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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE H. PLANTS

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE H. PLANTS

CHAPTER 5351. ENDANGERED, THREATENED, AND PROTECTED PLANTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5351.0101. DEFINITIONS. In this chapter:

(1) "Endangered plant" means a species of plant life in danger of extinction throughout all or a significant portion of its range.

(2) "Native plant" means any tree, shrub, herb, grass, forb, legume, fern, fern ally, or wildflower that is:

(A) indigenous to this state; and

(B) growing on public or private land.

(3) "Protected plant" means a species of plant life the executive director determines is of historical or cultural value to this state or the area in which it is found.

(4) "Public land" means land owned by this state or a local governmental entity.

(5) "Take" means to collect, pick, cut, dig up, or remove.

(6) "Threatened plant" means a species of plant life likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. (Parks & Wild. Code, Sec. 88.001.)

Source Law

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Endangered plant" means a species of plant life that is in danger of extinction throughout all or a significant portion of its range.

(2) "Threatened plant" means a species of plant life that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(3) "Protected plant" means a species of plant life that the director determines is of historical or cultural value to the state or the area in which it is found.

(4) "Native plant" means any tree, shrub, herb, grass, forb, legume, fern, fern ally, or wildflower that is indigenous to the state and that is growing on public or private land.

(5) "Public land" means land that is owned by the state or a local governmental entity.

(6) "Take" means to collect, pick, cut, dig up, or remove.

Revised Law

Sec. 5351.0102. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to the taking, possession, or sale of an endangered, threatened, or protected plant if the taking, possession, or sale is incidental to:

(1) the possession or sale of the real property on which the plant is growing;

(2) the possession or acquisition of an easement or lease on which the plant is growing; or

(3) the harvest or sale of an agricultural crop if the plant grows among that crop.

(b) This chapter does not apply to the possession, transportation, or sale of an endangered, threatened, or protected plant if:

(1) the plant originates in another state; and

(2) the person possessing, transporting, or selling the plant complies with the terms of:

(A) any required federal permit; or

(B) a state permit required by the law of the state in which the plant originates. (Parks & Wild. Code, Sec. 88.009.)

Source Law

> Sec. 88.009. EXCEPTIONS. (a) This chapter does not apply to the taking, possession, or sale of endangered, threatened, or protected plants if the taking, possession, or sale is incidental to:
> (1) the possession or sale of the real property on which the plant is growing;
> (2) the possession or acquisition of easements or leases on which the plant is growing; or
> (3) the harvest or sale of an agricultural crop if the endangered, threatened, or protected plant grows among that crop.
> (b) This chapter does not apply to the possession, transportation, or sale of an endangered, threatened, or protected plant if:
> (1) the plant originates in another state; and
> (2) the person possessing, transporting, or selling the plant complies with the terms of any required federal permit or with the terms of a state permit required by the laws of the originating state.

Revised Law

Sec. 5351.0103. DEPARTMENT REGULATIONS. The department shall adopt regulations to administer this chapter, including regulations governing:

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

(2) hearing procedures;

(3) procedures for identifying an endangered, threatened, or protected plant; and

(4) the publication and distribution of lists of endangered, threatened, or protected plants. (Parks & Wild. Code, Sec. 88.006.)

Source Law

> Sec. 88.006. REGULATIONS. The department shall adopt regulations to administer the provisions of this chapter, including regulations to provide for:
>
> (1) permit application forms, fees, and procedures;
>
> (2) hearing procedures;
>
> (3) procedures for identifying endangered, threatened, or protected plants; and
>
> (4) publication and distribution of lists of endangered, threatened, or protected plants.

Revised Law

Sec. 5351.0104. DEPARTMENT POWERS AND DUTIES. (a) The department may:

(1) conduct biological research and field investigations to help determine the classification of a native plant;

(2) collect and disseminate information about the conservation of native plants and the habitats of native plants; and

(3) take an endangered, threatened, or protected plant from public land without a permit for the purpose of conservation, education, or scientific study.

(b) The department shall distribute pictures and other information concerning endangered, threatened, or protected plants to law enforcement agencies and the public as the department determines necessary for an educational purpose. (Parks & Wild. Code, Sec. 88.007.)

Source Law

> Sec. 88.007. ACTIVITIES BY THE DEPARTMENT. (a) The department may conduct biological research and field investigations to help determine the classification of native plants.
>
> (b) The department may collect and disseminate information about the conservation of native plants and their habitats.
>
> (c) The department may take an endangered, threatened, or protected plant from public land without a permit for the purpose of conservation, education, or scientific studies.
>
> (d) The department shall distribute pictures

and other information concerning endangered, threatened, or protected plants to law enforcement agencies and the public as the department determines necessary for educational purposes.

SUBCHAPTER B. CLASSIFICATION OF ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

Revised Law

Sec. 5351.0201. DEFINITION. In this subchapter, "statewide list" means the list filed by the executive director under Section 5351.0203. (New.)

Revisor's Note

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

Revised Law

Sec. 5351.0202. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS. A species of native plant is an endangered, threatened, or protected native plant if the plant is listed on:

(1) the United States list of endangered and threatened plants under 50 C.F.R. Part 17, as that list existed on September 1, 1981, and has been modified as provided by Section 5351.0205; or

(2) the statewide list. (Parks & Wild. Code, Sec. 88.002; New.)

Source Law

Sec. 88.002. ENDANGERED, THREATENED, OR PROTECTED NATIVE PLANTS. Species of native plants are endangered, threatened, or protected if listed as such on:

(1) the United States List of Endangered Plant Species as in effect on the effective date of this Act (50 C.F.R. Part 17); or

(2) the list of endangered, threatened, or protected native plants as filed by the director of the department.

Revisor's Note

Section 88.002(1), Parks and Wildlife Code, refers to "the United States List of Endangered Plant Species as in effect on the effective date of this Act

(50 C.F.R. Part 17)." The quoted language is revised as "the United States list of endangered and threatened plants under 50 C.F.R. Part 17, as that list existed on September 1, 1981, and has been modified as provided by Section 5351.0205" for the reasons that follow.

The revised law substitutes "September 1, 1981" for "the effective date of this Act" because Section 88.002, Parks and Wildlife Code, was added by Chapter 637, Acts of the 67th Legislature, Regular Session, 1981, which took effect September 1, 1981. Additionally, the revised law substitutes "list of endangered and threatened plants" for "List of Endangered Plant Species" to conform to the title of the list provided by 50 C.F.R. Section 17.12(h), as that section existed on September 1, 1981 (45 Fed. Reg. 33768).

For the convenience of the reader, the revised law adds "and has been modified as provided by Section 5351.0205" because Section 88.004(a), Parks and Wildlife Code, revised as Section 5351.0205, requires the executive director of the Parks and Wildlife Department to file an order with the secretary of state accepting a modification to the "list of endangered or threatened plants issued by the United States" if the modification involves a plant that occurs in this state, and it is clear Sections 88.002(1) and 88.004(a) refer to the same list and that the legislature intended Section 88.002, which governs native plants, to encompass modifications accepted by the executive director on the basis of a plant's occurrence in this state.

Revised Law

Sec. 5351.0203. STATEWIDE LIST. The executive director

shall file with the secretary of state a list of endangered, threatened, or protected native plants. (Parks & Wild. Code, Sec. 88.003.)

Source Law

> Sec. 88.003. STATEWIDE LIST. The director shall file with the secretary of state a list of endangered, threatened, or protected native plants.

Revised Law

Sec. 5351.0204. MODIFICATION OF STATEWIDE LIST. (a) The executive director may modify the statewide list by filing an order with the secretary of state. The order takes effect on filing.

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

(c) The executive director shall hold a public hearing at least 30 days before the date the executive director files a modification order under Subsection (a). (Parks & Wild. Code, Secs. 88.004(b), (c), (d).)

Source Law

> (b) The director may amend the list of endangered, threatened, or protected native plants by filing a modification order with the secretary of state. The order is effective on filing.
>
> (c) The director shall give public notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.
>
> (d) The director shall hold a public hearing at least 30 days before the modification order authorized by Subsection (b) of this section is filed.

Revisor's Note

Section 88.004(b), Parks and Wildlife Code, provides that the executive director of the Parks and Wildlife Department may "amend" the list of endangered, threatened, or protected native plants. For consistency in terminology used in this chapter, the revised law substitutes "modify" for "amend" because, in this context, the terms are synonymous and

"modification" is the term used in Section 88.004(c), Parks and Wildlife Code, revised as Subsection (b) of this section.

Revised Law

Sec. 5351.0205. MODIFICATION OF FEDERAL LIST OF ENDANGERED AND THREATENED PLANTS. The executive director shall file an order with the secretary of state accepting a modification made to the United States list of endangered and threatened plants unless the executive director finds that the plant does not occur in this state. The order takes effect immediately. (Parks & Wild. Code, Sec. 88.004(a).)

Source Law

> Sec. 88.004. AMENDMENT TO LIST. (a) If the list of endangered or threatened plants issued by the United States is modified, the director shall file an order with the secretary of state accepting the modification unless the director finds that the plant does not occur in this state. The order is effective immediately.

SUBCHAPTER C. PROHIBITED ACTS

Revised Law

Sec. 5351.0301. CERTAIN PLANTS TAKEN FROM PUBLIC LAND FOR COMMERCIAL SALE. Except as otherwise provided by this chapter, a person may not take for commercial sale, possess for commercial sale, or sell all or part of an endangered, threatened, or protected plant from public land. (Parks & Wild. Code, Sec. 88.008(a).)

Source Law

> Sec. 88.008. PROHIBITED ACTS. (a) Except as otherwise provided by this chapter, no person may take for commercial sale, possess for commercial sale, or sell all or part of an endangered, threatened, or protected plant from public land.

Revised Law

Sec. 5351.0302. CERTAIN PLANTS TAKEN FROM PRIVATE LAND FOR COMMERCIAL SALE. (a) A person may not take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless:

(1) the person possesses a permit issued under Section

5351.0402; and

(2) each plant is tagged as provided by Section 5351.0403.

(b) A person may not hire or pay another person to take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless both persons possess a permit issued under Section 5351.0402. (Parks & Wild. Code, Secs. 88.008(c), (d).)

Source Law

(c) No person may take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless the person possesses a permit issued under Section 88.0081 of this code and each plant is tagged as provided by Section 88.0081 of this code.

(d) No person may hire or pay another person to take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless both persons possess a permit issued under Section 88.0081 of this code.

Revisor's Note

Section 88.008(c), Parks and Wildlife Code, prohibits a person from performing certain activities with respect to certain plants unless the person possesses a permit issued under Section 88.0081 of that code and each plant is tagged as provided by Section 88.0081. Section 88.008(d), Parks and Wildlife Code, prohibits a person from hiring or paying a person to perform an activity described by Section 88.008(c) unless both persons possess a permit issued under Section 88.0081. The provisions of Section 88.0081 regarding permits and tags are revised as Sections 5351.0402 and 5351.0403, respectively, and throughout this chapter the revised law is drafted accordingly.

Revised Law

Sec. 5351.0303. TRANSPORTATION OF CERTAIN PLANTS TAKEN FROM

PUBLIC LAND. A contract or common carrier may not transport or receive for shipment all or part of an endangered, threatened, or protected native plant taken from public land. (Parks & Wild. Code, Sec. 88.008(b).)

Source Law

> (b) No contract or common carrier may transport or receive for shipment all or part of an endangered, threatened, or protected native plant taken from public land.

SUBCHAPTER D. PERMITS AND TAGS

Revised Law

Sec. 5351.0401. PERMIT TO TAKE PLANTS FROM PUBLIC LAND. The department shall issue a permit to a qualified person to take endangered, threatened, or protected plants or the parts of such plants from public land for the purpose of propagation, education, or scientific study. (Parks & Wild. Code, Sec. 88.005.)

Source Law

> Sec. 88.005. PERMIT. The department shall issue a permit to a qualified person to take endangered, threatened, or protected plants or parts thereof from public land for the purpose of propagation, education, or scientific studies.

Revised Law

Sec. 5351.0402. PERMIT TO TAKE PLANTS FROM PRIVATE LAND. (a) A person must possess a permit issued by the department if the person:

(1) takes, possesses, or transports for commercial sale or sells an endangered, threatened, or protected plant from private land; or

(2) hires or pays another person to perform activities described by Subdivision (1).

(b) A permit required by Subsection (a) must:

(1) specify the land from which the taking is permissible;

(2) include an attached copy of the landowner's written consent submitted under Subsection (c); and

(3) contain any other information the department

requires.

(c) A person applying for a permit under this section must submit to the department:

(1) a copy of the landowner's written consent for the person to take the plant from the land; and

(2) a permit fee set by the commission in an amount reasonable to defray administrative costs.

(d) The commission shall adopt rules specifying the form and other information required for permits issued under this section. (Parks & Wild. Code, Secs. 88.0081(a), (b), (e) (part).)

Source Law

> Sec. 88.0081. PERMIT FOR TAKING PLANTS FROM PRIVATE LAND. (a) A person who takes, possesses, or transports for commercial sale or sells an endangered, threatened, or protected plant from private land, or who hires or pays another to perform those activities, shall possess a permit issued by the department. The permit must specify the land from which the taking is permissible, have attached a copy of the landowner's consent, and contain any other information required by the department.
>
> (b) A person applying for a permit under this section must submit to the department:
>
> (1) a copy of the written consent of the landowner from whose land the plant will be taken; and
>
> (2) a permit fee set by the commission in an amount reasonable to defray administrative costs.
>
> (e) The commission shall adopt rules specifying the form and information required for permits and . . . issued under this section.

Revised Law

Sec. 5351.0403. TAGS. (a) In addition to the permit required by Section 5351.0402, a person who takes an endangered, threatened, or protected plant from private land shall attach to each plant at the time of taking a tag issued to the person by the department.

(b) The fee for each tag is one dollar. The department shall waive the tagging fee if the department determines the plant was planted and cultivated for the express purpose of commercial harvest.

(c) A person may not remove a tag attached to a plant under this section before the plant has been transplanted into its final

site for landscaping or beautification purposes. Only the final owner or a department employee may remove the tag.

(d) The commission shall adopt rules specifying the form and other information required for tags issued under this section. (Parks & Wild. Code, Secs. 88.0081(c), (d), (e) (part), (f).)

Source Law

> (c) In addition to the permit required by this section, a person taking endangered, threatened, or protected plants from private land shall attach to each plant at the time of taking a tag issued to the person by the department. The fee for each tag is $1.
>
> (d) No person may remove the tag from the plant until the plant has been transplanted into its ultimate site for landscaping or beautification purposes. Only the ultimate owner or a department employee may remove the tag.
>
> (e) The commission shall adopt rules specifying the form and information required for . . . tags issued under this section.
>
> (f) The department shall waive the tagging fee if it determines the plants were planted and cultivated for the express purpose of being harvested for commercial purposes.

SUBCHAPTER Z. ENFORCEMENT

Revised Law

Sec. 5351.9901. INSPECTION OF VEHICLE OR CONTAINER. A person authorized to enforce this chapter may detain for inspection and inspect a vehicle or package, crate, or other container if the person has probable cause to believe the vehicle or container contains a plant in violation of this chapter. (Parks & Wild. Code, Sec. 88.010.)

Source Law

> Sec. 88.010. INSPECTIONS. A person authorized to enforce this chapter may detain for inspection and inspect a vehicle, package, crate, or other container if the person has probable cause to believe it contains a plant in violation of this chapter.

Revised Law

Sec. 5351.9902. CRIMINAL PENALTIES. (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, except that the offense is:

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

(A) it is shown on the trial of the offense that,

during the preceding three-year period, the defendant has previously been convicted of an offense under this section; or

(B) the offense is for a violation of Section 5351.0302(b); or

(2) a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that, during the preceding five-year period, the defendant has previously been convicted two or more times of an offense under this section.

(c) Each endangered, threatened, or protected plant taken, possessed, transported, or sold in violation of this chapter is a separate offense. (Parks & Wild. Code, Sec. 88.011.)

Source Law

> Sec. 88.011. PENALTIES. (a) Except as otherwise provided by this section, a person who violates any provision of 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 he has been convicted within the preceding 36 months of a violation of this chapter, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.
>
> (c) If it is shown at the trial of the defendant that he has been convicted two or more times within the preceding 60 months of a violation of this chapter, on conviction he shall be punished for a Class A Parks and Wildlife Code misdemeanor.
>
> (d) A person who hires or pays another person to take, possess, or transport for commercial sale or sell an endangered, threatened, or protected plant in violation of Subsection (d) of Section 88.008 of this code commits an offense. An offense under this section is a Class B Parks and Wildlife Code misdemeanor.
>
> (e) Each endangered, threatened, or protected plant taken, possessed, transported, or sold in violation of this chapter constitutes a separate offense.

Revisor's Note

Section 88.011(d), Parks and Wildlife Code, creates an offense for a person who hires or pays another person to perform certain activities in violation of Section 88.008(d) of that code, revised as Section 5351.0302(b), and states that an "offense under this section" is a Class B Parks and Wildlife Code misdemeanor. It is clear from the context that "this section" is a typographical error and the

legislature intended to refer to "this subsection," meaning Section 88.011(d). The revised law is drafted accordingly.

Revised Law

Sec. 5351.9903. INJUNCTION AGAINST VIOLATION BY GOVERNMENTAL AGENCY. A state or local governmental agency that violates or threatens to violate this chapter is subject to a civil suit for injunctive relief. The suit must be brought in the name of this state. (Parks & Wild. Code, Sec. 88.012.)

Source Law

Sec. 88.012. INJUNCTION AGAINST GOVERNMENTAL VIOLATOR. A state or local governmental agency that violates or threatens to violate a provision of this chapter is subject to a civil suit for injunctive relief. The suit shall be brought in the name of the State of Texas.

CHAPTER 5352. AQUATIC PLANTS

SUBCHAPTER A. CONTROL OR ERADICATION OF CERTAIN PLANTS BY DEPARTMENT

Revised Law

Sec. 5352.0101. NUISANCE OR NOXIOUS AQUATIC PLANT PROGRAM. (a) The department may implement a program to control or eradicate nuisance or noxious aquatic plants from public water in this state, including:

(1) hydrilla; and

(2) giant sylvania.

(b) The department may use money appropriated to the department as provided by Section 162.502(c), Tax Code, to implement the program under this section.

(c) The department may use the services of department personnel or contract with a person not employed by the department to control or eradicate nuisance or noxious plants in the water of this state. (Parks & Wild. Code, Sec. 12.010.)

Source Law

Sec. 12.010. NUISANCE OR NOXIOUS AQUATIC VEGETATION PROGRAM. (a) The department may implement a program to control or eradicate nuisance aquatic vegetation, including hydrilla and giant sylvania,

from public water in this state.

(b) To implement the program under this section, the department may use money from unclaimed refunds of the tax on fuel used in motorboats appropriated to the department under Section 162.502(c), Tax Code.

(c) The department may contract with a person not employed by the department or use the services of department personnel for the control or eradication of nuisance or noxious vegetation in the water of this state.

Revisor's Note

(1) Section 12.010, Parks and Wildlife Code, refers to "vegetation." For consistency in terminology used in this chapter, the revised law substitutes "plants" for "vegetation" because the terms are synonymous and "plants" is more commonly used.

(2) Section 12.010(a), Parks and Wildlife Code, authorizes the Parks and Wildlife Department to implement a program to control or eradicate "nuisance aquatic vegetation." The revised law adds a reference to "noxious" aquatic vegetation because it is clear from the context of the section that the department may implement the program with respect to nuisance or noxious vegetation.

(3) Section 12.010(b), Parks and Wildlife Code, provides that the Parks and Wildlife Department may use money "from unclaimed refunds of the tax on fuel used in motorboats" that is appropriated to the department under Section 162.502(c), Tax Code. The revised law omits the quoted language as unnecessary because all money appropriated to the department as provided by Section 162.502(c) comes from unclaimed refunds of the tax on fuel used in motorboats that are deposited to the credit of the general revenue fund.

SUBCHAPTER B. EXOTIC AQUATIC PLANTS

Revised Law

Sec. 5352.0201. DEFINITIONS. In this subchapter:

(1) "Exotic aquatic plant" means a nonindigenous

aquatic plant that is not normally found in the public water of this state.

(2) "Public water" has the meaning assigned by Section 5054.0101. (Parks & Wild. Code, Sec. 66.0072(a).)

Source Law

Sec. 66.0072. EXOTIC HARMFUL OR POTENTIALLY HARMFUL AQUATIC PLANTS. (a) In this section:

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

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

Revisor's Note

Section 66.0072(a), Parks and Wildlife Code, provides definitions that apply in "this section," meaning Section 66.0072 of that code. Section 66.0072 is revised in this subchapter. Although this subchapter also includes the revision of provisions not derived from Section 66.0072, the revised law substitutes a reference to the entire subchapter for "this section" because, for each term defined in this section, the term is either not used in the other provisions or the other provisions, by their own terms, apply to the terms as they are defined in Section 66.0072.

Revised Law

Sec. 5352.0202. HARMFUL EXOTIC AQUATIC PLANTS. (a) Except as otherwise provided by this section, a person may not import, possess, sell, or place into public water an exotic aquatic plant that is harmful or potentially harmful unless the person is authorized to do so by commission rule or a permit issued by the department.

(b) The commission shall adopt rules to implement this section and shall by rule adopt a list of exotic aquatic plants that may not be imported into or possessed in this state without a permit.

(c) The commission may adopt an emergency rule under Chapter

2001, Government Code, to add an exotic aquatic plant to the list under Subsection (b) if the plant is determined to be harmful or potentially harmful.

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

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

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

(3) a transfer of water:

(A) from a water body in which there is no known harmful or potentially harmful exotic aquatic plant population;

(B) into a water body in which there is a known harmful or potentially harmful exotic aquatic plant population;

(C) directly to a water treatment facility;

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

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

(e) This section does not apply to any microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes. The department:

(1) shall consult with the Department of Agriculture as necessary to administer this section; and

(2) may not adopt rules or permits for microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes without written approval from the Department of Agriculture. (Parks & Wild. Code, Secs. 66.0072(b), (c), (d), (e), (f), (g).)

Source Law

(b) A person may not import, possess, sell, or place into the public water of this state an exotic harmful or potentially harmful aquatic plant except as authorized by commission rule or a permit issued by the department.

(c) The commission by rule shall adopt a list of exotic aquatic plants that may not be imported into or possessed in this state without a permit.

(d) The commission may enact an emergency rule as provided by Chapter 2001, Government Code, to add an exotic aquatic plant to the list of prohibited plants if the plant is determined to be harmful or potentially harmful.

(e) This section does not apply to any microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes. The department shall consult with the Department of Agriculture as necessary to administer this section and may not adopt rules or permits for microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes without written approval from the Department of Agriculture of the rules or permits.

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

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

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

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

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

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

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

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

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

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

Revisor's Note

Section 66.0072(g), Parks and Wildlife Code, provides that certain water transfers are not a

violation of Section 66.0072 of that code and prohibits the Parks and Wildlife Department from requiring a permit under that section. Section 66.0072 is revised in pertinent part as Subsection (a) of this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5352.0203. EXPIRATION, TRANSFER, AND REPLACEMENT OF PERMIT. (a) A permit issued under Section 5352.0202 is valid only during the yearly period for which the permit is issued without regard to the date the permit is acquired.

(b) Each yearly period for a permit issued under Section 5352.0202:

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

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

(c) A permit issued under Section 5352.0202 may not be transferred to another person, except that a permit issued in the name of a business remains valid for the business location specified on the permit if a change of ownership or business name occurs.

(d) The commission by regulation may prescribe:

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

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

(A) transfer of a permit issued under Section 5352.0202; or

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

Source Law

Sec. 66.017. LICENSE, TAG, AND PERMIT EXPIRATIONS AND TRANSFERS. (a) All [licenses, tags, and] permits issued under the authority of Chapter 66 of this code are valid only during the yearly period for which they are issued without regard to the date on

which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. . . .

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

Revisor's Note

(1) Section 66.017, Parks and Wildlife Code, refers to permits issued under the authority of Chapter 66 of that code. The revised law substitutes "Section 5352.0202" for references to Chapter 66 because a portion of Chapter 66 providing for a permit under that chapter is revised in Section 5352.0202.

(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.

Revised Law

Sec. 5352.0204. REMOVAL OF HARMFUL EXOTIC AQUATIC PLANTS FROM WATERCRAFT. A person shall immediately on leaving any public or private body of water in this state remove and lawfully dispose of any exotic aquatic plant listed under Section 5352.0202(b) that clings or attaches to the person's:

(1) vessel or other watercraft; or

(2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or other watercraft. (Parks & Wild. Code, Sec. 66.0071.)

Source Law

Sec. 66.0071. REMOVAL OF HARMFUL AQUATIC PLANTS. On leaving any public or private body of water in this state, a person shall immediately remove and lawfully dispose of any exotic aquatic plant on the list of prohibited plants adopted under Section 66.0072 that is clinging or attached to the person's:

(1) vessel or watercraft; or

(2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

Revisor's Note

Section 66.0071, Parks and Wildlife Code, refers to the list of prohibited plants adopted under Section 66.0072 of that code. The pertinent part of Section 66.0072 requiring the adoption of a list of prohibited plants is revised as Section 5352.0202(b), and the revised law is drafted accordingly.

Revised Law

Sec. 5352.0205. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates this subchapter or a commission

rule adopted under this subchapter.

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

(c) An offense under this section for a violation of Section 5352.0202 or a commission proclamation adopted under that section is:

(1) a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted one time of a violation of Section 5352.0202; or

(2) a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of a violation of Section 5352.0202. (Parks & Wild. Code, Secs. 66.012(a), (e) (part), (f) (part).)

Source Law

> Sec. 66.012. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.
>
> (e) An offense under Section . . . 66.0072, . . . or a proclamation adopted by the commission under those sections is a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.
>
> (f) An offense under Section . . . 66.0072, . . . or a proclamation adopted by the commission under those sections is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.

CHAPTER 5353. SEAGRASS PLANTS

Revised Law

Sec. 5353.0101. DEFINITION. In this chapter, "seagrass plant" means a flowering marine plant of the species:

(1) Cymodocea filiformis, known as manatee grass;

(2) Halodule beaudettei or Halodule wrightii, known as shoal grass;

(3) Halophila engelmannii, known as star grass or Engelmann's seagrass;

(4) Ruppia maritima, known as widgeon grass; or

(5) Thalassia testudinum, known as turtle grass. (Parks & Wild. Code, Sec. 66.024(a).)

Source Law

Sec. 66.024. SEAGRASS PLANTS. (a) In this section, "seagrass plant" means a flowering marine plant of the species:

(1) Cymodocea filiformis, known as manatee grass;

(2) Halodule beaudettei or Halodule wrightii, known as shoal grass;

(3) Halophila engelmannii, known as star grass or Engelmann's seagrass;

(4) Ruppia maritima, known as widgeon grass; or

(5) Thalassia testudinum, known as turtle grass.

Revised Law

Sec. 5353.0102. PROHIBITED REMOVAL OF SEAGRASS PLANTS. A person may not uproot or dig out any rooted seagrass plant from a bay bottom or other saltwater bottom area in the jurisdiction of this state by means of a propeller unless the person is authorized to uproot or dig out the rooted seagrass plant by a commercial license or permit issued by the department. (Parks & Wild. Code, Sec. 66.024(b).)

Source Law

(b) A person may not uproot or dig out any rooted seagrass plant from a bay bottom or other saltwater bottom area in the jurisdiction of this state by means of a propeller, except as that uprooting or digging out may be authorized by a commercial license or permit issued by the department.

Revised Law

Sec. 5353.0103. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a commission proclamation under this chapter.

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

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

(1) anchors a vessel within an area containing seagrass plants and uproots a seagrass plant;

(2) uses an electric trolling motor within an area containing seagrass plants and uproots a seagrass plant; or

(3) operates a vessel in a manner consistent with the acceleration required to reach and stay on plane. (Parks & Wild. Code, Secs. 66.024(c), (d).)

Source Law

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

(1) anchors a vessel within an area containing seagrass plants and uproots a seagrass plant;

(2) uses an electric trolling motor within an area containing seagrass plants and uproots a seagrass plant; or

(3) operates a vessel in a manner consistent with the acceleration required to reach and stay on plane.

(d) A person who violates this section or a proclamation of the commission under this section commits an offense that is a Class C Parks and Wildlife Code misdemeanor.