on:

(A) the United States Coast Guard certificate of documentation; or

(B) the certificate of number issued by this state or another state. (Parks & Wild. Code, Sec. 77.036(b).)

Source Law

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat if the boat is registered with the United States Coast Guard and the number appearing on the United States Coast Guard certificate of documentation or the Texas or other state's certificate of number.

Revised Law

Sec. 5251.1004. LICENSE DESIGN. (a) A commercial shrimp boat license issued under this chapter must be:

(1) a sign or emblem at least 32 square inches in size; and

(2) constructed of a durable material.

(b) The character and design of each class of commercial shrimp boat license issued under this chapter must be distinguishable. (Parks & Wild. Code, Secs. 77.039(a) (part), (b).)

Source Law

Sec. 77.039. LICENSE DESIGN. (a) A commercial shrimp boat license or . . . issued under this subchapter must be a sign or emblem at least 32 square

inches in size and be constructed of a durable material.

(b) The character and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

Revisor's Note

Section 77.039, Parks and Wildlife Code, refers to a commercial shrimp boat license issued under "this subchapter," meaning Subchapter C, Chapter 77, of that code. The revised law substitutes "this chapter" for the quoted language for the reason stated in the revisor's note to Section 5251.1002.

Revised Law

Sec. 5251.1005. PROOF OF IDENTITY OF CAPTAIN AND CREW. The captain and each crew member of a licensed commercial shrimp boat must possess proof of the person's identity and produce the proof to any enforcement officer on request. (Parks & Wild. Code, Sec. 77.040(c).)

Source Law

(c) The captain and each crew member of a licensed commercial shrimp boat must possess and produce on request to any enforcement officer proof of the person's identity.

Revised Law

Sec. 5251.1006. SALE OF CATCH. (a) A commercial shrimp boat license holder may sell only:

(1) the catch of shrimp from the vessel to which the commercial shrimp boat license applies; and

(2) aquatic products other than shrimp if those aquatic products:

(A) were taken incidental to lawful shrimping on the vessel to which the commercial shrimp boat license applies; and

(B) comply with all applicable provisions of this code or commission regulations.

(b) A commercial shrimp boat captain's license holder may sell only:

(1) the catch of shrimp from the vessel being operated by that license holder; and

(2) aquatic products other than shrimp if those aquatic products:

(A) were taken incidental to lawful shrimping; and

(B) comply with all applicable provisions of this code or commission regulations.

(c) Subsection (b) does not authorize the sale of shrimp or other aquatic products without the consent of the owner of the vessel used to make the catch. (Parks & Wild. Code, Secs. 77.0352(a) (part), (b) (part), (c), (d).)

Source Law

> Sec. 77.0352. SALE OF CATCH. (a) The holder of a commercial shrimp boat license or . . . may sell only the catch of shrimp from the vessel to which the commercial shrimp boat license or . . . applies.
>
> (b) The holder of a commercial shrimp boat license or . . . may sell aquatic products other than shrimp if those aquatic products:
>
> (1) were taken incidental to lawful shrimping on the vessel to which the commercial shrimp boat license or . . . applies; and
>
> (2) comply with all applicable provisions of this code or commission regulations.
>
> (c) The holder of a commercial shrimp boat captain's license may sell only:
>
> (1) the catch of shrimp from the vessel being operated by that license holder; and
>
> (2) aquatic products other than shrimp if those aquatic products:
>
> (A) were taken incidental to lawful shrimping; and
>
> (B) comply with all applicable provisions of this code or commission regulations.
>
> (d) Subsection (c) does not authorize the sale of shrimp or other aquatic products without the consent of the owner of the vessel used to make the catch.

SUBCHAPTER K. GENERAL LICENSE PROVISIONS

Revised Law

Sec. 5251.1101. LICENSE TERM. (a) A license issued under this chapter is valid only during the yearly period for which the license is issued without regard to the date the license is acquired.

(b) Each yearly period for a license 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. (Parks & Wild. Code, Sec. 77.0361(a) (part).)

Source Law

> Sec. 77.0361. LICENSE EXPIRATIONS AND TRANSFERS. (a) All licenses issued under the authority of Chapter 77 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. . . .

Revised Law

Sec. 5251.1102. LICENSE ISSUED FOR TRANSITION PERIOD. The commission by rule may:

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

(2) set the fee for a license issued during a transition period at an amount less than the amount prescribed by this chapter for that license. (Parks & Wild. Code, Sec. 77.0361(a) (part).)

Source Law

> (a) . . . The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

Revised Law

Sec. 5251.1103. LICENSE TRANSFERABILITY. (a) Except as provided by Subsection (b) and Sections 5251.0503, 5251.0808, and 5251.1208, a license issued under this chapter may not be transferred to another person or vessel.

(b) The commission by regulation may prescribe:

(1) requirements necessary for license transfers; and

(2) a form to be used and fee to be charged for transfer of a license issued under this chapter. (Parks & Wild. Code, Secs. 77.0361(b) (part), (c) (part).)

Source Law

(b) All licenses issued under the authority of this chapter may not be transferred to another person or vessel except as provided by Subsection (c) or by Section 77.113. . . .

(c) The commission, by regulation, may prescribe requirements necessary for license transfers and may prescribe, by regulation, forms to be used and fees to be charged for transfers of licenses in this chapter, ...

Revisor's Note

Section 77.0361(b), Parks and Wildlife Code, provides that a license issued under the authority of Chapter 77 of that code may not be transferred except as provided by Section 77.0361(c) or 77.113 of that code. Sections 77.0361(c) and 77.113 are revised in pertinent part as Subsection (b) of this section and Section 5251.1208, respectively, and the revised law is drafted accordingly. Additionally, other provisions of Section 77.0361(b), revised in Sections 5251.0503 and 5251.0808, describe exceptions to the general rule that a license may not be transferred, and the revised law adds a reference to those provisions for clarity and the convenience of the reader.

Revised Law

Sec. 5251.1104. DUPLICATE OR REPLACEMENT LICENSE OR LICENSE PLATE. The commission by regulation may prescribe a form to be used and fee to be charged for a duplicate license plate or duplicate or replacement license under this chapter. (Parks & Wild. Code, Sec. 77.0361(c) (part).)

Source Law

(c) The commission . . . may prescribe, by regulation, forms to be used and fees to be charged . . . for duplicate license plates, or for duplicate or replacement licenses.

Revised Law

Sec. 5251.1105. EFFECT OF LICENSE FORFEITURE. A person whose license has been forfeited may not do business without a new license or hold another license during the forfeiture period.

(Parks & Wild. Code, Sec. 77.024.)

Source Law

> Sec. 77.024. OPERATION WITHOUT LICENSE. No person whose license has been forfeited may do business without a new license or possess another license for the period of forfeiture.

Revised Law

Sec. 5251.1106. STATUS OF LICENSE FEES. A license fee provided by this chapter is a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state. (Parks & Wild. Code, Sec. 77.002(a).)

Source Law

> Sec. 77.002. LICENSE FEES. (a) License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

Revised Law

Sec. 5251.1107. DISPOSITION OF MONEY FROM LICENSES. Money received for a license issued under this chapter must be sent to the department not later than the 10th day of the month following the date the money is collected. (Parks & Wild. Code, Sec. 77.003 (part).)

Source Law

> Sec. 77.003. DISPOSITION OF FUNDS. Money received for licenses issued under this chapter or . . . shall be remitted to the department by the 10th day of the month following the date of collection.

Revisor's Note
(End of Subchapter)

Section 77.011, Parks and Wildlife Code, prohibits a person from operating in the coastal water without the appropriate required license as prescribed in Chapter 77 of that code. The revised law omits that provision because a licensing requirement prescribed by Chapter 77 applies on its own terms. The omitted law reads:

> Sec. 77.011. LICENSE REQUIREMENT. No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

SUBCHAPTER L. BAY AND BAIT SHRIMP LICENSE MANAGEMENT

Revised Law

Sec. 5251.1201. DEFINITIONS. In this subchapter:

(1) "Flagrant offense" includes:

(A) trawling in a nursery area in violation of this code or a commission proclamation;

(B) shrimping longer than 30 minutes before or 30 minutes after legal shrimping hours prescribed by this code or by a commission proclamation;

(C) exceeding possession limits, in violation of this code or a commission proclamation, by 100 or more pounds;

(D) exceeding legal net size, in violation of this code or a commission proclamation, by five feet or more; or

(E) falsifying information required by this subchapter or a commission rule adopted under this subchapter for the issuance of a commercial bay shrimp boat license or commercial bait shrimp boat license.

(2) "Review board" means the shrimp license management review board established under Section 5251.1205.

(3) "Shrimp license management program" means the shrimp license management program implemented by the department under Section 5251.1204. (Parks & Wild. Code, Sec. 77.117(d); New.)

Source Law

(d) For purposes of this section, a flagrant offense includes:

(1) trawling in a nursery area in violation of this code or of a proclamation of the commission issued under this code;

(2) shrimping longer than 30 minutes before or 30 minutes after legal shrimping hours prescribed by this code or by a proclamation of the commission issued under this code;

(3) exceeding possession limits, in violation of this code or of a proclamation of the commission issued under this code, by 100 or more pounds;

(4) exceeding legal net size, in violation of this code or of a proclamation of the commission issued under this code, by five feet or more; or

(5) falsifying information required by this subchapter or a commission rule adopted under this subchapter for the issuance of a commercial bay or

bait shrimp boat license.

Revisor's Note

(1) Section 77.117(d), Parks and Wildlife Code, refers to a Parks and Wildlife Commission proclamation "issued under this code." The revised law omits the quoted language for the reason stated in Revisor's Note (1) to Section 5158.0401.

(2) The definitions of "review board" and "shrimp license management program" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 5251.1202. ADMINISTRATIVE PROCEDURES. The executive director shall establish administrative procedures to carry out the requirements of this subchapter. (Parks & Wild. Code, Sec. 77.121(a).)

Source Law

Sec. 77.121. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

Revised Law

Sec. 5251.1203. CONFLICT WITH PROCLAMATION. A commission proclamation under this subchapter prevails over any conflicting provision of this chapter to the extent of the conflict. (Parks & Wild. Code, Sec. 77.123.)

Source Law

Sec. 77.123. PREVAILING AUTHORITY. A proclamation of the commission under this subchapter prevails over any conflicting provision of this chapter to the extent of the conflict.

Revised Law

Sec. 5251.1204. SHRIMP LICENSE MANAGEMENT PROGRAM. (a) The department shall implement a shrimp license management program in accordance with the shrimp management plan adopted by the commission under Section 5251.0202 and as prescribed by this

subchapter to:

(1) promote efficiency and economic stability in the shrimping industry; and

(2) conserve economically important shrimp resources.

(b) The commission shall adopt rules necessary to administer the shrimp license management program. (Parks & Wild. Code, Secs. 77.111, 77.121(b).)

Source Law

Sec. 77.111. SHRIMP LICENSE MANAGEMENT PROGRAM. For the purposes of promoting efficiency and economic stability in the shrimping industry and of conserving economically important shrimp resources, the department shall implement a shrimp license management program in accordance with the shrimp management plan adopted by the commission under Section 77.007 and as prescribed by this subchapter.

[Sec. 77.121]
(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Revisor's Note

Section 77.121(b), Parks and Wildlife Code, refers to the "program established under this subchapter." For clarity and consistency in terminology used in this subchapter, the revised law substitutes "shrimp license management program" for the quoted language because it is clear from the context that the referenced program is the shrimp license management program implemented under Section 77.111, Parks and Wildlife Code, revised as Subsection (a) of this section.

Revised Law

Sec. 5251.1205. SHRIMP LICENSE MANAGEMENT REVIEW BOARD. (a) The shrimp license management review board is composed of nine members elected by the commercial bay and commercial bait shrimp boat license holders.

(b) A review board member must be a commercial bay shrimp boat license holder or a commercial bait shrimp boat license holder.

(c) The review board members must reflect the following geographical distribution according to the county of residence specified on the member's commercial bay shrimp boat license or commercial bait shrimp boat license:

(1) one member representing Orange, Jefferson, Chambers, and Harris Counties;

(2) two members representing Galveston County;

(3) two members representing Brazoria and Matagorda Counties;

(4) three members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) one member representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administration of the shrimp license management program, including hardship and appeal cases concerning eligibility, license transfer, license renewal, license suspension, license revocation, and vessel length and engine changes.

(e) The executive director shall:

(1) adopt procedures for the election of review board members and operation of the review board; and

(2) solicit and consider recommendations from commercial bay and commercial bait shrimp boat license holders regarding the procedures described by Subdivision (1).

(f) The review board is not subject to Chapter 2110, Government Code. (Parks & Wild. Code, Sec. 77.118.)

Source Law

Sec. 77.118. SHRIMP LICENSE MANAGEMENT REVIEW BOARD. (a) The holders of commercial bay and bait shrimp boat licenses shall elect a shrimp license management review board of nine members.

(b) A member of the review board must be a holder of a commercial bay or bait shrimp boat license.

(c) The nine members of the review board must be selected to reflect the following geographical distribution according to the county of residence specified on the member's commercial bay or bait shrimp boat license:

(1) one member representing Orange, Jefferson, Chambers, and Harris counties;

(2) two members representing Galveston County;

(3) two members representing Brazoria and Matagorda counties;

(4) three members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio counties; and

(5) one member representing Kleberg, Cameron, and Willacy counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the shrimp license management program, including hardship and appeal cases concerning eligibility, license transfer, license renewal, license suspension, license revocation, and vessel length and engine changes.

(e) The executive director shall adopt procedures for the election and operation of the review board. The executive director shall solicit and consider recommendations from the commercial bay and bait shrimp boat license holders regarding the procedures.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

Revisor's Note

(1) Section 77.118(a), Parks and Wildlife Code, provides that the commercial bay and bait shrimp boat license holders "shall elect" a shrimp license management review board of nine members. For clarity, the revised law restates the provision as a requirement for the composition of the review board rather than an affirmative duty on the license holders for the reasons stated in Revisor's Note (1) to Section 5158.0416.

(2) Section 77.118(f), Parks and Wildlife Code, refers to Article 6252-33, Revised Statutes. That statute was codified in 1997 as Chapter 2110, Government Code, and the revised law is drafted accordingly.

Revised Law

Sec. 5251.1206. ISSUANCE AND RENEWAL OF COMMERCIAL BAY SHRIMP BOAT LICENSE OR COMMERCIAL BAIT SHRIMP BOAT LICENSE. (a) This section applies only to:

(1) a commercial bay shrimp boat license; and

(2) a commercial bait shrimp boat license.

(b) The department may not issue a new license to which this section applies unless the applicant documents to the department's satisfaction that the vessel for which the license is sought:

(1) is owned by the applicant;

(2) was under construction and at least 50 percent completed on April 1, 1995; and

(3) is intended to be licensed and used as a commercial bay shrimp boat or commercial bait shrimp boat.

(c) The commission may not renew a license to which this section applies unless the applicant:

(1) owns the commercial bay shrimp boat or commercial bait shrimp boat for which the license renewal is sought; and

(2) held the license to be renewed during the preceding license year.

(d) An applicant for a new or renewed license to which this section applies that is for a vessel required by United States Coast Guard rules to be documented by the United States Coast Guard must submit to the department with the license application the United States Coast Guard certificate of documentation for the vessel. (Parks & Wild. Code, Secs. 77.112(a), (c), (d).)

Source Law

Sec. 77.112. ISSUANCE AND RENEWAL OF COMMERCIAL BAY AND BAIT SHRIMP BOAT LICENSES. (a) After August 31, 1995, the department may not issue a new commercial bay or bait shrimp boat license unless the person seeking to obtain the license documents to the satisfaction of the department that the vessel for which the license is sought:

(1) is owned by the person;

(2) was under construction and at least 50 percent completed on April 1, 1995; and

(3) is intended to be licensed and used as a commercial bay or bait shrimp boat.

(c) After August 31, 1996, the commission may renew a commercial bay or bait shrimp boat license only if the person seeking to renew the license:

(1) owns the commercial bay or bait shrimp boat for which the license renewal is sought; and

(2) held the license to be renewed during the preceding license year.

(d) An applicant for a new or renewed commercial bay or bait shrimp boat license for a vessel that is required by United States Coast Guard rules to be documented by the United States Coast Guard must submit to the department with the license application

the United States Coast Guard certificate of documentation for the vessel.

Revisor's Note

(1) Section 77.112(a), Parks and Wildlife Code, provides that "[a]fter August 31, 1995," the Parks and Wildlife Department may only issue a new commercial bay shrimp boat license or new commercial bait shrimp boat license to certain persons. Section 77.112(c), Parks and Wildlife Code, provides that "[a]fter August 31, 1996," the Parks and Wildlife Commission may only renew a commercial bay shrimp boat license or commercial bait shrimp boat license held by certain persons. In both instances, the revised law omits the quoted language as unnecessary because those dates have passed and the language does not add to the clear meaning of the law.

(2) Section 77.112(b), Parks and Wildlife Code, imposes limitations on the Parks and Wildlife Department relating to the renewal of certain shrimp boat licenses that are only effective for the license year ending August 31, 1996. The revised law omits that provision as unnecessary because the period for which the limitations were effective has passed and the provision does not add to the clear meaning of the law. The omitted law reads:

> (b) For the license year ending August 31, 1996, the department may renew a commercial bay or bait shrimp boat license only if the person seeking renewal of the license:
>
> (1) owns the commercial bay or bait shrimp boat for which the license renewal is sought; and
>
> (2) held the license to be renewed on April 1, 1995, or, after that date, obtained the license to be renewed by a transfer authorized by Section 77.113.

Revised Law

Sec. 5251.1207. INDIVIDUAL AS LICENSE HOLDER REQUIRED; DESIGNATION OF INDIVIDUAL FOR LICENSE RETENTION OR RENEWAL. (a) A

commercial bay shrimp boat license or commercial bait shrimp boat license must be issued to an individual.

(b) To retain or renew a commercial bay shrimp boat license or commercial bait shrimp boat license, a license holder who is a person other than an individual must designate an individual in whose name the license will be issued. (Parks & Wild. Code, Sec. 77.114(c).)

Source Law

> (c) A commercial bay or bait shrimp boat license must be issued to an individual. A person other than an individual who wishes to retain or seeks to renew a license of either type must designate an individual to whom the license will be issued.

Revised Law

Sec. 5251.1208. LICENSE TRANSFER. (a) A commercial bay shrimp boat license or commercial bait shrimp boat license may be transferred at any time, by sale or otherwise:

(1) between commercial bay shrimp boat license or commercial bait shrimp boat license holders;

(2) between a commercial bay shrimp boat license holder or a commercial bait shrimp boat license holder and a historical shrimp boat captain, as defined by the review board and approved by the executive director; or

(3) to an heir or devisee of the deceased commercial bay shrimp boat license holder or commercial bait shrimp boat license holder, if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

(b) The commission may set a fee for the transfer of a commercial bay shrimp boat license or commercial bait shrimp boat license. The amount of the transfer fee may not exceed the amount of the license fee for the license being transferred. (Parks & Wild. Code, Secs. 77.113(b), 77.115.)

Source Law

> [Sec. 77.113]
> (b) A commercial bay or bait shrimp boat license may be transferred at any time, by sale or otherwise:

(1) between holders of a commercial bay or bait shrimp boat license;

(2) between a holder of a commercial bay or bait shrimp boat license and a historical shrimp boat captain as defined by the shrimp license management review board and approved by the executive director; or

(3) to an heir or devisee of the deceased holder of the commercial bay or bait shrimp boat license, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Sec. 77.115. TRANSFER FEE. The commission may set a fee for the transfer of a commercial bay or bait shrimp boat license. The amount of the transfer fee may not exceed the amount of the license fee for the license being transferred.

Revisor's Note

Section 77.113(a), Parks and Wildlife Code, prohibits certain shrimp boat licenses from being transferred from one person to another before September 1, 1999, except under certain circumstances. The revised law omits that provision as unnecessary because that date has passed and the provision does not add to the clear meaning of the law. The omitted law reads:

> Sec. 77.113. LICENSE TRANSFER. (a) Except as provided by this section, a commercial bay or bait shrimp boat license may not be transferred from one person to another before September 1, 1999.

Revised Law

Sec. 5251.1209. LIMIT ON NUMBER OF LICENSES HELD OR CONTROLLED. A person may not hold or directly or indirectly control more than:

(1) four commercial bay shrimp boat licenses; and

(2) four commercial bait shrimp boat licenses. (Parks & Wild. Code, Sec. 77.114(a).)

Source Law

Sec. 77.114. LIMIT ON NUMBER OF LICENSES HELD; DESIGNATED LICENSE HOLDER. (a) Except as provided by Subsection (b), no person may hold or directly or indirectly control more than four commercial bay and four commercial bait shrimp boat licenses.

Revisor's Note

Section 77.114(a), Parks and Wildlife Code,

provides that "[e]xcept as provided by Subsection (b)," a person may not hold or directly or indirectly control more than four commercial bay and four commercial bait shrimp boat licenses. Section 77.114(b), Parks and Wildlife Code, provides certain license holders a temporary exception to the general limit provided by Subsection (a) until August 31, 2002. The revised law omits the quoted language and Section 77.114(b) as unnecessary because that date has passed and the exception is no longer applicable. The omitted law reads:

> (b) A person who qualifies to renew a license under Section 77.112 on September 1, 1995, may hold each license renewed and after that date may retain and renew the licenses until the licenses are transferred, not renewed, or revoked. A person may not hold or renew more than four commercial bay and four commercial bait shrimp boat licenses under this subsection after August 31, 2002.

Revised Law

Sec. 5251.1210. LENGTH AND ENGINE HORSEPOWER LIMITS FOR CERTAIN LICENSED VESSELS. (a) Except as provided by Subsection (d), a vessel licensed as a commercial bay shrimp boat or commercial bait shrimp boat may not:

(1) have an engine that is rated by the manufacturer of the engine at more than 400 horsepower; or

(2) exceed 60 feet in length.

(b) A vessel licensed as a commercial bay shrimp boat or commercial bait shrimp boat may not be lengthened or have the engine horsepower increased more than once after September 1, 1995.

(c) A vessel may not be lengthened by more than 15 percent of the vessel's length.

(d) The department may renew the license for a vessel that on September 1, 1995, is licensed as a commercial bay shrimp boat or commercial bait shrimp boat and exceeds the length or horsepower limit set by Subsection (a), but the vessel may not be lengthened or

have the horsepower of the vessel increased. If the vessel is replaced, the replacement vessel must meet the engine and length requirements described in Subsection (a).

(e) For purposes of this section, vessel length is determined according to United States Coast Guard specifications in effect on September 1, 1995. (Parks & Wild. Code, Sec. 77.116.)

Source Law

> Sec. 77.116. LENGTH AND ENGINE LIMITS; VESSEL UPGRADE. (a) Except as provided by Subsection (d), a vessel licensed as a commercial bay or bait shrimp boat may not:
>
> (1) have an engine that is rated by the manufacturer of the engine at more than 400 horsepower; or
>
> (2) exceed 60 feet in length.
>
> (b) A vessel licensed as a commercial bay or bait shrimp boat may not be lengthened or have the engine horsepower increased more than once after September 1, 1995.
>
> (c) A vessel may not be lengthened by more than 15 percent of the vessel's length.
>
> (d) The license for a vessel that on September 1, 1995, is licensed as a commercial bay or bait shrimp boat and exceeds the length or horsepower limit set by Subsection (a) may be renewed, but the vessel may not be lengthened or have the horsepower of the vessel increased. If the vessel is replaced, the replacement vessel must meet the engine and length requirements described in Subsection (a).
>
> (e) For purposes of this section, vessel length shall be determined according to United States Coast Guard specifications in effect on September 1, 1995.

Revised Law

Sec. 5251.1211. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program as part of the shrimp license management program.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director shall consult with the review board concerning establishment of the criteria.

(c) The commission shall retire each license purchased

under the license buyback program until the commission finds that management of the shrimp fishery allows reissue of those licenses through auction or lottery.

(d) A person whose license is selected by the department to be purchased under the license buyback program shall be required to execute a contract that includes the following terms:

> "Section 40.251, Natural Resources Code, provides that any person who intentionally leaves, abandons, or maintains any vessel in a wrecked, derelict, or substantially dismantled condition in violation of Section 40.108, Natural Resources Code, shall be guilty of a Class A misdemeanor. Further, a person who leaves, abandons, or maintains a derelict vessel in violation of Section 40.108, Natural Resources Code, shall be subject to a civil penalty of not less than $100 or more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000 pursuant to Section 40.251(f), Natural Resources Code. I agree not to abandon or dispose of any vessel in violation of state law. I further acknowledge that money paid to me under the license buyback program may be forfeited to the coastal protection fund established by Section 40.151, Natural Resources Code, if the commissioner of the General Land Office finds that the vessel to which the license applied was abandoned in violation of Section 40.108, Natural Resources Code."

(e) The commissioner of the General Land Office may order the forfeiture of any money paid to a person under the license buyback program if the commissioner finds that the vessel to which the license applied was abandoned by the person in violation of Section 40.108, Natural Resources Code. Any money forfeited under this section shall be deposited to the credit of the coastal protection fund established by Section 40.151, Natural Resources

Code. (Parks & Wild. Code, Sec. 77.119.)

Source Law

Sec. 77.119. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program as part of the shrimp license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director shall consult with the shrimp license management review board concerning establishment of the criteria.

(c) The commission shall retire each license purchased under the license buyback program until the commission finds that management of the shrimp fishery allows reissue of those licenses through auction or lottery.

(d) A person whose license is selected by the department to be purchased under the license buyback program shall be required to execute a contract that includes the following terms:

> "Section 40.251, Natural Resources Code, provides that any person who intentionally leaves, abandons, or maintains any vessel in a wrecked, derelict, or substantially dismantled condition in violation of Section 40.108, Natural Resources Code, shall be guilty of a Class A misdemeanor. Further, a person who leaves, abandons, or maintains a derelict vessel in violation of Section 40.108, Natural Resources Code, shall be subject to a civil penalty of not less than $100 or more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000 pursuant to Section 40.251(f), Natural Resources Code. I agree not to abandon or dispose of any vessel in violation of state law. I further acknowledge that money paid to me under the license buyback program may be forfeited to the coastal protection fund established by Section 40.151, Natural Resources Code, if the commissioner of the General Land Office finds that the vessel to which the license applied was abandoned in violation of Section 40.108, Natural Resources Code."

(e) The commissioner of the General Land Office may order the forfeiture of any money paid to a person under the license buyback program if the commissioner finds that the vessel to which the license applied was abandoned by the person in violation of Section 40.108, Natural Resources Code. Any money forfeited under this section shall be deposited to the credit of the coastal protection fund established by Section 40.151, Natural Resources Code.

Revised Law

Sec. 5251.1212. LICENSE SUSPENSION. (a) The executive

director may suspend a commercial bay shrimp boat license or commercial bait shrimp boat license after notice to the license holder and an opportunity for a hearing if the license holder or any other operator of the licensed vessel is convicted of one or more flagrant offenses totaling three flagrant offenses for the licensed vessel.

(b) A suspension under this section may be for a period of:

(1) six months, if:

(A) the date of each offense is within a 24-consecutive-month period beginning on or after September 1, 1995; and

(B) the license holder has not previously had a commercial bay shrimp boat license or commercial bait shrimp boat license suspended under this section; or

(2) 12 months, if:

(A) the date of each offense is within a 24-consecutive-month period; and

(B) the license holder has previously had a commercial bay shrimp boat license or commercial bait shrimp boat license suspended under this section.

(c) Except as provided by Section 5251.1213, a license suspension under this section does not affect the license holder's eligibility to renew the license after the suspension expires.

(d) The same flagrant offense may not be counted for more than one suspension under this section. (Parks & Wild. Code, Secs. 77.117(a), (b), (e).)

Source Law

Sec. 77.117. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice and the opportunity for a hearing, may suspend a commercial bay or bait shrimp boat license if the license holder or any other operator of the licensed vessel is convicted of one or more flagrant offenses totalling three flagrant offenses for the licensed vessel. The suspension may be for:

(1) six months, if:

(A) the date of each offense is within a 24-consecutive-month period beginning not earlier than September 1, 1995; and

(B) the license holder has not

previously had a commercial bay or bait shrimp boat license suspended under this section; or

(2) 12 months, if the date of each offense is within a 24-consecutive-month period and the license holder has previously had a commercial bay or bait shrimp boat license suspended under this section.

(b) Except as provided by Subsection (c), a license suspension under this section does not affect the license holder's eligibility to renew the license after the suspension expires.

(e) The same flagrant offense may not be counted for more than one suspension under this section.

Revisor's Note

Sections 77.117(b) and (e), Parks and Wildlife Code, refer to a license suspension under Section 77.117 of that code. The pertinent parts of Section 77.117 providing for the suspension of a license are revised as this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5251.1213. LICENSE REVOCATION. The executive director may permanently revoke a commercial bay shrimp boat license or commercial bait shrimp boat license after notice to the license holder and an opportunity for a hearing if:

(1) the license holder has previously had a commercial bay shrimp boat license or commercial bait shrimp boat license suspended twice under Section 5251.1212;

(2) the license holder or any other operator of the licensed vessel is convicted of one or more flagrant offenses totaling three flagrant offenses for the licensed vessel; and

(3) the date of each offense is in a 24-consecutive-month period beginning not earlier than the date of the most recent previous suspension under Section 5251.1212. (Parks & Wild. Code, Sec. 77.117(c).)

Source Law

(c) The executive director, after notice and the opportunity for a hearing, may permanently revoke a commercial bay or bait shrimp boat license if:

(1) the license holder has previously had a commercial bay or bait shrimp boat license suspended twice under this section;

(2) the license holder or any other operator of the licensed vessel is convicted of one or

more flagrant offenses totalling three flagrant offenses for the licensed vessel; and

(3) the date of each offense is in a 24-consecutive-month period beginning not earlier than the date of the most recent previous suspension under this section.

Revisor's Note

Sections 77.117(c)(1) and (3), Parks and Wildlife Code, refer to a license suspension under Section 77.117 of that code. The pertinent parts of Section 77.117 providing for the suspension of a license are revised as Section 5251.1212, and the revised law is drafted accordingly.

Revisor's Note
(End of Subchapter)

Section 77.122, Parks and Wildlife Code, requires the Parks and Wildlife Department to submit a report to the governor and legislature not later than January 1, 1999. The revised law omits that provision as executed. The omitted law reads:

> Sec. 77.122. REPORT TO LEGISLATURE. Not later than January 1, 1999, the department shall report to the governor and each member of the legislature an overview of the administration and status of the shrimp license management program, including the biological, sociological, and economic effects of the program.

SUBCHAPTER M. GULF SHRIMP LICENSE MORATORIUM

Revised Law

Sec. 5251.1301. DEFINITIONS. In this subchapter:

(1) "Gulf shrimp license moratorium program" means the gulf shrimp license moratorium program implemented by the department under Section 5251.1303.

(2) "Review board" means the gulf shrimp license moratorium review board established under Section 5251.1304. (New.)

Revisor's Note

The definitions of "gulf shrimp license moratorium program" and "review board" are added to the revised law for drafting convenience and to

eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 5251.1302. ADMINISTRATIVE PROCEDURES. The executive director shall establish administrative procedures to carry out the requirements of this subchapter. (Parks & Wild. Code, Sec. 77.154(a).)

Source Law

> Sec. 77.154. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

Revised Law

Sec. 5251.1303. GULF SHRIMP LICENSE MORATORIUM PROGRAM. (a) The department shall implement a gulf shrimp license moratorium program to promote efficiency and economic stability in the gulf shrimping industry.

(b) The commission shall adopt rules necessary to administer the gulf shrimp license moratorium program. (Parks & Wild. Code, Secs. 77.151, 77.154(b).)

Source Law

> Sec. 77.151. GULF SHRIMP LICENSE MORATORIUM PROGRAM. The department shall implement a gulf shrimp license moratorium program to promote efficiency and economic stability in the gulf shrimping industry.
>
> [Sec. 77.154]
> (b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Revisor's Note

Section 77.154(b), Parks and Wildlife Code, refers to the "program established under this subchapter." For clarity and consistency in terminology used in this subchapter, the revised law substitutes "gulf shrimp license moratorium program" for the quoted language because it is clear from the context that the referenced program is the gulf shrimp license moratorium program implemented under Section

77.151, Parks and Wildlife Code, revised as Subsection (a) of this section.

Revised Law

Sec. 5251.1304. GULF SHRIMP LICENSE MORATORIUM REVIEW BOARD. (a) The gulf shrimp license moratorium review board is composed of nine members elected by the commercial gulf shrimp boat license holders.

(b) A review board member must be a commercial gulf shrimp boat license holder.

(c) The review board members must reflect the following geographical distribution according to the county of residence specified on the member's commercial gulf shrimp boat license:

(1) two members representing Orange, Jefferson, Chambers, and Harris Counties;

(2) one member representing Galveston County;

(3) two members representing Brazoria and Matagorda Counties;

(4) two members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) two members representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administration of the gulf shrimp license moratorium program, including hardship and appeal cases concerning eligibility.

(e) The executive director shall:

(1) adopt procedures for the election of review board members and the operation of the review board; and

(2) solicit and consider recommendations from commercial gulf shrimp boat license holders regarding the review board procedures described by Subdivision (1) and the continued need for the review board.

(f) The review board is not subject to Chapter 2110, Government Code. (Parks & Wild. Code, Sec. 77.153.)

Source Law

Sec. 77.153. GULF SHRIMP LICENSE MORATORIUM REVIEW BOARD. (a) The holders of commercial gulf shrimp boat licenses shall elect a gulf shrimp license moratorium review board of nine members.

(b) A member of the review board must be a holder of a commercial gulf shrimp boat license.

(c) The nine members of the review board must be selected to reflect the following geographical distribution according to the county of residence specified on the member's commercial gulf shrimp boat license:

(1) two members representing Orange, Jefferson, Chambers, and Harris Counties;

(2) one member representing Galveston County;

(3) two members representing Brazoria and Matagorda Counties;

(4) two members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) two members representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the gulf shrimp license moratorium program, including hardship and appeal cases concerning eligibility.

(e) The executive director shall adopt procedures for the election and operation of the review board. The executive director shall solicit and consider recommendations from the commercial gulf shrimp boat license holders regarding the procedures and the continued need for the board.

(f) The review board is not subject to Chapter 2110, Government Code.

Revisor's Note

Section 77.153(a), Parks and Wildlife Code, provides that the commercial gulf shrimp boat license holders "shall elect" a gulf shrimp license moratorium review board of nine members. For clarity, the revised law restates the provision as a requirement for the composition of the review board rather than an affirmative duty on the license holders for the reasons stated in Revisor's Note (1) to Section 5158.0416.

Revised Law

Sec. 5251.1305. ISSUANCE AND RENEWAL OF COMMERCIAL GULF SHRIMP BOAT LICENSE. (a) The department may not issue or renew a commercial gulf shrimp boat license unless the applicant documents to the department's satisfaction that the vessel for which the

license is sought:

(1) is owned by the applicant;

(2) was licensed as a gulf shrimp boat on the day the renewal was sought or at the end of the licensing period immediately preceding the period for which the license is sought; and

(3) is intended to be licensed and used as a commercial gulf shrimp boat.

(b) An applicant for a new or renewed commercial gulf shrimp boat license for a vessel must submit to the department with the license application:

(1) if United States Coast Guard rules require the vessel to be documented, the United States Coast Guard certificate of documentation for the vessel; and

(2) the certificate of number for the vessel as required by Chapter 4052. (Parks & Wild. Code, Sec. 77.152.)

Source Law

Sec. 77.152. ISSUANCE AND RENEWAL OF COMMERCIAL GULF SHRIMP BOAT LICENSES. (a) After August 31, 2005, the department may not issue or renew a commercial gulf shrimp boat license unless the person seeking to obtain or renew the license documents to the satisfaction of the department that the vessel for which the license is sought:

(1) is owned by the person;

(2) was licensed as a gulf shrimp boat on the day the renewal was sought or at the end of the licensing period immediately preceding the period for which the license is sought; and

(3) is intended to be licensed and used as a commercial gulf shrimp boat.

(b) An applicant for a new or renewed commercial gulf shrimp boat license for a vessel must submit to the department with the license application:

(1) the United States Coast Guard certificate of documentation for the vessel, if the vessel is required by United States Coast Guard rules to be documented; and

(2) the certificate of number for the vessel as required by Chapter 31.

Revisor's Note

Section 77.152(a), Parks and Wildlife Code, prohibits the Parks and Wildlife Department from issuing certain commercial gulf shrimp boat licenses "[a]fter August 31, 2005." The revised law omits the quoted language as unnecessary because that date has

passed and the language does not add to the clear meaning of the law.

SUBCHAPTER N. SHRIMPING IN OUTSIDE WATER

Revised Law

Sec. 5251.1401. PROHIBITION ON CATCHING SHRIMP DURING GENERAL CLOSED SEASON. (a) Except as provided by this subchapter, a person may not catch shrimp in outside water from June 1 through July 15 or during a period provided under Section 5251.1402.

(b) The presence of a shrimp trawl, excluding doors, not stored within the confines of the hull of a vessel in outside water during the closed period described by Subsection (a) is prima facie evidence of a violation of this section. (Parks & Wild. Code, Secs. 77.061(a)(1), (c).)

Source Law

> Sec. 77.061. GENERAL CLOSED SEASON. (a) Except as specifically provided in this subchapter, no person may catch shrimp in outside water:
>
> (1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or
>
> . . .
>
> (c) Except as provided in this section, the presence of a shrimp trawl (excluding doors) not stored within the confines of the hull of a vessel in outside water during the closed period provided by Subdivision (1) of Subsection (a) of this section is prima facie evidence of a violation of this section.

Revisor's Note

Section 77.061(c), Parks and Wildlife Code, provides that "[e]xcept as provided in this section," the presence of a shrimp trawl not stored within the hull of a vessel in outside water during the general closed season for shrimping is prima facie evidence of a violation of the prohibition on shrimping during the closed season. The exception referenced by the quoted language is Section 77.061(d), Parks and Wildlife Code, which provides that Section 77.061(c) does not apply to certain gulf shrimp boats that are in direct transit to open water to catch white shrimp as provided

in Section 77.065 of that code. Section 77.065 was repealed by Chapter 1256 (H.B. 2542), Acts of the 75th Legislature, Regular Session, 1997. The revised law omits the quoted language and Section 77.061(d) as unnecessary because the exception provided by Section 77.061(d) is no longer applicable. The omitted law reads:

> (d) Subsection (c) of this section does not apply to a licensed commercial gulf shrimp boat within one-fourth mile of jetties when the vessel is in direct transit to open water to catch white shrimp as provided in Section 77.065, Parks and Wildlife Code, as amended.

Revised Law

Sec. 5251.1402. CHANGE IN GENERAL CLOSED SEASON. (a) The commission may change the opening and closing dates of the general closed season described by Section 5251.1401, based on sound biological data, to provide for an earlier, later, or longer season not to exceed 60 days.

(b) The commission must provide public notice of a change to the general closed season:

(1) not less than 24 hours before changing the opening date; and

(2) not less than 72 hours before changing the closing date.

(c) The commission may delegate to the executive director the duties and responsibilities of opening and closing the shrimping season under this section. (Parks & Wild. Code, Sec. 77.062.)

Source Law

> Sec. 77.062. CHANGE IN GENERAL CLOSED SEASON. Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

Revised Law

Sec. 5251.1403. PROHIBITION ON CATCHING SHRIMP IN SHALLOWER WATER DURING CERTAIN SEASON. Except as provided by this subchapter, a person may not catch shrimp, other than seabobs, in outside water that is seven fathoms or less in depth after December 15 and before February 2 of the following year. (Parks & Wild. Code, Sec. 77.061(a)(2).)

Source Law

> Sec. 77.061. GENERAL CLOSED SEASON. (a) Except as specifically provided in this subchapter, no person may catch shrimp in outside water:
>
> . . .
>
> (2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

Revisor's Note

Section 77.061(a)(2), Parks and Wildlife Code, refers to outside water "extending from the coastline of Texas." The revised law omits the quoted language as unnecessary because Section 77.001(3), Parks and Wildlife Code, revised as Section 5251.0101(11), defines outside water for purposes of Chapter 77 of that code as "the salt water of the state contiguous to and seaward from the shoreline" of this state and "that portion of the Gulf of Mexico extending from the shoreline seaward" that is within the jurisdiction of this state.

Revised Law

Sec. 5251.1404. REQUIRED DISPLAY OF DOCUMENTATION NUMBER OR REGISTRATION NUMBER ON VESSEL. (a) A commercial shrimp boat operating in outside water during the closed season under Section 5251.1401(a) must display:

(1) the boat's documentation number issued by the United States Coast Guard for documented vessels; or

(2) a registration number issued by a state.

(b) The number must be:

(1) displayed on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft;

(2) permanently attached or painted on the vessel in block Arabic numerals in contrasting color to the background; and

(3) not less than 18 inches in height for vessels greater than 65 feet in length or not less than 10 inches in height for all other vessels. (Parks & Wild. Code, Sec. 77.061(e).)

Source Law

> (e) A commercial shrimp boat operating in the outside water during the closed season as provided by Subdivision (1) of Subsection (a) of this section shall display its documentation number issued by the United States Coast Guard for documented vessels or a registration number issued by a state on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. This number shall be permanently attached or painted on the vessel in block Arabic numerals in contrasting color to the background and at least 18 inches in height on vessels over 65 feet in length or at least 10 inches in height for all other vessels.

Revised Law

Sec. 5251.1405. RESTRICTION ON SIZE OF TRY NETS AND BEAM TRAWLS. (a) If restrictions are imposed on the size of main trawls, the number of main trawls, or both, a person may not use in outside water:

(1) a try net that:

(A) exceeds 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door; and

(B) has doors or boards that exceed 450 square inches each; or

(2) a beam trawl that exceeds 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

(b) This section does not apply to the taking of seabobs. (Parks & Wild. Code, Sec. 77.063.)

Source Law

Sec. 77.063. GENERAL LIMITATION ON NETS. (b) When restrictions are imposed on either or both the size and number of main trawls, no person may use a try net in outside water exceeding 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each or a beam trawl exceeding 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

(c) This section does not apply to the taking of sea bobs.

Revised Law

Sec. 5251.1406. SHRIMP SIZE EXCEPTION. Minimum size restrictions provided by this chapter do not apply to shrimp taken from outside water if:

(1) the Gulf of Mexico Fishery Management Council's Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico is in effect; and

(2) the plan restricts the taking of shrimp in the Fishery Conservation Zone contiguous to outside water, to conform with this state's closed season under Sections 5251.1401(a) and 5251.1402. (Parks & Wild. Code, Sec. 77.072.)

Source Law

Sec. 77.072. SHRIMP SIZE EXCEPTION. Minimum size restrictions as provided in Chapter 77, Parks and Wildlife Code, as amended, do not apply to shrimp taken from outside waters when:

(1) the Gulf of Mexico Fishery Management Council's Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico is in effect; and

(2) such plan as described in Subsection (a) of this section restricts the taking of shrimp in the Fishery Conservation Zone contiguous to the outside waters of Texas, to conform with the Texas closed Gulf season as defined in Sections 77.061(1) and 77.062 of this code.

Revisor's Note

Section 77.072(2), Parks and Wildlife Code, refers to Section 77.061(1), Parks and Wildlife Code. It is clear from the context that "Section 77.061(1)" is a typographical error and the legislature intended to refer to Section 77.061(a)(1), Parks and Wildlife Code. Section 77.061(a)(1) is revised as Section 5251.1401(a), and the revised law is drafted

accordingly.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5251.9801. METHOD OF TAKING SHRIMP COUNT. (a) An authorized department employee shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totaling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately. (Parks & Wild. Code, Sec. 77.014.)

Source Law

> Sec. 77.014. METHOD OF TAKING COUNT. (a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.
>
> (b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.
>
> (c) Each sample must weigh five pounds after draining at least three minutes.
>
> (d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.
>
> (e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.
>
> (f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.
>
> (g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

Revised Law

Sec. 5251.9802. SHRIMP GRADING. Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale. (Parks & Wild. Code, Sec. 77.015.)

Source Law

> Sec. 77.015. GRADATION AND PROCESSING. Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

Revised Law

Sec. 5251.9803. RETENTION OF RED DRUM, SPECKLED SEA TROUT, AND LIGHTNING WHELKS PROHIBITED. (a) A person using a trawl to take shrimp may not retain a red drum, speckled sea trout, or lightning whelk, also known as Busycon perversum pulleyi, caught in the trawl.

(b) A person may not retain a red drum, speckled sea trout, or lightning whelk if:

(1) the person is on board a boat licensed under this chapter; and

(2) there is a shrimp trawl on board the boat. (Parks & Wild. Code, Sec. 77.0191.)

Source Law

> Sec. 77.0191. RETENTION OF REDFISH, SPECKLED SEA TROUT, AND LIGHTNING WHELKS. (a) No person who is using a trawl for the purpose of taking shrimp may retain a redfish, speckled sea trout, or lightning whelk, also known as Busycon perversum pulleyi, caught in the trawl.
>
> (b) No person may retain a redfish, speckled sea trout, or lightning whelk if the person is on board a boat licensed under this chapter and if there is a shrimp trawl on board the boat.

Revisor's Note

Section 77.0191, Parks and Wildlife Code, refers to "redfish." The revised law substitutes "red drum" for "redfish" for the reasons stated in Revisor's Note (1) to Section 5101.9902.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5251.9901. GENERAL CRIMINAL PENALTY. (a) A person

commits an offense if the person violates:

(1) a provision of this chapter other than Section 5251.1105 or 5251.1401; or

(2) a regulation adopted under this chapter.

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

(1) a Class B Parks and Wildlife Code misdemeanor if 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 one time of an offense under this section; or

(2) a Class A 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 two or more times of an offense under this section. (Parks & Wild. Code, Secs. 77.020(a), (b), (c).)

Source Law

> Sec. 77.020. PENALTY. (a) A person who violates a provision of this chapter except Section 77.024 or 77.061(a)(1) or who violates a regulation adopted under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (b) If it is shown at the trial of the defendant that the person has been convicted once within five years before the trial date of a violation of a provision of this chapter except Section 77.024 or 77.061(a)(1), or of a regulation adopted under this chapter, the person is guilty of a Class B Parks and Wildlife Code misdemeanor.
>
> (c) If it is shown at the trial of the defendant that the person has been convicted two or more times within five years before the trial date of a violation of a provision of this chapter except Section 77.024 or 77.061(a)(1), or of a regulation adopted under this chapter, the person is guilty of a Class A Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5251.9902. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS. (a) A person commits an offense if the person violates Section 5251.1105 or 5251.1401.

(b) Notwithstanding Subchapter A, Chapter 2952, an offense under this section is punishable by:

(1) a fine of not less than $2,500 or more than $5,000;

(2) confinement in the county jail for not less than six months or more than one year; or

(3) both a fine and confinement. (Parks & Wild. Code, Sec. 77.061(b).)

Source Law

> (b) Notwithstanding the provisions of Subchapter E, Chapter 12, of this code, a person who violates Subdivision (1) of Subsection (a) of this section or Section 77.024 of this code commits an offense and on conviction is punishable by a fine of not less than $2,500 nor more than $5,000, by confinement in the county jail for not less than six months nor more than one year, or by both.

Revised Law

Sec. 5251.9903. SEPARATE OFFENSES. Each day on which a violation occurs is a separate offense. (Parks & Wild. Code, Sec. 77.021.)

Source Law

> Sec. 77.021. SEPARATE OFFENSE. Each day on which a violation occurs constitutes a separate offense.

Revised Law

Sec. 5251.9904. RESPONSIBILITY FOR VIOLATION. (a) The captain of a vessel involved in a violation of this chapter is primarily responsible for the violation.

(b) A crew member of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is shown on the trial of the offense that the crew member acted in violation of the orders of the captain of the vessel.

(c) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is shown on the trial of the offense that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation. (Parks & Wild. Code, Sec. 77.022.)

Source Law

> Sec. 77.022. RESPONSIBILITY FOR VIOLATION. (a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew

acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation.

Revised Law

Sec. 5251.9905. LIMITATION PERIOD. An indictment or information for a violation of this chapter must be presented not later than one year after the date of the commission of the offense. (Parks & Wild. Code, Sec. 77.025.)

Source Law

Sec. 77.025. PERIOD OF LIMITATION. Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

Revisor's Note

Section 77.025, Parks and Wildlife Code, provides for a one-year limitation period for a violation of the chapter, "[e]xcept as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended." The revised law omits the quoted language as unnecessary because under Article 1.02, Code of Criminal Procedure, the Code of Criminal Procedure applies to any criminal proceeding brought in this state and therefore Article 12.05 applies to the calculation of the limitation period under Section 77.025 by its own terms.

Revised Law

Sec. 5251.9906. DISPOSITION OF MONEY FROM FINES. Money received for a fine paid for a violation of this chapter must be sent to the department not later than the 10th day of the month following the date the money is collected. (Parks & Wild. Code, Sec. 77.003 (part).)

Source Law

Sec. 77.003. DISPOSITION OF FUNDS. Money received for . . . fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

Revised Law

Sec. 5251.9907. APPLICABILITY OF OTHER LAW TO CERTAIN RULE VIOLATIONS. Subchapter B, Chapter 5953, and Chapter 5954 do not apply to a violation of a rule adopted under this chapter related to the display of a commercial shrimp boat license or a commercial shrimp boat's documentation or registration number unless a separate violation of this chapter or a rule adopted under this chapter exists at the time of the violation. (Parks & Wild. Code, Sec. 77.020(d).)

Source Law

(d) Section 12.109 and Subchapter D, Chapter 12, do not apply to a violation of a rule adopted under this chapter related to the display of a commercial shrimp boat license or a commercial shrimp boat's documentation or registration number if another violation of this chapter or a rule adopted under this chapter does not exist at the time of the violation.

Revisor's Note
(End of Chapter)

Section 77.002(b), Parks and Wildlife Code, creates the shrimp marketing account in the general revenue fund, describes the purpose of the account, and provides that the account consists of money deposited to the account under Section 77.002 of that code. Section 77.002(c), Parks and Wildlife Code, directs the Parks and Wildlife Department to increase the amount of certain fees and deposit to the credit of the shrimp marketing account the revenue attributable to that increase in fees. Section 77.002(d), Parks and Wildlife Code, prescribes the permissible uses of money in the shrimp marketing account. Section 77.002(e), Parks and Wildlife Code, directs the Parks and Wildlife Department to deposit quarterly to the shrimp marketing account the fee revenue received under Section 77.002(c). Sections 77.002(b), (c), (d), and (e) were enacted by Chapter 677 (H.B. 2470), Acts of the 78th Legislature, Regular Session, 2003.

During the same legislative session, the legislature enacted Chapter 1296 (H.B. 3318), Acts of the 78th Legislature, Regular Session, 2003, which abolished all funds, accounts, and dedications of revenue created by other Acts of the 78th Legislature, Regular Session, 2003, that were not specifically exempted from abolition by Chapter 1296. The revised law omits Sections 77.002(b), (d), and (e) and the part of Section 77.002(c) that dedicates revenue attributable to an increase in certain fees to the shrimp marketing account because the account and the dedication of revenue to the account created by those provisions were not specifically exempted from the application of Chapter 1296 (H.B. 3318), Acts of the 78th Legislature, Regular Session, 2003, and were abolished under that act. Additionally, the revised law omits as executed the part of Section 77.002(c) that directs the department to increase by 10 percent certain fees in effect on a specified date. The omitted law reads:

> (b) The shrimp marketing account is an account in the general revenue fund to be used by the Department of Agriculture solely for the purpose of the Texas shrimp marketing assistance program established under Subchapter B, Chapter 47, Agriculture Code. The account consists of funds deposited to the account under this section. The account is exempt from the application of Section 11.032 of this code and Section 403.095, Government Code.
>
> (c) Except as provided by Sections 47.021 and 77.049, in addition to fee increases the department is authorized to make under this code, the department shall increase by 10 percent the fee, as of September 1, 2003, for the following licenses and shall deposit the amount of the increase to the credit of the shrimp marketing account:
>
> (1) a wholesale fish dealer's license issued under Section 47.009;
>
> (2) a wholesale truck dealer's fish license issued under Section 47.010;
>
> (3) a retail fish dealer's license issued under Section 47.011;
>
> (4) a retail dealer's truck license issued under Section 47.013;
>
> (5) a commercial bay shrimp

boat license issued under Section 77.031; and

(6) a commercial gulf shrimp boat license issued under Section 77.035.

(d) Money in the shrimp marketing account may be used only for implementing, maintaining, and conducting, including hiring program staff employees for, the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code. The Department of Agriculture may allocate not more than $100,000 per fiscal year of the money in the account to cover administrative and personnel costs of the Department of Agriculture associated with the program.

(e) The department shall deposit at the end of each quarter to the credit of the shrimp marketing account, fees received under Subsection (c) for use by the Department of Agriculture to conduct and operate the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code.

CHAPTER 5252. MUSSELS AND CLAMS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5252.0101. DEFINITION. In this chapter, "mussels and clams" includes all freshwater and marine bivalve mollusks except species covered under other chapters of this code. (Parks & Wild. Code, Sec. 78.001(2).)

Source Law

Sec. 78.001. DEFINITIONS. In this chapter:

(2) "Mussels and clams" includes all freshwater and marine bivalve mollusks except species covered under other chapters of this code.

Revised Law

Sec. 5252.0102. DETERMINATION OF RESIDENCY STATUS. (a) For purposes of this chapter, a person is considered a resident if the person is an individual who has resided continuously in this state for more than six months immediately before applying to the department for a license required by this chapter.

(b) For purposes of this chapter, a person is considered a nonresident if the person is an individual not described by Subsection (a). (Parks & Wild. Code, Secs. 47.001(12), (13), 78.001(3), (5).)

Source Law

Sec. 47.001. DEFINITIONS. In this chapter:

(12) "Resident" means an individual who has resided continuously in this state for more than six months immediately before applying for a license required by this chapter from the department.

(13) "Nonresident" means an individual who is not a resident.

Sec. 78.001. DEFINITIONS. In this chapter:

(3) "Nonresident" has the meaning assigned under Section 47.001 of this code.

(5) "Resident" has the meaning assigned under Section 47.001 of this code.

Revisor's Note

Section 78.001, Parks and Wildlife Code, defines the terms "nonresident" and "resident" for purposes of the chapter by means of a cross-reference to Section 47.001 of that code. The revised law is drafted to include the substance of those definitions, which is more appropriately drafted as substantive law.

SUBCHAPTER B. REGULATION OF MUSSELS AND CLAMS GENERALLY

Revised Law

Sec. 5252.0201. REGULATION BY PROCLAMATION. (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of mussels and clams.

(b) A proclamation issued under this section must contain findings by the commission that support the need for the proclamation. In determining the need for a proclamation, the commission shall consider:

(1) measures to prevent the depletion of mussels and clams;

(2) measures based on the best scientific information available;

(3) measures to manage mussels and clams;

(4) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(5) measures that will enhance enforcement.

(c) A proclamation issued under this section may:

(1) prescribe the time, place, conditions, and means and manner of taking mussels and clams; and

(2) limit the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased.

(d) A proclamation issued under this section prevails over a proclamation issued under Chapter 5101.

(e) A proclamation issued under this section does not prevail over:

(1) an order or rule adopted by the executive commissioner of the Health and Human Services Commission or the commissioner of state health services; or

(2) a proclamation issued under:

(A) Subchapter C or D, Chapter 5053;

(B) Chapter 5054;

(C) Chapter 5254; or

(D) Subchapter B, Chapter 5458. (Parks & Wild. Code, Sec. 78.006.)

Source Law

Sec. 78.006. REGULATION OF TAKING, POSSESSION, PURCHASE, AND SALE OF MUSSELS AND CLAMS. (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of mussels and clams. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent the depletion of mussels and clams;

(2) measures based on the best scientific information available;

(3) measures to manage mussels and clams;

(4) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(5) measures that will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking mussels and clams.

(d) A proclamation of the commission under this section prevails over a proclamation of the commission issued under Chapter 61 of this code.

(e) A proclamation of the commission under this section does not prevail over:

(1) an order, rule, or regulation adopted by the commissioner of health; or

(2) a proclamation of the commission issued under Chapter 66 of this code.

Revisor's Note

(1) Section 78.006(e)(1), Parks and Wildlife Code, refers to an "order, rule, or regulation" adopted by the commissioner of health. The revised law omits "regulation" for the reasons stated in Revisor's Note (2) to Section 5053.0108.

(2) Section 78.006(e)(1), Parks and Wildlife Code, refers to "the commissioner of health." In 1975, the powers, duties, and functions granted by law to the commissioner of health were transferred to the Texas Board of Health Resources (Chapter 323, Acts of the 64th Legislature, Regular Session, 1975). The name of that board was changed to the Texas Board of Health in 1977, and the law again provided that the powers, duties, and functions granted by law to the commissioner of health were to be exercised by the board (Chapter 474, Acts of the 65th Legislature, Regular Session, 1977). In 2015, the powers and duties granted by law to the Texas Board of Health were transferred to the executive commissioner of the Health and Human Services Commission and the commissioner of state health services (Chapter 1, Acts of the 84th Legislature, Regular Session, 2015). Accordingly, the revised law substitutes "the executive commissioner of the Health and Human Services Commission or the commissioner of state health services" for "the commissioner of health."

(3) Section 78.006(e)(2), Parks and Wildlife Code, provides that a proclamation of the Parks and Wildlife Commission under Section 78.006 of that code does not prevail over a proclamation of the commission

issued under Chapter 66 of that code. The pertinent parts of Chapter 66 providing for issuance of a commission proclamation under that chapter are revised in Subchapters C and D, Chapter 5053, Chapters 5054 and 5254, and Subchapter B, Chapter 5458, and the revised law is drafted accordingly. Although Subchapter C, Chapter 5053, and Chapter 5054 also include the revision of provisions not derived from Chapter 66, it is appropriate to refer to Subchapter C, Chapter 5053, and Chapter 5054 in their entirety because the additional provisions do not authorize the issuance of a commission proclamation.

Revised Law

Sec. 5252.0202. TAKING OF MUSSELS AND CLAMS FOR PERSONAL USE AND CONSUMPTION. (a) In this section, "soft tissue" means mussel and clam body parts, exclusive of the shell, and pearls.

(b) A person who possesses a fishing license or who is a resident and is exempt from licensing requirements under Section 5153.0301 may take from the public water of this state, for personal use and consumption only, not more than:

(1) 25 pounds per day of whole mussels and clams, including shell and soft tissue; or

(2) 12 pounds per day of mussel and clam shells. (Parks & Wild. Code, Secs. 78.001(4), 78.005.)

Source Law

Sec. 78.001. DEFINITIONS. In this chapter:

(4) "Soft tissue" means mussel and clam body parts, exclusive of the shell, and pearls.

Sec. 78.005. EXEMPTION FOR PERSONAL USE AND CONSUMPTION. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Section 46.002 of this code may take or harvest from the public water of the state, for personal use and consumption only, not more than 25 pounds a day of whole mussels and clams, including shell and soft tissue, or 12 pounds a day of mussel and clam shells.

Revisor's Note

(1) Section 78.005, Parks and Wildlife Code, refers to a "valid" fishing license. The revised law omits "valid" for the reasons stated in Revisor's Note (1) to Section 5151.0302.

(2) Section 78.005, Parks and Wildlife Code, authorizes certain persons to "take or harvest" from public water a certain amount of whole mussels and clams or shells for personal use and consumption. The revised law omits "harvest" for the reason stated in the revisor's note to Section 5158.0603.

Revised Law

Sec. 5252.0203. EXPORT FEE. (a) The commission may charge a fee for mussels, clams, or mussel or clam shells that are harvested from the public water of this state for export in the amount of three cents per pound or a greater amount set by the commission.

(b) Money collected from shell export fees may be used only for research and mitigation and management activities associated with mussels and clams. (Parks & Wild. Code, Sec. 78.004.)

Source Law

Sec. 78.004. EXPORT FEE. The commission may charge a fee of three cents a pound or an amount set by the commission, whichever amount is more, for mussels or clams or mussel or clam shells that are harvested from the public water of the state for export. Funds collected from shell export fees may be used only for research and mitigation and management activities associated with mussels and clams.

Revisor's Note

Section 78.004, Parks and Wildlife Code, refers to "funds" collected from certain fees. The revised law substitutes "money" for "funds" for the reason stated in Revisor's Note (3) to Section 5054.0302.

SUBCHAPTER C. GENERAL LICENSE PROVISIONS

Revised Law

Sec. 5252.0301. LICENSE TERM. (a) A license issued under this chapter is valid only during the yearly period for which the

license is issued without regard to the date the license is acquired.

(b) Each yearly period for a license 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. (Parks & Wild. Code, Sec. 78.002(b) (part).)

Source Law

> (b) . . . All licenses issued under the authority of Chapter 78 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. . . .

Revised Law

Sec. 5252.0302. LICENSE ISSUED FOR TRANSITION PERIOD. The commission by rule may:

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

(2) set the fee for a license issued during a transition period at an amount less than the amount prescribed by this chapter for that license. (Parks & Wild. Code, Sec. 78.002(b) (part).)

Source Law

> (b) . . . The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

Revisor's Note

Section 78.002(b), Parks and Wildlife Code, refers to a license fee set at an amount less than prescribed in Chapter 78 of that code. The pertinent parts of Chapter 78 prescribing license fees related to mussels and clams are revised in this chapter, and

the revised law is drafted accordingly.

SUBCHAPTER D. COMMERCIAL MUSSEL AND CLAM FISHERMAN'S LICENSE

Revised Law

Sec. 5252.0401. COMMERCIAL MUSSEL AND CLAM FISHERMAN'S LICENSE REQUIRED. A person may not take mussels, clams, or mussel or clam shells from the public water of this state for commercial purposes, including to sell, barter, or exchange or for any other commercial use, without a resident or nonresident commercial mussel and clam fisherman's license. (Parks & Wild. Code, Secs. 78.001(1), 78.002(a).)

Source Law

Sec. 78.001. DEFINITIONS. In this chapter:

(1) "Commercial purposes" includes sale, barter, or exchange, or any other commercial use.

Sec. 78.002. LICENSE REQUIRED; FEES. (a) No person may take any mussels, clams, or their shells from the public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.

Revised Law

Sec. 5252.0402. LICENSE FORM. (a) The department shall prescribe the form of a commercial mussel and clam fisherman's license.

(b) The form must designate the water in which the license holder may operate. (Parks & Wild. Code, Sec. 78.002(b) (part).)

Source Law

(b) The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. . . .

Revisor's Note

Section 78.002(b), Parks and Wildlife Code, refers to a "licensee." The revised law substitutes "license holder" for "licensee" for the reasons stated in Revisor's Note (4) to Section 5158.0101.

Revised Law

Sec. 5252.0403. LICENSE FEE. (a) The fee for a resident commercial mussel and clam fisherman's license is $30 or a greater amount set by the commission.

(b) The fee for a nonresident commercial mussel and clam fisherman's license is $800 or a greater amount set by the commission.

(c) The department may grant permission to use a dredge in a designated area for an additional fee of $30 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 78.002(c), (d), (e).)

Source Law

> (c) The license fee for a resident commercial mussel and clam fisherman's license is $30 or an amount set by the commission, whichever amount is more.
>
> (d) The license fee for a nonresident commercial mussel and clam fisherman's license is $800 or an amount set by the commission, whichever amount is more.
>
> (e) The department may grant permission to use a dredge in a designated area for an additional fee of $30 or an amount set by the commission, whichever amount is more.

SUBCHAPTER E. SHELL BUYER'S LICENSE

Revised Law

Sec. 5252.0501. SHELL BUYER'S LICENSE REQUIRED. Except as provided by Section 5252.0202, a person may not purchase for commercial use mussel or clam shells that have been taken from the public water of this state without a resident or nonresident shell buyer's license. (Parks & Wild. Code, Sec. 78.003(a).)

Source Law

> Sec. 78.003. SHELL BUYER LICENSE. (a) No person may purchase for commercial use mussel or clam shells that have been taken from the public water of the state without a resident or nonresident shell buyer's license, except as allowed under Section 78.005 of this code.

Revised Law

Sec. 5252.0502. LICENSE FORM. The department shall prescribe the form of a shell buyer's license. (Parks & Wild. Code, Sec. 78.003(b).)

Source Law

> (b) The license form shall be prescribed by the department.

Revised Law

Sec. 5252.0503. LICENSE FEE. (a) The license fee for a resident shell buyer's license is $100 or a greater amount set by

the commission.

(b) The license fee for a nonresident shell buyer's license is $1,500 or a greater amount set by the commission. (Parks & Wild. Code, Secs. 78.003(c), (d).)

Source Law

(c) The license fee for a resident shell buyer's license is $100 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident shell buyer's license is $1,500 or an amount set by the commission, whichever amount is more.

Revised Law

Sec. 5252.0504. REPORT BY LICENSE HOLDER. A shell buyer's license holder shall file with the department a report of activities performed under the license in a form and manner specified by the department. (Parks & Wild. Code, Sec. 78.003(e).)

Source Law

(e) The holder of a shell buyer's license shall file with the department a report of activities performed under the license in a form and manner specified by the department.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5252.9901. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 78.007.)

Source Law

Sec. 78.007. UNLAWFUL ACTS. A person who violates the provisions of this chapter commits a Class C Parks and Wildlife Code misdemeanor.

CHAPTER 5253. CRABS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5253.0101. DEFINITIONS. In this chapter:

(1) "Commercial crab fishing" means pursuing, taking, attempting to take, or landing crabs in this state for compensation or for the purpose of sale, barter, or exchange.

(2) "Crab" means all species in the families

Portunidae and Xanthidae.

(3) "Crab license management program" means the crab license management program implemented by the department under Section 5253.0301.

(4) "License" means a commercial license issued in accordance with a proclamation under this chapter that authorizes commercial crab fishing or the operation of a commercial crab boat.

(5) "Review board" means the crab license management review board established under Section 5253.0302. (Parks & Wild. Code, Sec. 78.102; New.)

Source Law

Sec. 78.102. DEFINITIONS. In this subchapter:

(1) "Crab" means all species in the families Portunidae and Xanthidae.

(2) "Commercial crab fishing" means pursuing, taking, attempting to take, or landing crabs in this state for pay or for the purpose of sale, barter, or exchange.

(3) "License" means a commercial license issued in accordance with a proclamation under this subchapter that authorizes commercial crab fishing or the operation of a commercial crab boat.

Revisor's Note

The definitions of "crab license management program" and "review board" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 5253.0102. ADMINISTRATIVE PROCEDURES. The executive director shall establish administrative procedures to carry out the requirements of this chapter. (Parks & Wild. Code, Sec. 78.112(a).)

Source Law

Sec. 78.112. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

Revised Law

Sec. 5253.0103. PROCLAMATION PROCEDURES. Subchapter B,

Chapter 5101, applies to the adoption of proclamations under this chapter. (Parks & Wild. Code, Sec. 78.114.)

Source Law

Sec. 78.114. PROCLAMATION; PROCEDURES. Subchapter D, Chapter 61, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

SUBCHAPTER B. GENERAL LICENSE PROVISIONS

Revised Law

Sec. 5253.0201. AUTHORITY OF COMMISSION TO REQUIRE LICENSE; PROCLAMATION SCOPE AND REQUIREMENTS. (a) If the commission adopts one or more licenses to be issued under this chapter, a person may not engage in commercial crab fishing without a license adopted by the commission.

(b) If the commission adopts a commercial crab boat license to be issued under this chapter, a person may not operate a boat for the purpose of commercial crab fishing without having a commercial crab boat license as prescribed by the commission.

(c) A proclamation issued under this section may:

(1) establish a license that is issued to a person, to a person and limited to a vessel, or to a person according to the equipment used in commercial crab fishing, including issuing tags for crab traps placed in public water under Section 5253.0401;

(2) establish eligibility requirements for a license, including the use of historical participation in the industry or participation in the industry after August 31, 1995, and before November 14, 1996;

(3) establish requirements for license transfer;

(4) prohibit license transfer during certain time periods; and

(5) establish a lottery or an auction for issuing licenses.

(d) A proclamation under this section requiring a license must contain findings by the commission that support the need for the proclamation. In determining the need for a license

requirement, the commission shall consider:

(1) measures to prevent waste or depletion of crabs while achieving, on a continuing basis, the optimum yield for the fishery;

(2) the best scientific information available;

(3) the effect a licensing program would have on the management of crabs throughout the jurisdictional range;

(4) the need to promote, where practicable, efficiency in using crabs; and

(5) the need to enhance enforcement. (Parks & Wild. Code, Sec. 78.104.)

Source Law

Sec. 78.104. LICENSING. (a) If the commission adopts one or more licenses to be issued under this subchapter, a person may not engage in commercial crab fishing without a license adopted by the commission. If the commission adopts a commercial crab boat license to be issued under this subchapter, a person may not operate a boat for the purpose of commercial crab fishing without having a boat license as prescribed by the commission.

(b) A proclamation under this section requiring a license must contain findings by the commission that support the need for the proclamation. In determining the need for a license requirement, the commission shall consider:

(1) measures to prevent waste or depletion of crabs while achieving, on a continuing basis, the optimum yield for the fishery;

(2) the best scientific information available;

(3) the effect a licensing program would have on the management of crabs throughout the jurisdictional range;

(4) the need to promote, where practicable, efficiency in using crabs; and

(5) the need to enhance enforcement.

(c) A proclamation issued under this section may:

(1) establish a license that is issued to a person, to a person and limited to a vessel, or to a person according to the equipment used in commercial crab fishing, including issuing tags for crab traps placed in public waters under Section 66.018;

(2) establish eligibility requirements for a license, including the use of historical participation in the industry or participation in the industry after August 31, 1995, and before November 14, 1996;

(3) establish requirements for license transfer;

(4) prohibit license transfer during certain time periods; and

(5) establish a lottery or an auction for issuing licenses.

Revised Law

Sec. 5253.0202. LICENSE FEE. The fee for a license issued under this chapter is $500 or a greater amount set by the commission. (Parks & Wild. Code, Sec. 78.105 (part).)

Source Law

> Sec. 78.105. LICENSE FEE. The fee for a license is $500, or an amount set by the commission, whichever amount is more. . . .

Revised Law

Sec. 5253.0203. LICENSE TERM. (a) A license issued under this chapter is valid only during the yearly period for which the license is issued without regard to the date the license is acquired.

(b) Each yearly period for a license 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. (Parks & Wild. Code, Secs. 78.002(b) (part), 78.108.)

Source Law

> [Sec. 78.002]
>
> (b) . . . All licenses issued under the authority of Chapter 78 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. . . .
>
> Sec. 78.108. EXPIRATION OF LICENSE. A license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Each period is one year beginning on September 1 or another date set by the commission.

Revised Law

Sec. 5253.0204. LICENSE ISSUED FOR TRANSITION PERIOD. The commission by rule may:

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

(2) set the fee for a license issued during a transition period at an amount less than the amount prescribed by Section 5253.0202. (Parks & Wild. Code, Sec. 78.002(b) (part).)

Source Law

> (b) . . . The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

Revisor's Note

Section 78.002(b), Parks and Wildlife Code, refers to a license fee set at an amount less than prescribed in Chapter 78 of that code. The pertinent part of Chapter 78 prescribing license fees related to crabs is revised as Section 5253.0202, and the revised law is drafted accordingly.

Revised Law

Sec. 5253.0205. LICENSE RENEWAL. A person may not renew a license issued under this chapter unless the person held the license during the preceding license year. (Parks & Wild. Code, Sec. 78.106.)

Source Law

> Sec. 78.106. LICENSE RENEWAL. A person seeking to renew a license established by this subchapter must have held the license during the preceding license year.

Revised Law

Sec. 5253.0206. LICENSE TRANSFER. (a) The commission by proclamation shall allow a license issued under this chapter to be transferred beginning not later than September 1, 2001. The commission shall annually review its decision regarding license transfer.

(b) Notwithstanding Subsection (a), a license may be transferred at any time to an heir or devisee of a deceased license holder if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased individual's property.

(c) The commission by rule may set a fee for the transfer of a license issued under this chapter. The amount of the transfer fee may not exceed the amount of the license fee. (Parks & Wild. Code, Secs. 78.109(a), (c), (d).)

Source Law

> Sec. 78.109. LICENSE TRANSFER. (a) The commission by rule may set a fee for the transfer of a license. The amount of the fee may not exceed the amount of the license fee.
>
> (c) The commission by proclamation shall allow a license to be transferred beginning not later than September 1, 2001. The commission shall annually review the decision regarding license transfer.
>
> (d) Notwithstanding Subsection (c), a license may be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Revised Law

Sec. 5253.0207. DESIGNATION OF INDIVIDUAL AS LICENSE HOLDER. A license issued under this chapter to a person other than an individual must designate an individual in whose name the license will be issued. (Parks & Wild. Code, Sec. 78.107(b).)

Source Law

> (b) A license issued to a person other than an individual must designate an individual in whose name the license will be issued.

Revised Law

Sec. 5253.0208. LIMIT ON NUMBER OF LICENSES HELD OR CONTROLLED. A person may not hold or directly or indirectly control more than three licenses issued under this chapter other than an equipment license. (Parks & Wild. Code, Sec. 78.107(a).)

Source Law

> Sec. 78.107. LIMIT ON NUMBER OF LICENSES HELD. (a) A person may not hold or directly or indirectly control more than three licenses issued under this subchapter other than an equipment license.

Revised Law

Sec. 5253.0209. DISPOSITION OF LICENSE AND TRANSFER FEES. (a) Money received for a license issued under this chapter must be sent to the department not later than the 10th day of the month

following the date the money is collected.

(b) Except as provided by Subsection (c), the commission shall send to the comptroller for deposit to the credit of the game, fish, and water safety account the fee from the issuance or transfer of a license under this chapter.

(c) The department shall set aside at least 20 percent of the fees from commercial crab licenses and license transfers. The money shall be sent to the comptroller for deposit to the credit of the commercial license buyback subaccount in the game, fish, and water safety account. (Parks & Wild. Code, Secs. 78.105 (part), 78.109(b), 78.111(d), 78.113 (part).)

Source Law

> Sec. 78.105. LICENSE FEE. . . . All fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.
>
> [Sec. 78.109]
> (b) The commission shall send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account.
>
> [Sec. 78.111]
> (d) The department shall set aside at least 20 percent of the fee from commercial crab licenses and transfer fees. That money shall be sent to the comptroller for deposit to the credit of the commercial license buyback subaccount in the game, fish, and water safety account.
>
> Sec. 78.113. DISPOSITION OF FUNDS. Money received for a license issued under this subchapter or . . . shall be remitted to the department by the 10th day of the month following the date of collection.

Revised Law

Sec. 5253.0210. LICENSE SUSPENSION AND REVOCATION. (a) The executive director may suspend or revoke a license issued under this chapter after notice to the license holder and an opportunity for a hearing if the license holder or any other operator of a licensed vessel is shown to have been convicted of one or more flagrant offenses, as defined by commission proclamation, during a period described by the proclamation.

(b) A license suspension does not affect the license holder's eligibility to renew the license after the suspension

expires.

(c) The same flagrant offense may not be counted for more than one suspension under this section. (Parks & Wild. Code, Sec. 78.110.)

Source Law

Sec. 78.110. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice to a license holder and the opportunity for a hearing, may suspend or revoke a license if the license holder or any other operator of a licensed vessel is shown to have been convicted of one or more flagrant offenses defined by a proclamation of the commission during a period described by the proclamation of the commission.

(b) A license suspension does not affect the license holder's eligibility to renew the license after the suspension expires.

(c) The same flagrant offense may not be counted for more than one suspension under this section.

SUBCHAPTER C. CRAB LICENSE MANAGEMENT

Revised Law

Sec. 5253.0301. CRAB LICENSE MANAGEMENT PROGRAM. (a) The department shall implement a crab license management program in accordance with commission proclamations adopted under Chapter 5101 and this chapter to:

(1) promote efficiency and economic stability in the crabbing industry; and

(2) conserve economically important crab resources.

(b) The commission shall adopt rules necessary to administer the crab license management program. (Parks & Wild. Code, Secs. 78.101, 78.112(b).)

Source Law

Sec. 78.101. CRAB LICENSE MANAGEMENT PROGRAM. To promote efficiency and economic stability in the crabbing industry and to conserve economically important crab resources, the department shall implement a crab license management program in accordance with proclamations adopted by the commission under Chapter 61 and this subchapter.

[Sec. 78.112]

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Revisor's Note

Section 78.112(b), Parks and Wildlife Code,

refers to the "program established under this subchapter." For clarity and consistency in terminology used in this subchapter, the revised law substitutes "crab license management program" for the quoted language because it is clear from the context that the referenced program is the crab license management program implemented under Section 78.101, Parks and Wildlife Code, revised as Subsection (a) of this section.

Revised Law

Sec. 5253.0302. CRAB LICENSE MANAGEMENT REVIEW BOARD. (a) The crab license management review board is composed of an odd number of members greater than 4 and fewer than 12 who are elected by the license holders under this chapter.

(b) A review board member must be a license holder under this chapter or a wholesale fish dealer as defined by Section 5158.0101 with knowledge of the commercial crab fishing industry.

(c) A majority of the review board members may not be residents of the same county.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the crab license management program, including the definition of flagrant offenses, and hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(e) The executive director shall:

(1) adopt procedures for determining the size and operations of the review board and the election and terms of review board members; and

(2) solicit and consider recommendations regarding the procedures described by Subdivision (1) from:

(A) persons who purchased crab trap tags after September 1, 1995, and before August 31, 1996; or

(B) holders of licenses issued under this

chapter.

(f) A review board member serves without compensation or a per diem allowance.

(g) The review board is not subject to Chapter 2110, Government Code. (Parks & Wild. Code, Sec. 78.103.)

Source Law

Sec. 78.103. CRAB LICENSE MANAGEMENT REVIEW BOARD. (a) The license holders under this chapter shall elect a crab license management review board with an odd number of members greater than four and fewer than 12.

(b) A member of the review board must be a license holder under this subchapter or a wholesale fish dealer as defined by Section 47.001 with knowledge of the commercial crab fishing industry.

(c) A majority of the members of the review board may not be residents of the same county.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the crab licensing program, including the definition of flagrant offenses, and hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(e) The executive director shall adopt procedures for determining the size and operations of the review board and the election and terms of board members. The executive director shall solicit and consider recommendations regarding these procedures from persons who purchased crab trap tags after September 1, 1995, and before August 31, 1996, or from holders of licenses issued under this subchapter.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

(g) A member of the review board serves without compensation or a per diem allowance.

Revisor's Note

(1) Section 78.103(a), Parks and Wildlife Code, provides that the license holders under Chapter 78 of that code "shall elect" a crab license management review board with an odd number of members greater than four and fewer than 12. For clarity, the revised law restates the provision as a requirement for the composition of the review board rather than an affirmative duty on the license holders for the reasons stated in Revisor's Note (1) to Section 5158.0416.

(2) Section 78.103(d), Parks and Wildlife Code,

refers to the "crab licensing program." For clarity and consistency in terminology, the revised law substitutes "crab license management program" for the quoted language because it is clear from the context that the terms are synonymous and "crab license management program" is the program required to be implemented under Section 78.101, Parks and Wildlife Code, revised as Section 5253.0301.

(3) Section 78.103(f), Parks and Wildlife Code, refers to Article 6252-33, Revised Statutes. That statute was codified in 1997 as Chapter 2110, Government Code, and the revised law is drafted accordingly.

Revised Law

Sec. 5253.0303. LICENSE BUYBACK PROGRAM. (a) The department may implement a license buyback program as part of the crab license management program.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses issued under this chapter to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director must consult with the review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the crab fishery allows the reissuance of those licenses through auction or lottery. (Parks & Wild. Code, Secs. 78.111(a), (b), (c).)

Source Law

Sec. 78.111. LICENSE BUYBACK. (a) The department may implement a license buyback program as part of the crab license management program

established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director must consult with the crab license management review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the crab fishery allows reissue of those licenses through auction or lottery.

Revisor's Note

Section 78.111(b), Parks and Wildlife Code, provides that, for the purposes of Section 78.111 of that code, the Parks and Wildlife Commission may delegate to the executive director of the Parks and Wildlife Department the authority to develop the criteria for buying back licenses. Section 78.111 is revised in pertinent part as this section, and the revised law is drafted accordingly.

SUBCHAPTER D. CRAB TRAPS

Revised Law

Sec. 5253.0401. REQUIRED TAGS FOR CERTAIN CRAB TRAPS; CRAB TRAP REGULATIONS. (a) This section does not apply to a person taking crabs from public water for personal use.

(b) The department may issue tags for crab traps placed in public water. A crab trap tag issued under this subsection shall be attached to each crab trap placed in public water.

(c) Except as otherwise provided by this subsection, a person may not place a crab trap in public water unless a crab trap tag is attached to the trap. This subsection does not apply if a proclamation under this chapter requires a license that does not require the use of crab trap tags.

(d) Except as provided by Subsection (e), the department may collect a fee for each tag issued under this section of:

(1) not more than $1.50; or

(2) an amount determined by the commission, if a crab management plan is adopted and a crab advisory committee is established.

(e) If the commission adopts a license under this chapter, the department may not collect a fee for any crab trap tag.

(f) The commission may adopt regulations for the safe use of crab traps and to implement this section. (Parks & Wild. Code, Sec. 66.018.)

Source Law

> Sec. 66.018. CRAB TRAP TAGS. (a) The department may issue tags for crab traps placed in public water.
>
> (b) The commission may make regulations for the safe use of crab traps and to carry out the provisions of this section.
>
> (c) A crab trap tag issued under this section shall be attached to each crab trap placed in public water. The department may collect a maximum fee of $1.50 for each tag issued under this section; provided, however, that upon adoption of a crab management plan and the establishment of a crab advisory committee, the commission may determine the amount of the fee.
>
> (d) No person may place a crab trap in public water unless a crab trap tag is attached to the trap unless a proclamation under Subchapter B, Chapter 78, requires a license that does not require the use of crab trap tags.
>
> (e) This section shall not apply to persons taking crabs from public water for personal use.
>
> (f) If the commission adopts a license under Subchapter B, Chapter 78, the department may not collect a fee for any crab trap tag.

Revised Law

Sec. 5253.0402. EXPIRATION, TRANSFER, AND REPLACEMENT OF CRAB TRAP TAGS. (a) A crab trap tag issued under Section 5253.0401 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 crab trap tag issued under Section 5253.0401:

(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 crab trap tag issued under Section 5253.0401 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 Section 5253.0401 for references to Chapter 66 because a portion of Chapter 66 providing for a tag under that chapter is revised in Section 5253.0401.

(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. 5253.0403. ABANDONED CRAB TRAPS. (a) In this section, "abandoned crab trap" means a crab trap located in the public water

of this state that is designated as abandoned by the commission beginning on the first day of a closed season established under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) Abandoned crab traps are litter for purposes of Section 365.011, Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code.

(d) Sections 5953.0402 and 5953.0403(b) do not apply to the removal and disposal of an abandoned crab trap under this section.

(e) The commission shall adopt rules governing the removal and disposal of abandoned crab traps as necessary to enhance:

(1) enforcement of this chapter;

(2) the cleanliness of the beds and bottoms of the public water of this state;

(3) boating safety; and

(4) the conservation and management of crab resources.

(f) A commission proclamation issued under this section prevails over a conflicting commission proclamation issued under:

(1) Subchapter C or D, Chapter 5053;

(2) Chapter 5054;

(3) Chapter 5101;

(4) Subchapter D, Chapter 5158;

(5) Chapter 5254; or

(6) Subchapter B, Chapter 5458. (Parks & Wild. Code, Sec. 78.115.)

Source Law

Sec. 78.115. CRAB TRAPS; REMOVAL OF ABANDONED TRAPS. (a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed

season established by the commission under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

(1) enforcement of this chapter;

(2) the cleanliness of the beds and bottoms of the public water of this state;

(3) boating safety; and

(4) the conservation and management of crab resources.

(d) Abandoned crab traps are litter for purposes of Section 365.011, Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code. Section 12.1105 does not apply to the removal and disposal of an abandoned crab trap under this section.

(e) A proclamation made by the commission under this section prevails over a conflicting commission proclamation made under Chapter 47, 61, or 66.

Revisor's Note

Section 78.115(e), Parks and Wildlife Code, provides in part that a proclamation of the Parks and Wildlife Commission made under Section 78.115 of that code prevails over a conflicting commission proclamation made under Chapter 47 or 66 of that code. The pertinent part of Chapter 47 providing for a commission proclamation under that chapter is revised in Subchapter D, Chapter 5158. The pertinent parts of Chapter 66 providing for a commission proclamation under that chapter are revised in Subchapters C and D, Chapter 5053, Chapters 5054 and 5254, and Subchapter B, Chapter 5458. Although Subchapter C, Chapter 5053, and Chapter 5054 also include the revision of provisions not derived from Chapter 66, it is appropriate to refer to Subchapter C, Chapter 5053, and Chapter 5054, in their entirety because the additional provisions do not authorize the issuance of a commission proclamation. The revised law is drafted accordingly.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5253.9901. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a commission rule adopted under Section 5253.0401.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 66.012(a) (part), 78.007.)

Source Law

[Sec. 66.012]

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

Sec. 78.007. UNLAWFUL ACTS. A person who violates the provisions of this chapter commits a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5253.9902. DISPOSITION OF MONEY FROM FINES. Money received for a fine for a violation of this chapter must be sent to the department not later than the 10th day of the month following the date the money is collected. (Parks & Wild. Code, Sec. 78.113 (part).)

Source Law

Sec. 78.113. DISPOSITION OF FUNDS. Money received for . . . fines for violations of this subchapter shall be remitted to the department by the 10th day of the month following the date of collection.

CHAPTER 5254. RED DRUM AND SPECKLED SEA TROUT

SUBCHAPTER A. REGULATION OF COMMERCIAL ACTIVITY

Revised Law

Sec. 5254.0101. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to activities that are regulated under:

(1) the exceptions provided by Sections 5053.0402(b)(1), (2), and (5); or

(2) Section 5053.0406. (Parks & Wild. Code, Sec. 66.2012(e).)

Source Law

(e) This section does not apply to activities that are regulated under the exceptions provided by Subdivisions (1), (2), and (5) of Section 66.020(b) or under Subsections (f) and (g) of that section.

Revisor's Note

Section 66.2012(e), Parks and Wildlife Code, refers to "[t]his section," meaning Section 66.2012 of that code. The revised law substitutes "[t]his subchapter" for "[t]his section" because Section 66.2012 is revised in this subchapter. Although this subchapter also includes the revision of other provisions, it is appropriate to refer to the subchapter in its entirety because the other provisions merely prescribe criminal penalties for violations of Section 66.2012.

Revised Law

Sec. 5254.0102. REGULATION BY PROCLAMATION. (a) The commission by proclamation may regulate the catching, possession, transportation, sale, and purchase for commercial purposes in this state of red drum and speckled sea trout. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining whether to permit or prohibit any commercial use of red drum and speckled sea trout under Subsection (a), the commission shall consider:

(1) the availability of red drum and speckled sea trout in the coastal water of this state;

(2) the availability of red drum and speckled sea trout from sources other than the coastal water of this state;

(3) the economic interests of commercial and sports fishermen and related industries in this state;

(4) the research of the department conducted under Section 5054.0308;

(5) the protection of red drum and speckled sea trout

habitat; and

(6) the degree of compliance with state law and previous regulations of the commission by fishermen and fish dealers in this state.

(c) A proclamation issued under this section may:

(1) prescribe the time, place, conditions, and means and manner of catching red drum and speckled sea trout; and

(2) limit the quantity and size of red drum and speckled sea trout that may be caught, possessed, transported, sold, or purchased. (Parks & Wild. Code, Secs. 66.2012(a), (b), (c).)

Source Law

Sec. 66.2012. REGULATION OF COMMERCIAL USES OF REDFISH AND SPECKLED SEA TROUT. (a) The commission by proclamation may regulate the catching, possession, transportation, sale, and purchase for commercial purposes in this state of redfish and speckled sea trout. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining whether to permit or prohibit any commercial use of redfish and speckled sea trout under Subsection (a) of this section, the commission shall consider:

(1) the availability of redfish and speckled sea trout in the coastal water of this state;

(2) the availability of redfish and speckled sea trout from sources other than the coastal water of this state;

(3) the economic interests of commercial and sports fishermen and related industries in this state;

(4) the research of the department made under Section 66.217 of this code;

(5) the protection of redfish and speckled sea trout habitat; and

(6) the degree of compliance with state law and previous regulations of the commission by fishermen and fish dealers in this state.

(c) A proclamation issued under Subsection (a) of this section may limit the number and size of redfish and speckled sea trout that may be caught, possessed, transported, sold, or purchased and may prescribe the times, places, conditions, and means and manner of catching redfish and speckled sea trout.

Revisor's Note

(1) Sections 66.2012(a), (b), and (c), Parks and Wildlife Code, refer to "redfish." Throughout this chapter, the revised law substitutes "red drum" for "redfish" for the reasons stated in Revisor's Note (1)

to Section 5101.9902.

(2) Section 66.2012(a), Parks and Wildlife Code, refers to a proclamation issued under Section 66.2012 of that code. The pertinent part of Section 66.2012 providing for the issuance of a proclamation is revised in this section, and the revised law is drafted accordingly.

(3) Section 66.2012(c), Parks and Wildlife Code, provides that a proclamation issued under Section 66.2012(a) of that code may limit the "number" and size of redfish and speckled sea trout that may be caught, possessed, transported, sold, or purchased. For consistency in terminology used in this subtitle, the revised law substitutes "quantity" for "number" because the terms are synonymous and "quantity" is more commonly used.

Revised Law

Sec. 5254.0103. CONFLICT WITH PROCLAMATION. A commission proclamation issued under Section 5254.0102 prevails over any conflicting provision of Subchapter D, Chapter 5053, to the extent of the conflict and only during the period that the proclamation is in effect. (Parks & Wild. Code, Sec. 66.2012(d).)

Source Law

(d) A proclamation of the commission under this section prevails over any conflicting provision of Section 66.020 to the extent of the conflict and only during the period that the proclamation is in effect.

Revisor's Note

Section 66.2012(d), Parks and Wildlife Code, refers to a proclamation of the Parks and Wildlife Commission under Section 66.2012 of that code. The pertinent part of Section 66.2012 providing for the issuance of a proclamation is revised in Section 5254.0102, and the revised law is drafted accordingly.

Revised Law

Sec. 5254.0104. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates a proclamation issued under Section 5254.0102.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor, except that the offense is a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this section.

(c) In addition to the penalty prescribed by Subsection (b), a person who violates a proclamation issued under Section 5254.0102 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 Section 5254.0102 three or more times within a five-year period. (Parks & Wild. Code, Secs. 66.2011 (part), 66.2012(f), 66.218 (part).)

Source Law

> 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 . . . 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 . . . 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. 66.2012]
> (f) A person who violates a proclamation issued under Subsection (a) is guilty of an offense and is punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011 and 66.218.
>
> Sec. 66.218. PENALTIES. (a) Except as otherwise provided by this section, a person who

violates . . . a proclamation adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial for a violation of Section . . . 66.2012, . . . 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 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 the reason stated in Revisor's Note (4) to Section 5101.9902.

(2) Section 66.2012(f), Parks and Wildlife Code, refers to a proclamation issued under Section 66.2012(a) of that code. Section 66.2012(a) is revised in Section 5254.0102, and the revised law is drafted accordingly.

(3) Section 66.2012(f), Parks and Wildlife Code, provides that a person who violates a proclamation issued under Section 66.2012(a) of that code is guilty of an offense and is "punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011 and 66.218" of that code. For clarity and the convenience of the reader, the revised law substitutes the applicable substance of Sections 66.2011 and 66.218 for the quoted language. With respect to the punishments provided by Section 66.218, the revised law includes only the portions of Section 66.218 providing a criminal penalty for a violation of a proclamation because those are the only portions of Section 66.218 applicable to a violation of a proclamation issued under Section 66.2012. The revised law does not

include the portions of Section 66.218 applicable to a statutory violation because Section 66.2012 does not include any provisions that can be violated.

(4) Section 66.218, Parks and Wildlife Code, refers to a proclamation "adopted" under certain provisions of Chapter 66 of that code. The revised law substitutes "issued" for "adopted" for the reasons stated in Revisor's Note (1) to Section 5158.9802.

SUBCHAPTER B. SEASONS FOR NONCOMMERCIAL TAKING

Revised Law

Sec. 5254.0201. SEASONS SET BY COMMISSION RULE. The commission may adopt rules setting open and closed seasons for the noncommercial taking of red drum and speckled sea trout. (Parks & Wild. Code, Sec. 47.039(a).)

Source Law

> Sec. 47.039. SEASONS. (a) The commission may adopt rules setting open and closed seasons for the noncommercial taking of redfish and speckled sea trout.

Revised Law

Sec. 5254.0202. CATCHING AND RETAINING RED DRUM OR SPECKLED SEA TROUT PROHIBITED DURING CLOSED SEASON. A person may not catch and retain a red drum or speckled sea trout during a closed season set by the commission under Section 5254.0201. (Parks & Wild. Code, Sec. 47.039(b).)

Source Law

> (b) No person may catch and retain a redfish or speckled sea trout during a closed season set by the commission under Subsection (a) of this section.

Revised Law

Sec. 5254.0203. 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. 47.051 (part).)

Source Law

Sec. 47.051. PENALTY. . . . a person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revised Law

Sec. 5254.0204. DISPOSITION OF MONEY FROM FINES. Money received for a fine paid for a violation of this subchapter, less allowable deductions, must be sent to the department not later than the 10th day of the month following receipt. (Parks & Wild. Code, Sec. 47.055 (part).)

Source Law

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

CHAPTER 5255. SHARKS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5255.0101. DEFINITIONS. In this chapter:

(1) "Destroy" means, with respect to a shark fin, to denature the fin for the purpose of rendering the fin inedible.

(2) "Place of business" has the meaning assigned by Section 5158.0101.

(3) "Sale" includes barter and exchange.

(4) "Shark" means any species of the subclass Elasmobranchii.

(5) "Shark fin" means the fresh and uncooked, or cooked, frozen, dried, or otherwise processed, detached fin or tail of a shark. (Parks & Wild. Code, Sec. 66.2161(a).)

Source Law

Sec. 66.2161. SALE OR PURCHASE OF SHARK FINS OR SHARK FIN PRODUCTS; OFFENSE. (a) In this section:

(1) "Destroy" means, with respect to a shark fin, to denature the fin for the purpose of rendering the fin inedible.

(2) "Place of business" has the meaning assigned by Section 47.001.

(3) "Sale" includes barter and exchange.

(4) "Shark" means any species of the subclass Elasmobranchii.

(5) "Shark fin" means the fresh and uncooked, or cooked, frozen, dried, or otherwise processed, detached fin or tail of a shark.

Revised Law

Sec. 5255.0102. COMMISSION RULES. The commission may adopt rules as necessary to administer this chapter. (Parks & Wild. Code, Sec. 66.2161(k).)

Source Law

(k) The commission may adopt rules as necessary to administer this section.

SUBCHAPTER B. USE OF SHARK AND SHARK PRODUCTS

Revised Law

Sec. 5255.0201. REQUIREMENTS FOR PROCESSING SHARK CARCASS IN PLACE OF BUSINESS OR RESTAURANT; OFFENSE. (a) A person may process in a place of business or restaurant a shark carcass into steaks or fillets only if:

(1) the steaks and fillets do not contain any portion of a shark fin; and

(2) each of the shark's fins is destroyed and discarded in the manner prescribed by the department immediately on detaching the fins from the remainder of the carcass.

(b) A person commits an offense if the person fails to immediately destroy and discard a shark fin as required by Subsection (a) or otherwise violates that subsection.

(c) An offense under this section 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, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this chapter. (Parks & Wild. Code, Secs. 66.2161(b), (c)(1), (d), (e).)

Source Law

(b) A person may process in a place of business or restaurant a shark carcass into steaks or fillets only if:

(1) the steaks and fillets do not contain any portion of a shark fin; and

(2) each of the shark's fins is destroyed and discarded in the manner prescribed by the

department immediately on detaching the fins from the remainder of the carcass.

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

(1) fails to immediately destroy and discard a shark fin as required by Subsection (b) or otherwise violates that subsection;

. . .

(d) Except as provided by Subsection (e), an offense under this section is a Class B Parks and Wildlife Code misdemeanor.

(e) An offense under this section 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 section during the five-year period preceding the date of the trial of the current offense.

Revised Law

Sec. 5255.0202. SALE OR PURCHASE OF SHARK FIN OR SHARK FIN PRODUCT; OFFENSE. (a) A person commits an offense if the person buys or offers to buy, sells or offers to sell, possesses for the purpose of sale, transports or ships for the purpose of sale, or advertises for sale a shark fin regardless of where the shark was taken or caught.

(b) An offense under this section 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, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this chapter.

(c) Each shark fin a person purchases or possesses for the purpose of sale in violation of this section is a separate offense.

(d) For purposes of Subsection (a):

(1) proof that the person possessed a shark fin, other than a shark fin that has been destroyed, in a place of business or restaurant or on any commercial vessel on the waters of this state is prima facie evidence that the person possessed the shark fin for the purpose of sale; and

(2) proof that the person advertised for sale a shark fin, a product containing shark fin, or a product represented to be or to contain shark fin is prima facie evidence that the person offered a shark fin for sale. (Parks & Wild. Code, Secs. 66.2161(c)(2), (d), (e), (f), (g), (h).)

Source Law

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

. . .

(2) buys or offers to buy, sells or offers to sell, possesses for the purpose of sale, transports or ships for the purpose of sale, or advertises for sale a shark fin regardless of where the shark was taken or caught; or

. . .

(d) Except as provided by Subsection (e), an offense under this section is a Class B Parks and Wildlife Code misdemeanor.

(e) An offense under this section 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 section during the five-year period preceding the date of the trial of the current offense.

(f) Each shark fin a person purchases or possesses for the purpose of sale in violation of this section constitutes a separate offense.

(g) For purposes of Subsection (c)(2), proof that the person possessed a shark fin, other than a shark fin that has been destroyed, in a place of business or restaurant or on any commercial vessel on the waters of this state is prima facie evidence that the person possessed the shark fin for the purpose of sale.

(h) For purposes of Subsection (c)(2), proof that the person advertised for sale a shark fin, a product containing shark fin, or a product represented to be or to contain shark fin is prima facie evidence that the person offered a shark fin for sale.

Revisor's Note

Section 66.2161(f), Parks and Wildlife Code, provides that each shark fin a person purchases or possesses for the purpose of sale in violation of "this section," meaning Section 66.2161 of that code, constitutes a separate offense. The revised law retains the reference to "this section" because the provisions of Section 66.2161 that describe the unlawful purchase or possession of a shark fin are revised in this section.

Revised Law

Sec. 5255.0203. PERMIT FOR SCIENTIFIC RESEARCH INVOLVING SHARK FIN. (a) Notwithstanding Section 5255.0202(a), the department may issue a permit for the possession, transport, sale, or purchase of shark fins for a bona fide scientific research purpose.

(b) Section 5255.0202(a) does not apply to a person who possesses, transports, sells, or purchases a shark fin in accordance with a permit issued under this section.

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

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

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

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

(e) The commission by regulation may prescribe:

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

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

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

(B) a duplicate or replacement permit. (Parks & Wild. Code, Secs. 66.017 (part), 66.2161(i).)

Source Law

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

and] permit transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses and permits in this chapter and for duplicate or replacement . . . permits.

[Sec. 66.2161]

(i) Notwithstanding Subsection (c)(2), the department may issue a permit for the possession, transport, sale, or purchase of shark fins for a bona fide scientific research purpose. Subsection (c)(2) does not apply to a person who possesses, transports, sells, or purchases a shark fin in accordance with a permit issued under this subsection.

Revisor's Note

(1) Section 66.017, Parks and Wildlife Code, refers to permits issued under the authority of Chapter 66 of that code. The revised law substitutes "this section" for references to Chapter 66 because a portion of Chapter 66 providing for a permit under that chapter is revised in this section.

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

(3) Section 66.017(b), Parks and Wildlife Code, provides that all licenses, tags, and permits issued under the authority of Chapter 66 of that code may not be transferred to another person except that a "license" issued in the name of a business shall remain valid for the business location specified on the "license or permit" under certain circumstances. Section 66.017(b) further provides that the Parks and Wildlife Commission, by regulation, may prescribe

requirements necessary to clarify "license and permit" transfer procedures. It is clear from the context that the legislature intended the exception to the prohibition on transferring a license or permit to apply to both licenses and permits, and the revised law is drafted accordingly.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5255.9901. CRIMINAL PENALTY FOR RULE OR PROCLAMATION VIOLATION. (a) A person commits an offense if the person violates a rule or proclamation adopted under this chapter.

(b) An offense under this section 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, during the five-year period preceding the trial date of the offense, the defendant has previously been convicted of an offense under this chapter. (Parks & Wild. Code, Secs. 66.2161(c)(3), (d), (e).)

Source Law

> (c) A person commits an offense if the person:
>
> . . .
>
> (3) violates a proclamation or rule adopted under this section.
>
> (d) Except as provided by Subsection (e), an offense under this section is a Class B Parks and Wildlife Code misdemeanor.
>
> (e) An offense under this section 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 section during the five-year period preceding the date of the trial of the current offense.

Revised Law

Sec. 5255.9902. SEIZURE OF EVIDENCE. If a person is charged with an offense under this chapter, the peace officer shall seize and hold as evidence the shark fin, product containing shark fin, or product represented to be or to contain shark fin. Notwithstanding Subchapter B, Chapter 5953, on a final court ruling, the department shall destroy the shark fin, product containing shark fin, or product represented to be or to contain shark fin. (Parks & Wild.

Code, Sec. 66.2161(j).)

Source Law

(j) When a person is charged with an offense under this section, the warden or other peace officer shall seize and hold as evidence the shark fin, product containing shark fin, or product represented to be or to contain shark fin. Notwithstanding Section 12.109, on a final court ruling, the department shall destroy the shark fin, product containing shark fin, or product represented to be or to contain shark fin.

Revisor's Note

Section 66.2161(j), Parks and Wildlife Code, refers to a "warden or other peace officer." Because it is clear from the context that the referenced "warden" is a game warden, the revised law omits "warden" for the reason stated in the revisor's note to Section 5103.0407.