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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE Z. GENERAL ENFORCEMENT PROVISIONS

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE Z. GENERAL ENFORCEMENT PROVISIONS

CHAPTER 5951. GENERAL ENFORCEMENT PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5951.0101. DEFINITION. In this subtitle, "vessel" means a watercraft, including an attached motor, that can be used for transportation on water. (Parks & Wild. Code, Sec. 12.101(3).)

Source Law

Sec. 12.101. DEFINITIONS. In this subchapter:

(3) "Vessel" means watercraft, including an attached motor, that can be used for transportation on water.

SUBCHAPTER B. GENERAL ENFORCEMENT PROVISIONS

Revised Law

Sec. 5951.0201. COMPLAINT AND PROCEEDING AUTHORIZED. (a) The department may file complaints in the name of this state to recover fines and penalties for violations of law relating to game, birds, and fish.

(b) The department may file a complaint and bring a proceeding against an individual for a violation of law relating to game, birds, and fish without the approval of the county attorney of the county in which the proceeding is brought. The department is not required to provide security for costs for a proceeding brought under this subsection. (Parks & Wild. Code, Sec. 12.105.)

Source Law

Sec. 12.105. SUITS. (a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

Revisor's Note

Section 12.105(b), Parks and Wildlife Code, provides that the Parks and Wildlife Department may

"commence" proceedings against an individual for certain violations of law. The revised law substitutes "bring" for "commence" because, in context, the terms are synonymous and "bring" is more consistent with modern usage.

Revised Law

Sec. 5951.0202. SEPARATE OFFENSES. Each fish, bird, animal, reptile, amphibian, or egg or part of a fish, bird, animal, reptile, amphibian, or egg that is taken, possessed, killed, left to die, imported, exported, offered for sale, sold, purchased, attempted to be purchased, or retained in violation of this code or a proclamation or regulation adopted under this code is a separate offense. (Parks & Wild. Code, Sec. 12.409.)

Source Law

> Sec. 12.409. SEPARATE OFFENSES. Each fish, bird, animal, reptile, amphibian, or egg or part of a fish, bird, animal, reptile, amphibian, or egg taken, possessed, killed, left to die, imported, exported, offered for sale, sold, purchased, attempted to be purchased, or retained in violation of any provision of this code or a proclamation or regulation adopted under this code constitutes a separate offense.

Revised Law

Sec. 5951.0203. POSSESSION OF PROTECTED WILDLIFE AS PRIMA FACIE EVIDENCE OF OFFENSE. Except as provided by Subchapter A, Chapter 5053, possession of a live or dead wild game bird, wild game animal, or other species of protected wildlife during a time when hunting the bird, animal, or other species is prohibited is prima facie evidence of the guilt of the person in possession. (Parks & Wild. Code, Sec. 62.008.)

Source Law

> Sec. 62.008. PRIMA FACIE EVIDENCE. Except as provided in Subchapter B of this chapter, possession of a wild game bird, wild game animal, or other species of protected wildlife, whether dead or alive, during a time when the hunting of the animal, bird, or species is prohibited is prima facie evidence of the guilt of the person in possession.

Revisor's Note

Section 62.008, Parks and Wildlife Code, provides

that, except as provided in Subchapter B, Chapter 62, of that code, possession of a wild game bird, wild game animal, or other species of protected wildlife under certain circumstances is prima facie evidence of the guilt of the person in possession. Subchapter B is revised in pertinent part as Subchapter A, Chapter 5053, of this code, and the revised law is drafted accordingly. Although Subchapter A, Chapter 5053, also includes the revision of other provisions, it is appropriate to refer to that subchapter in its entirety because those other provisions do not contain any exceptions to the general rule in Section 62.008.

Revised Law

Sec. 5951.0204. PURCHASE OF GAME BIRD OR ANIMAL FOR EVIDENCE; IMMUNITY AND EFFECT OF UNCORROBORATED EVIDENCE. (a) A person who, for the purpose of establishing testimony, purchases a game bird or animal the sale of which is prohibited by this code is immune from prosecution for the purchase.

(b) A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser. (Parks & Wild. Code, Sec. 62.009.)

Source Law

> Sec. 62.009. PURCHASE FOR EVIDENCE. A person who, for the purpose of establishing testimony, purchases a game bird or animal whose sale is prohibited by this code, is immune from prosecution for the purchase. A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser.

Revised Law

Sec. 5951.0205. PURCHASE OR SALE OF AQUATIC LIFE FOR EVIDENCE; IMMUNITY AND EFFECT OF UNCORROBORATED EVIDENCE. (a) A person authorized by the department who, for the purpose of establishing testimony, purchases or sells any aquatic life the purchase or sale of which is prohibited or regulated by this code is immune from prosecution for the purchase or sale.

(b) A conviction for the unlawful purchase or sale of an

aquatic animal may be sustained on the uncorroborated testimony of the person authorized by the department to purchase or sell aquatic life. (Parks & Wild. Code, Sec. 66.022.)

Source Law

> Sec. 66.022. PURCHASE FOR EVIDENCE. A person authorized by the department who, for the purpose of establishing testimony, purchases or sells any aquatic life the purchase or sale of which is prohibited or regulated by this code is immune from prosecution for the purchases or sales. A conviction for the unlawful purchase or sale of any aquatic animal may be sustained on the uncorroborated testimony of the person authorized by the department to purchase or sell aquatic life.

SUBCHAPTER C. GENERAL OFFENSES

Revised Law

Sec. 5951.0301. VIOLATION OF COMMISSION RULE ON POSSESSING REQUIRED LICENSE OR STAMP. (a) A person commits an offense if the person violates a commission rule relating to possessing a license or stamp required by this code for hunting wildlife resources or for catching aquatic life.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 12.119.)

Source Law

> Sec. 12.119. VIOLATION OF COMMISSION RULE ON POSSESSION OF LICENSE; PENALTY. (a) A person commits an offense if the person violates a rule adopted by the commission relating to possessing a license or stamp otherwise required by this code for hunting wildlife resources or for catching aquatic life.
>
> (b) An offense under this section is a Class C Parks and Wildlife misdemeanor.

Revisor's Note

> Section 12.119(a), Parks and Wildlife Code, refers to a person possessing a license or stamp "otherwise" required by that code for certain activities. The revised law omits "otherwise" as unnecessary because it does not add to the clear meaning of the law.

CHAPTER 5952. INSPECTIONS, ENTRY, AND SEARCHES

SUBCHAPTER A. INSPECTIONS

Revised Law

Sec. 5952.0101. INSPECTION OF DOCUMENTS, DEVICES, WILDLIFE RESOURCES, AND CONTAINERS. (a) In this section:

(1) "Residence" means a person's principal or ordinary home or dwelling place.

(2) "Temporary residence" means a place, other than a hunting blind, where a person temporarily dwells or seeks shelter. The term includes:

(A) a hunting club or lodge;

(B) a clubhouse;

(C) a cabin;

(D) a tent;

(E) a manufactured home used as a hunting club or lodge; and

(F) a hotel room, motel room, or room in a boardinghouse used during a hunting trip.

(3) "Wildlife resource" means an animal, bird, reptile, amphibian, fish, or form of aquatic life, or a part of an animal, bird, reptile, amphibian, fish, or form of aquatic life, the hunting, catching, or possession of which is regulated by this code.

(b) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department who observes a person engaged in, or reasonably believes that a person is or has been engaged in, an activity regulated by this code or under the commission's jurisdiction may inspect:

(1) a license, permit, tag, or other document issued by the department and required by this code for a person hunting or catching wildlife resources;

(2) a device that may be used to hunt or catch a wildlife resource;

(3) a wildlife resource in the person's possession;

and

(4) the contents of a container or receptacle commonly used to store or conceal a wildlife resource.

(c) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department may inspect a wildlife resource taken by a person and in the plain view of the warden or officer.

(d) This section does not authorize a game warden or other peace officer commissioned by the department to conduct a search under this section:

(1) in a person's residence or temporary residence; or

(2) on a publicly maintained road or way that is:

(A) improved, designed, or ordinarily used for vehicular traffic;

(B) open to the public; and

(C) distinguishable from a shoulder, berm, or other area not intended for vehicular traffic. (Parks & Wild. Code, Sec. 12.102.)

Source Law

Sec. 12.102. INSPECTION OF WILDLIFE RESOURCES. (a) In this section:

(1) "Residence" means a person's principal or ordinary home or dwelling place.

(2) "Temporary residence" means a place where a person temporarily dwells or seeks shelter. The term does not include a hunting blind. The term does include a:

(A) hunting club or lodge;

(B) clubhouse;

(C) cabin;

(D) tent;

(E) manufactured home used as a hunting club or lodge; and

(F) hotel room, motel room, or room in a boardinghouse used during a hunting trip.

(3) "Wildlife resource" means any animal, bird, reptile, amphibian, fish, or form of aquatic life or any part of an animal, bird, reptile, amphibian, fish, or form of aquatic life the hunting, catching, or possession of which is regulated by this code.

(b) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department who observes a person engaged in an activity regulated by this code or under the jurisdiction of the commission or reasonably believes that a person is or has been engaged in an activity regulated by this code or under the jurisdiction of the

commission may inspect:

(1) any license, permit, tag, or other document issued by the department and required by this code of a person hunting or catching wildlife resources;

(2) any device that may be used to hunt or catch a wildlife resource;

(3) any wildlife resource in the person's possession; and

(4) the contents of any container or receptacle that is commonly used to store or conceal a wildlife resource.

(c) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department may inspect any wildlife resource that has been taken by a person and is in plain view of the game warden or other peace officer.

(d) Nothing in this section authorizes a game warden or other peace officer commissioned by the department to conduct a search otherwise authorized by this section:

(1) in a person's residence or temporary residence; or

(2) on a publicly maintained road or way that is:

(A) improved, designed, or ordinarily used for vehicular traffic;

(B) open to the public; and

(C) distinguishable from a shoulder, berm, or other area not intended for vehicular traffic.

Revised Law

Sec. 5952.0102. INSPECTION OF AQUATIC ANIMAL PRODUCTS; OFFENSE. (a) In this section, "aquatic animal product," "commercial fisherman," and "place of business" have the meanings assigned by Section 5158.0101.

(b) A person who possesses or handles aquatic animal products for commercial purposes shall allow an authorized department employee to inspect the aquatic animal products at the person's place of business during normal business hours.

(c) A commercial fisherman shall allow an authorized department employee to inspect aquatic animal products handled by or in the possession of the fisherman while the fisherman is pursuing the fisherman's trade or at a reasonable hour.

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

(e) This section does not authorize the search of a residence without a search warrant. (Parks & Wild. Code, Secs.

47.001(1) (part), (9) (part), (16) (part), 47.037, 47.051 (part).)

Source Law

Sec. 47.001. DEFINITIONS. In this chapter:

(1) "Commercial fisherman" [means a person who for pay or for the purpose of sale, barter, or exchange or any other commercial purpose:

(A) catches aquatic products from the water of this state except finfish from the tidal waters of this state; or

(B) unloads in this state aquatic products that:

(i) were taken from water outside this state; and

(ii) have not been previously unloaded in another state or a foreign country.]

(9) "Place of business" [means a permanent structure on land or a motor vehicle required to be registered under Section 502.040, Transportation Code, where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased but does not include a boat or any type of floating device, a public cold storage vault, the portion of a structure that is used as a residence, or a vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.]

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

Sec. 47.037. INSPECTION. (a) No person who possesses or handles aquatic products for commercial purposes may refuse to allow an authorized employee of the department to inspect the aquatic products at the dealer's or handler's place of business during normal business hours.

(b) No commercial fisherman may refuse to allow an authorized employee of the department to inspect aquatic products handled by or in the possession of the commercial fisherman while the commercial fisherman is pursuing his trade or at a reasonable hour.

(c) This section does not authorize the search of a residence without a search warrant.

Sec. 47.051. PENALTY. . . . a person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Revisor's Note

(1) Section 47.001(16), Parks and Wildlife Code, defines the term "aquatic product" as any live or dead, uncooked, fresh or frozen aquatic animal life, and Sections 47.037(a) and (b) of that code refer to "aquatic products." For clarity, the revised law substitutes "aquatic animal product" for "aquatic product" and substitutes "aquatic animal products" for

"aquatic products."

(2) Sections 47.037(a) and (b), Parks and Wildlife Code, prohibit certain persons from refusing to allow an authorized employee of the Parks and Wildlife Department to inspect certain aquatic products. For clarity, the revised law restates those provisions as an affirmative duty to allow the inspection of the aquatic products rather than a prohibition on refusing to allow the inspection.

(3) Section 47.037(a), Parks and Wildlife Code, prohibits a "person who possesses or handles aquatic products for commercial purposes" from refusing to allow an authorized employee of the Parks and Wildlife Department to inspect aquatic products at "the dealer's or handler's place of business." For clarity and consistency in terminology used in this section, the revised law substitutes "the person's" for "the dealer's or handler's" because it is clear from the context that "the dealer's or handler's place of business" refers to the place of business of the person who is the subject of the prohibition.

Revised Law

Sec. 5952.0103. INSPECTION OF CERTAIN FACILITIES. (a) In this section, "protected wildlife" means a game animal, game bird, nongame animal, or nongame bird that is the subject of a protective law or regulation of this state or the United States.

(b) An authorized department employee may enter and inspect a cold storage or processing facility or other place, including a taxidermist shop and a tannery, where protected wildlife is stored.

(c) An inspection under this section may be made during normal business hours or at any other reasonable time. (Parks & Wild. Code, Sec. 62.031.)

Source Law

Sec. 62.031. INSPECTIONS OF FACILITIES. (a)

Authorized employees of the department may enter and inspect a cold storage or processing facility or other place, including taxidermist shops and tanneries, where protected wildlife are stored.

(b) In this section "protected wildlife" means game animals, game birds, nongame animals, and nongame birds that are the subject of any protective law or regulation of this state or the United States.

(c) Inspections under this section may be made during normal business hours or at any other reasonable time.

SUBCHAPTER B. ENTRY

Revised Law

Sec. 5952.0201. ENTERING LAND OR WATER AUTHORIZED. (a) An authorized department employee may enter land or water where wild game or fish are known to range or stray to:

(1) enforce the game and fish laws of this state; or

(2) conduct scientific investigations and research regarding wild game or fish.

(b) An action may not be sustained against a department employee to prevent the employee from entering land or water when acting in an official capacity under Subsection (a). (Parks & Wild. Code, Sec. 12.103(a).)

Source Law

Sec. 12.103. ENTERING LAND; USE OF INFORMATION OBTAINED BY ENTRY; CIVIL PENALTY. (a) To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity as described by this subsection.

Revised Law

Sec. 5952.0202. USE OF INFORMATION OBTAINED BY ENTRY. (a) Except as provided by Subsection (d) or (e), the department may use information collected by a department employee on privately owned land only:

(1) for the purposes of scientific investigations and research authorized under Section 5952.0201; and

(2) if authorized in writing by the landowner or the landowner's agent.

(b) The department may not, without the prior written

consent of the landowner or the landowner's agent:

(1) use incidental information obtained on privately owned land that does not pertain directly to the scientific investigation or research authorized under Section 5952.0201; or

(2) enter or permit the entry of information that does not pertain directly to the scientific investigation or research authorized under Section 5952.0201 into a database:

(A) maintained by the department and available to a person other than a department employee;

(B) maintained by a natural heritage program administered by the department; or

(C) established and maintained by any other person.

(c) Except as provided by Subsection (d) or (e), or unless the landowner or the landowner's agent consents in writing, information collected under this subchapter may be reported or compiled only in a manner that prevents the identification of a specific parcel of private property.

(d) The department may:

(1) as necessary, collect and enter data relating to the occurrence or harvest of natural resources in public land or water; and

(2) collect and report standardized annual wildlife survey information required by the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. Section 669 et seq.).

(e) The department may disclose information collected under this subchapter to the Texas Animal Health Commission as needed to carry out a governmental purpose. (Parks & Wild. Code, Secs. 12.103(b), (c), (d), (d-1).)

Source Law

(b) Except as provided by Subsection (d) or (d-1), the department may use information collected by an employee of the department on privately owned land only for the purposes of scientific investigations and research described in Subsection (a) and only if authorized in writing by the landowner or the landowner's agent. Unless the department first

obtains the written consent of the landowner or the landowner's agent, the department may not:

(1) use other incidental information obtained on the land that does not pertain directly to the investigation or research authorized under Subsection (a); or

(2) enter or permit the entry of any information that does not pertain directly to the investigation or research authorized under Subsection (a), into a database:

(A) maintained by the department and available to a person other than a department employee;

(B) maintained by a natural heritage program administered by the department; or

(C) established and maintained by any other person.

(c) Except as provided by Subsection (d) or (d-1), information collected under this section may only be reported or compiled in a manner that prevents the identification of an individual parcel or specific parcels of private property without the written consent of the landowner or the landowner's agent.

(d) The department may collect and enter data as necessary relating to the occurrence or harvest of natural resources in public land or water. The department may collect and report standardized annual wildlife survey information required by the Pitman-Robertson Wildlife Restoration Act (16 U.S.C. Section 669 et seq.).

(d-1) The department may disclose information collected under this section to the Texas Animal Health Commission as needed to carry out a governmental purpose.

Revisor's Note

(1) Section 12.103(b)(1), Parks and Wildlife Code, prohibits the Parks and Wildlife Department under certain circumstances from using "other" incidental information obtained on privately owned land that does not pertain directly to the scientific investigation or research authorized under Section 12.103(a) of that code. The revised law omits "other" as unnecessary because it does not add to the clear meaning of the law.

(2) Section 12.103(c), Parks and Wildlife Code, provides that certain information may only be reported or compiled in a manner that prevents the identification of "an individual parcel or specific parcels" of private property. The revised law substitutes "a specific parcel" for the quoted language because under Section 311.012(b), Government

Code (Code Construction Act), the singular includes the plural.

Revised Law

Sec. 5952.0203. CIVIL PENALTY. (a) The department is liable to a private landowner for a civil penalty of $1,000 for a violation of this subchapter involving information collected by a department employee on the landowner's property.

(b) A landowner may bring suit to collect a civil penalty under this section in the county in which the land is located or the county in which the landowner resides. (Parks & Wild. Code, Sec. 12.103(e).)

Source Law

> (e) The department is liable to a private landowner for a civil penalty in the amount of $1,000 for a violation of this section involving information collected by an employee of the department on the landowner's property. A landowner may bring suit to collect the penalty in the county in which the land is located or the county in which the landowner resides.

SUBCHAPTER C. SEARCHES

Revised Law

Sec. 5952.0301. AUTHORITY OF DEPARTMENT PEACE OFFICER TO SEARCH AND INSPECT CERTAIN CONTAINERS FOR WILDLIFE RESOURCES. (a) In this section, "wildlife resource" means an animal, bird, reptile, amphibian, fish, or other aquatic life the taking or possession of which is regulated by this code.

(b) A game warden or other peace officer commissioned by the department may:

(1) search a game bag, vehicle, vessel, or other receptacle if the warden or officer has a reasonable, articulable suspicion that the bag, vehicle, vessel, or receptacle contains a wildlife resource that has been unlawfully killed or taken; and

(2) inspect a wildlife resource or a part or product of a wildlife resource that is discovered during a search under Subdivision (1). (Parks & Wild. Code, Sec. 12.104.)

Source Law

Sec. 12.104. RIGHT TO SEARCH AND INSPECT. (a)

A game warden or other peace officer commissioned by the department may search a game bag, vehicle, vessel, or other receptacle if the game warden or peace officer has a reasonable, articulable suspicion that the game bag, vehicle, vessel, or receptacle contains a wildlife resource that has been unlawfully killed or taken.

(b) A game warden or other peace officer commissioned by the department may inspect a wildlife resource or a part or product of a wildlife resource that is discovered during a search under Subsection (a) of this section.

(c) In this section "wildlife resource" means an animal, bird, reptile, amphibian, fish, or other aquatic life the taking or possession of which is regulated in any manner by this code.

Revised Law

Sec. 5952.0302. AUTHORITY OF AUTHORIZED DEPARTMENT EMPLOYEE TO SEARCH CERTAIN CONTAINERS FOR GAME; OFFENSE. (a) An authorized department employee may search a game bag, receptacle, or automobile or other vehicle if the employee has reason to believe that the bag, receptacle, or vehicle contains game unlawfully killed or taken.

(b) A person commits an offense if the person refuses to allow a search or to stop a vehicle when requested by an authorized department employee. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 62.007, 62.013(a) (part).)

Source Law

Sec. 62.007. STOPPING FOR SEARCH. (a) An authorized employee of the department may search the game bag, receptacle, automobile, or other vehicle if he has reason to believe that the bag, receptacle, automobile, or vehicle contains game unlawfully killed or taken.

(b) A person who refuses to allow a search or refuses to stop a vehicle when requested to do so by an authorized employee commits an offense.

[Sec. 62.013]

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

CHAPTER 5953. SEIZURE AND DISPOSITION OF PROPERTY

SUBCHAPTER A. DISPOSITION OF SEIZED GAME

Revised Law

Sec. 5953.0101. DEFINITION. In this subchapter, "exotic animal" has the meaning assigned by Section 5053.0501. (Parks &

Wild. Code, Sec. 12.110(f).)

Source Law

(f) In this section, "exotic animal" has the meaning assigned by Section 62.015.

Revised Law

Sec. 5953.0102. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to the lawful possession or sale of an exotic animal. (Parks & Wild. Code, Sec. 12.110(e).)

Source Law

(e) This section does not apply to the lawful possession or sale of an exotic animal.

Revised Law

Sec. 5953.0103. DONATION OF SEIZED GAME. Except as provided by Section 5953.0104, the department, whenever reasonably practicable, shall donate to a charitable institution, hospital, or other person a wild game animal, bird, fowl, game fish, or exotic animal that is unlawfully killed, taken, shipped, held in storage, possessed, or offered for sale in a public eating place. (Parks & Wild. Code, Sec. 12.110(a).)

Source Law

Sec. 12.110. DISPOSITION OF CONFISCATED GAME. (a) Except as provided by Subsection (d), the department shall donate, whenever donation is reasonably practicable, any wild game animal, bird, fowl, game fish, or exotic animal that is unlawfully killed, taken, shipped, held in storage, possessed, or offered for sale in a public eating place to a charitable institution, hospital, or person or persons.

Revisor's Note

Section 12.110(a), Parks and Wildlife Code, requires the Parks and Wildlife Department to donate to certain entities wild game animals, birds, fowl, game fish, or exotic animals, except as provided by Section 12.110(d) of that code. Section 12.110(d) is revised in pertinent part as Section 5953.0104, and the revised law is drafted accordingly.

Revised Law

Sec. 5953.0104. SALE OF SEIZED LIVE GAME. (a) The

department may sell seized live game described by Section 5953.0103 to the highest of three bidders.

(b) At the time of a sale under Subsection (a), the department shall provide the buyer a receipt for all game sold to the buyer. (Parks & Wild. Code, Sec. 12.110(d) (part).)

Source Law

> (d) The department may sell confiscated live game described by Subsection (a) to the highest of three bidders. At the time of a sale under this subsection, the department shall provide the buyer a receipt for all game sold to the buyer. . . .

Revisor's Note

> Section 12.110(d), Parks and Wildlife Code, refers to "confiscated" live game. Throughout this chapter, the revised law substitutes "seized" for "confiscated" for consistency in terminology used in this chapter and because, in context, the terms are synonymous.

Revised Law

Sec. 5953.0105. PROCEEDS FROM SALE OF SEIZED GAME. (a) The department shall deposit the proceeds from the sale of seized live game under Section 5953.0104 in the state treasury to the credit of the appropriate suspense fund pending the outcome of a criminal action for an unlawful act described by Section 5953.0103 against the person from whom the game was seized.

(b) The department shall pay the proceeds of a sale described by Subsection (a) to the person from whom the game was seized if, with respect to an unlawful act described by Section 5953.0103 regarding the game:

(1) the person is acquitted by the trial court;

(2) the charges against the person are dismissed; or

(3) the limitations period for the prosecution of the offense has expired. (Parks & Wild. Code, Sec. 12.110(d) (part).)

Source Law

> (d) . . . The department shall deposit the proceeds of the sale in the state treasury to the credit of the appropriate suspense fund pending the

outcome of any action against the person charged with an unlawful action described by Subsection (a). If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the game was seized.

Revisor's Note

Section 12.110(d), Parks and Wildlife Code, refers to "the person" charged with an unlawful act described by Section 12.110(a) of that code. The revised law clarifies that "the person" is the person from whom the game was seized because it is clear from the context of Section 12.110 that the person charged with an unlawful act is the person from whom the game was seized.

Revised Law

Sec. 5953.0106. IMMUNITY FROM LIABILITY. The department or a department enforcement officer acting under this subchapter is not liable in a civil action for the seizure, sale, or donation of a game bird, other fowl, animal, game fish, or exotic animal. (Parks & Wild. Code, Sec. 12.110(c).)

Source Law

(c) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, or donation of a game bird, other fowl, animal, game fish, or exotic animal.

SUBCHAPTER B. SEIZURE AND DISPOSITION OF AQUATIC ANIMAL PRODUCTS

Revised Law

Sec. 5953.0201. DEFINITION. In this subchapter, "aquatic animal product" has the meaning assigned by Section 5158.0101. (Parks & Wild. Code, Sec. 12.109(a) (part).)

Source Law

(a) . . . aquatic products as defined by Section 47.001(16) of this code, ...

Revisor's Note

Section 12.109(a), Parks and Wildlife Code, refers by cross-reference to the definition of "aquatic product" in Section 47.001(16) of that code.

Section 47.001(16) is revised in Section 5158.0101 as "aquatic animal product," and this subchapter is revised accordingly. Additionally, the revised law applies the definition to the entirety of Section 12.109, revised as this subchapter, because it is clear from the context of Section 12.109 that the definition of "aquatic product" is intended to apply to every instance of that term in that section.

Revised Law

Sec. 5953.0202. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to aquatic animal products, including fish and shrimp, taken from an area declared by the executive commissioner of the Health and Human Services Commission or the commissioner of state health services to be a prohibited area. (Parks & Wild. Code, Sec. 12.109(e).)

Source Law

(e) This section does not apply to fish, shrimp, or other aquatic products that are taken from an area declared by the Commissioner of Health to be a prohibited area.

Revisor's Note

Section 12.109(e), Parks and Wildlife Code, refers to "the Commissioner of Health." 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" for the reasons stated in Revisor's Note (2) to Section 5252.0201.

Revised Law

Sec. 5953.0203. SEIZURE AND DISPOSITION OF AQUATIC ANIMAL PRODUCTS. (a) Except as provided by Sections 5953.0205 and 5953.0206, if a department enforcement officer believes that a person unlawfully possesses an aquatic animal product taken in violation of this code or a commission proclamation, the officer shall seize:

(1) the unlawfully possessed aquatic animal product; and

(2) all other aquatic animal products, regardless of whether the products are found in storage or on deck, living or dead, frozen or fresh, or whole or processed, that are:

(A) aboard an involved vessel; or

(B) in a device used to catch or store an aquatic animal product.

(b) A department enforcement officer who seizes an aquatic animal product under Subsection (a) shall sell the product to the highest of three bidders. If bids cannot be obtained, the department, if practicable, shall donate the product to a charitable institution, hospital, or other person.

(c) A department enforcement officer who sells an aquatic animal product under Subsection (b) shall give to the person from whom the product was seized a receipt for the product on the sale of the product.

(d) To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an aquatic animal product sold under Subsection (b) that is intended for sale and use as human food. (Parks & Wild. Code, Secs. 12.109(a) (part), (b) (part).)

Source Law

> Sec. 12.109. CONFISCATION AND DISPOSITION OF AQUATIC PRODUCTS. (a) Except as provided by Subsection (c) or (f) of this section, when an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other aquatic products . . . taken in violation of this code or a proclamation of the commission adopted under this code, he shall seize the aquatic products and all aquatic products aboard any vessel involved, or in any device used to catch or store aquatic products, whether in storage or on deck, and whether alive or dead, frozen or fresh, whole or processed to any extent. The officer shall sell the aquatic products and dispose of the proceeds as provided in Subsection (b) of this section.
>
> (b) The confiscated aquatic products shall be sold to the highest of three bidders. . . . The officer shall give to the person a receipt for all aquatic products seized upon the sale of the aquatic products. If bids cannot be obtained, the department, if practicable, shall donate the aquatic products to a charitable institution, hospital, or other person. To the extent practicable, Subtitle A, Title

6, Health and Safety Code, applies to an aquatic product sold under this subsection that is intended for sale and use as human food.

Revisor's Note

(1) Section 12.109(a), Parks and Wildlife Code, refers to a Parks and Wildlife Commission proclamation "adopted under this code." The revised law omits the quoted language because a proclamation of the commission is necessarily adopted under the Parks and Wildlife Code.

(2) Section 12.109(a), Parks and Wildlife Code, requires an enforcement officer of the Parks and Wildlife Department to seize certain aquatic products whether alive or dead, frozen or fresh, whole or processed "to any extent." The revised law omits the quoted language because a product that has been processed includes a product that has been processed "to any extent."

(3) Section 12.109(b), Parks and Wildlife Code, requires an enforcement officer of the Parks and Wildlife Department to give to "the person" a receipt for all aquatic products seized on the sale of those products. The revised law substitutes "person from whom the product was seized" for "person" because it is clear from the context of Section 12.109 that the person to whom the receipt must be given is the person from whom the product was seized.

Revised Law

Sec. 5953.0204. PROCEEDS FROM SALE OF SEIZED AQUATIC ANIMAL PRODUCTS. (a) The proceeds from the sale of a seized aquatic animal product under Section 5953.0203 shall be deposited in the state treasury to the credit of the appropriate suspense fund pending the outcome of a criminal action for unlawful possession against the person from whom the product was seized.

(b) The proceeds described by Subsection (a) shall be

transferred to the credit of the game, fish, and water safety account if, with respect to an offense for unlawful possession of an aquatic animal product, the person from whom the aquatic animal product was seized:

(1) is found guilty;

(2) pleads guilty or nolo contendere;

(3) is placed on deferred adjudication community supervision; or

(4) fails to appear in accordance with a notice described by Section 2952.0301 or another law requiring that, as a condition of release, the person subsequently appear before a court to answer for the offense.

(c) The department shall pay the proceeds described by Subsection (a) to the person from whom the aquatic animal product was seized if, with respect to an offense for unlawful possession of the aquatic animal product:

(1) the person is acquitted by the trial court;

(2) the charges against the person are dismissed; or

(3) the limitations period for the prosecution of the offense has expired. (Parks & Wild. Code, Secs. 12.109(b) (part), (d).)

Source Law

> (b) . . . The proceeds of the sale shall be deposited in the state treasury to the credit of the appropriate suspense fund pending the outcome of the action taken against the person charged with illegal possession. . . .
>
> (d) If the person is found guilty, pleads guilty or nolo contendere, is placed on deferred adjudication, or fails to appear in accordance with a notice described by Section 12.106 or another law requiring that, as a condition of release, the defendant subsequently appear before a court to answer for the offense, all the proceeds shall be transferred to the credit of the game, fish, and water safety account. If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the aquatic products were seized.

Revisor's Note

(1) Section 12.109(b), Parks and Wildlife Code, refers to the "person charged with illegal possession." The revised law substitutes "person from whom the aquatic animal product was seized" for the quoted language because it is clear from the context of Section 12.109 that the person charged with illegally possessing an aquatic product is the person from whom the product was seized.

(2) Section 12.109(b), Parks and Wildlife Code, refers to the outcome of an action taken against a person charged with "illegal" possession. The revised law substitutes "unlawful" for "illegal" for clarity and consistency in terminology used in this subchapter.

(3) Section 12.109(d), Parks and Wildlife Code, refers to a person being placed on "deferred adjudication." Throughout this chapter, the revised law substitutes "deferred adjudication community supervision" for "deferred adjudication" for the reasons stated in Revisor's Note (2) to Section 5159.0501.

(4) Section 12.109(d), Parks and Wildlife Code, requires that the proceeds of the sale of a seized aquatic product be either transferred to the game, fish, and water safety account or paid to the person from whom the product was seized depending on the outcome of a criminal case involving the person. Section 12.109(b), Parks and Wildlife Code, requires the proceeds to be deposited to the credit of the appropriate suspense fund pending the outcome of the action against the person charged with "[unlawful] possession." The revised law clarifies that the criminal case involving the person is with respect to

an offense for unlawful possession of the seized aquatic product because it is clear from the context that the criminal case involving the person is with respect to the offense for unlawful possession referred to in Section 12.109(b).

Revised Law

Sec. 5953.0205. SEIZURE OF AQUATIC ANIMAL PRODUCTS DUE TO DAILY BAG OR POSSESSION LIMIT. (a) A department enforcement officer who seizes aquatic animal products under Section 5953.0203 shall allow the person in possession of the products to retain a lawful quantity of the products if:

(1) the products were seized due only to a violation of a daily bag or possession limit; and

(2) the person provides written acknowledgment of the retention of a lawful quantity to the officer on a form provided by the department.

(b) The enforcement officer shall sell as provided by Section 5953.0203 the aquatic animal products not retained under Subsection (a) of this section and dispose of the proceeds as provided by Section 5953.0204. (Parks & Wild. Code, Sec. 12.109(c).)

Source Law

(c) If aquatic products are seized due only to a violation of a daily bag or possession limit, the officer shall allow the person in possession to retain a lawful quantity of the aquatic products, but only if the person gives written acknowledgement of retention of a lawful quantity to the officer on a form provided by the department. The officer shall sell the remainder of the aquatic products and dispose of the proceeds as provided by Subsection (b) of this section.

Revisor's Note

Section 12.109(c), Parks and Wildlife Code, requires an enforcement officer of the Parks and Wildlife Department to sell certain aquatic products and dispose of the proceeds as provided by Section 12.109(b) of that code. The provisions of Section

12.109(b) relating to the sale of the products are revised in Section 5953.0203, and the provisions of Section 12.109(b) relating to the disposal of the proceeds of that sale are revised in Section 5953.0204. Although Sections 5953.0203 and 5953.0204 also include the revision of provisions not derived from Section 12.109(b), it is appropriate to refer to the entirety of Sections 5953.0203 and 5953.0204 because the provisions not derived from Section 12.109(b) do not provide for the sale of aquatic products or the disposition of proceeds from that sale. The revised law is drafted accordingly.

Revised Law

Sec. 5953.0206. DISPOSITION OF UNLAWFULLY TAKEN OYSTERS. If a department enforcement officer determines that a person is in possession of oysters that were taken unlawfully, the officer may direct, if practical, that the oysters be returned to a public reef. (Parks & Wild. Code, Sec. 12.109(f).)

Source Law

(f) If an enforcement officer of the department determines that a person is in possession of oysters that were taken unlawfully, the officer may direct, if practical, that the oysters be returned to a public reef.

Revised Law

Sec. 5953.0207. IMMUNITY FROM LIABILITY. The department or a department enforcement officer acting under this subchapter is not liable in a civil action for the seizure, sale, release, or donation of an aquatic animal product or for directing the return of oysters to a public reef. (Parks & Wild. Code, Sec. 12.109(g).)

Source Law

(g) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, release, or donation of aquatic products or for the order to return oysters to a public reef.

Revisor's Note

Section 12.109(g), Parks and Wildlife Code,

provides that the Parks and Wildlife Department and an enforcement officer of the department are not liable in a civil action for "the order to return" oysters to a public reef. The revised law substitutes "directing the return" for "the order to return" for clarity and consistency in terminology used in this subchapter.

SUBCHAPTER C. SEIZURE AND DISPOSITION OF FUR-BEARING ANIMALS

Revised Law

Sec. 5953.0301. SEIZURE AND DISPOSITION OF FUR-BEARING ANIMALS, PELTS, AND CARCASSES. (a) A game warden or authorized department employee may seize a fur-bearing animal or the pelt or carcass of a fur-bearing animal taken or possessed in violation of this code or a commission regulation.

(b) The department may sell a seized fur-bearing animal or pelt or carcass of a fur-bearing animal to the highest of three bidders.

(c) At the time of a sale under Subsection (b), the department shall provide the buyer a receipt for all fur-bearing animals, pelts, or carcasses sold to the buyer.

(d) To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an animal or animal part sold under this section that is intended for sale and use as human food. (Parks & Wild. Code, Secs. 12.1101(a), (b) (part), (d).)

Source Law

> Sec. 12.1101. SEIZURE AND DISPOSAL OF CERTAIN ANIMALS' PELTS AND CARCASSES. (a) A game warden or authorized employee of the department may seize a fur-bearing animal, pelt, or carcass taken or possessed in violation of a provision of this code or a lawful regulation of the commission.
>
> (b) The department may sell a confiscated fur-bearing animal, pelt, or carcass to the highest of three bidders. At the time of a sale under this subsection, the department shall provide the buyer a receipt for all fur-bearing animals, pelts, or carcasses sold to the buyer. . . .
>
> (d) To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an animal or animal part sold under this section that is intended for sale and use as human food.

Revisor's Note

(1) Section 12.1101(a), Parks and Wildlife Code, authorizes the seizure of certain animals, pelts, and carcasses if taken or possessed in violation of that code or a "lawful" regulation of the Parks and Wildlife Commission. The revised law omits "lawful" as unnecessary because, as a general principle of law, a game warden or authorized employee of the Parks and Wildlife Department is authorized to enforce a violation of a regulation of the commission only if that regulation is lawful.

(2) Section 12.1101(d), Parks and Wildlife Code, refers to certain animals and animal parts sold under Section 12.1101 of that code. The pertinent parts of Section 12.1101 are revised as this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5953.0302. PROCEEDS FROM SALE OF SEIZED FUR-BEARING ANIMALS, PELTS, AND CARCASSES. (a) The department shall deposit the proceeds from the sale of a seized fur-bearing animal or pelt or carcass of a fur-bearing animal under Section 5953.0301(b) in the state treasury to the credit of the appropriate suspense fund pending the outcome of a criminal action for an unlawful act described by Section 5953.0301(a) against the person from whom the items were seized.

(b) The department shall:

(1) transfer the proceeds of the sale to the credit of the game, fish, and water safety account if, with respect to an unlawful act described by Section 5953.0301(a), the person from whom the items were seized:

(A) is found guilty;

(B) pleads guilty or nolo contendere;

(C) is placed on deferred adjudication community supervision; or

(D) fails to appear in accordance with a notice described by Section 2952.0301 or another law requiring that, as a condition of release, the person subsequently appear before a court to answer for the offense; or

(2) pay the proceeds of the sale to the person from whom the items were seized if, with respect to an unlawful act described by Section 5953.0301(a):

(A) the person is acquitted by the trial court;

(B) the charges against the person are dismissed; or

(C) the limitations period for the prosecution of the offense has expired. (Parks & Wild. Code, Sec. 12.1101(b) (part).)

Source Law

> (b) . . . The department shall deposit the proceeds of the sale in the state treasury to the credit of the appropriate suspense fund pending the outcome of any action against the person charged with an unlawful action described by Subsection (a). If that person is found guilty, pleads guilty or nolo contendere, is placed on deferred adjudication, or fails to appear in accordance with a notice described by Section 12.106 or another law requiring that, as a condition of release, the defendant subsequently appear before a court to answer for the offense, the department shall transfer the proceeds of the sale to the credit of the game, fish, and water safety account. If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the items were seized.

Revisor's Note

Section 12.1101(b), Parks and Wildlife Code, refers to "the person" charged with an unlawful act described by Section 12.1101(a) of that code. The revised law clarifies that "the person" is the person from whom the items were seized because it is clear from the context of Section 12.1101 that the person charged with an unlawful action described by Section 12.1101(a) is the person from whom the items were seized.

Revised Law

Sec. 5953.0303. IMMUNITY FROM LIABILITY AND SUIT. A game warden or authorized department employee acting under the authority of this subchapter is immune from liability and from suit for the seizure of items under this subchapter. (Parks & Wild. Code, Sec. 12.1101(c).)

Source Law

> (c) A game warden or authorized employee of the department acting under the authority of this section is immune from liability and from suit for the seizure of items under this section.

SUBCHAPTER D. REMOVAL OR SEIZURE AND DISPOSITION OF FISHING DEVICES

Revised Law

Sec. 5953.0401. REMOVAL AND DISPOSITION OF ABANDONED FISHING DEVICE. (a) In this section, "abandoned fishing device" means an unattended fishing device located in the public water of this state that is placed in violation of this code or commission rule.

(b) An abandoned fishing device is litter for purposes of Section 365.011, Health and Safety Code, and is subject to immediate removal and disposal.

(c) Except as provided by Subsection (d), an abandoned fishing device must be disposed of in compliance with the Health and Safety Code.

(d) The department may transfer an abandoned fishing device removed under this section to a unit of The University of Texas System, The Texas A&M University System, or the Texas State University System that is engaged in teaching and research related to marine science and oceanography on the request of an authorized representative of the unit for use in the unit's teaching or research programs.

(e) The commission may adopt rules to govern the removal and disposal of abandoned fishing devices as necessary to enhance:

(1) enforcement of this section;

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

(3) boating safety; and

(4) conservation and management of aquatic resources.

(Parks & Wild. Code, Secs. 12.1104(a), (b), (c), (e).)

Source Law

Sec. 12.1104. REMOVAL AND DISPOSAL OF ABANDONED FISHING DEVICE. (a) In this section, "abandoned fishing device" means an unattended fishing device located in the public water of this state that is placed in violation of a provision of this code or commission rule.

(b) An abandoned fishing device is litter for purposes of Section 365.011, Health and Safety Code, and is subject to immediate removal and disposal. Except as provided by Subsection (e), an abandoned fishing device must be disposed of in compliance with the Health and Safety Code.

(c) The commission may adopt rules to govern the removal and disposal of abandoned fishing devices as necessary to enhance:

(1) enforcement of this section;

(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 aquatic resources.

(e) On request of an authorized representative of a unit of The University of Texas System, The Texas A&M University System, or the Texas State University System engaged in teaching and research related to marine science and oceanography, the department may transfer an abandoned fishing device removed under this section to the unit for use in the unit's teaching or research programs.

Revised Law

Sec. 5953.0402. SEIZURE AND DISPOSITION OF UNLAWFUL FISHING DEVICE. (a) A peace officer shall seize without a warrant a seine, net, trawl, trap, or other device if the officer finds the device in or on the public water of this state, or aboard a vessel on the public water of this state, in violation of this code or a commission regulation.

(b) When a person is charged with an offense in connection with the unlawful use or possession of a seine, net, trawl, trap, or other device seized by a peace officer under this section, the officer shall hold the device as evidence. Except as provided in Subsection (c), the seine, net, trawl, trap, or other device shall

be:

(1) destroyed by the peace officer on final conviction of the person for the offense, including a final judgment arising from a plea of nolo contendere; or

(2) returned to the owner if the person is found not guilty of the offense or the charge for the offense is dismissed.

(c) The department may transfer a seine, net, or other marine equipment seized under this section to a unit of The University of Texas System, The Texas A&M University System, or the Texas State University System that is engaged in teaching and research related to marine science and oceanography on the request of an authorized representative of the unit for use in carrying out the teaching and research programs at the institution. (Parks & Wild. Code, Secs. 12.1105(a), (b), (e).)

Source Law

> Sec. 12.1105. SEIZURE AND DISPOSITION OF UNLAWFUL FISHING DEVICES. (a) When a game warden or other peace officer finds in or on the public water of the state a seine, net, trawl, trap, or other device that is in or on the water in violation of a provision of this code or in violation of a lawful regulation of the commission or is aboard a vessel in violation of a provision of this code or a lawful regulation of the commission, the warden or other peace officer shall seize without a warrant the seine, net, trawl, trap, or device.
>
> (b) When an alleged violator is charged with an offense in connection with the unlawful use or possession of the seine, net, trawl, trap, or device seized by the warden or other peace officer, the warden or other peace officer shall hold the seine, net, trawl, trap, or device as evidence. Except as provided in Subsection (e) of this section, on a final conviction for the offense of the alleged violator, including a final judgment arising from a plea of nolo contendere, the warden or other peace officer shall destroy the seine, net, trawl, trap, or device. If the alleged violator is not guilty of the offense or if the charge is not prosecuted and dismissed, the seine, net, trawl, trap, or device shall be returned to the owner.
>
> (e) The Parks and Wildlife Department, when requested by authorized representatives of units of The University of Texas System, The Texas A&M University System, and the Texas State University System engaged in teaching and research related to marine science and oceanography, may transfer to such units of said universities and university systems nets, seines, and other marine equipment, which have been seized under this section, to be used in carrying out the teaching and research programs within said

institutions.

Revisor's Note

(1) Section 12.1105(a), Parks and Wildlife Code, refers to a "game warden or other peace officer." Throughout this chapter, the revised law omits the reference to a game warden from provisions that include a reference to both "peace officer" and "game warden" for the reason stated in the revisor's note to Section 5103.0407.

(2) Section 12.1105(a), Parks and Wildlife Code, authorizes a game warden or other peace officer to seize a seine, net, trawl, trap, or other device when found under certain circumstances in violation of that code or a "lawful" regulation of the Parks and Wildlife Commission. The revised law omits "lawful" as unnecessary because, as a general principle of law, a game warden or other peace officer is authorized to enforce a violation of a regulation of the commission only if that regulation is lawful.

(3) Section 12.1105(b), Parks and Wildlife Code, refers to an "alleged violator" charged with an offense in connection with the unlawful use or possession of a seine, net, trawl, trap, or other device. The revised law substitutes "person" for "alleged violator" to provide consistency in terminology in the revised code and because "person" is more consistent with modern usage.

Revised Law

Sec. 5953.0403. IMMUNITY FROM LIABILITY AND SUIT. (a) A peace officer is immune from liability and from suit for the removal or disposal of an abandoned fishing device under Section 5953.0401.

(b) A peace officer who seizes a seine, net, trawl, trap, or other device under Section 5953.0402 is immune from liability and from suit for the seizure or destruction of the device under

Subsection (b) of that section. (Parks & Wild. Code, Secs. 12.1104(d), 12.1105(d).)

Source Law

[Sec. 12.1104]

(d) A game warden or other peace officer is immune from liability and from suit for the removal or disposal of an abandoned fishing device under this section.

[Sec. 12.1105]

(d) A game warden or other peace officer who seizes items under this section is immune from liability and from suit for a seizure or destruction of a seine, net, trawl, trap, or other device as authorized by Subsection (b).

Revisor's Note

(1) Section 12.1104(d), Parks and Wildlife Code, refers to the removal or disposal of an abandoned fishing device under Section 12.1104 of that code. Section 12.1104 is revised in pertinent part as Section 5953.0401, and the revised law is drafted accordingly.

(2) Section 12.1105(d), Parks and Wildlife Code, refers to a game warden or other peace officer who seizes items under Section 12.1105 of that code. Section 12.1105 is revised in pertinent part as Section 5953.0402, and the revised law is drafted accordingly.

SUBCHAPTER E. SEIZURE AND DISPOSITION OF CONTRABAND

Revised Law

Sec. 5953.0501. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a device, including an airplane, ultralight airplane, or helicopter, that can be used for flight in the air.

(2) "Contraband" means:

(A) an aircraft, vehicle, firearm, or other device used to commit a violation of Subchapter H, Chapter 5159, or a commission regulation adopted under that subchapter;

(B) a vessel that is not documented by the United

States Coast Guard or registered as provided by Title 4 and that is used to commit an offense under Section 5104.0301, 5104.0302, or 5104.0305;

(C) equipment, including a vessel, seized as provided by Section 5101.9902(b) or 5254.0104(c); or

(D) an aircraft or vessel used to commit a second or subsequent offense under:

(i) Section 5101.9901 for a violation of Section 5101.0402; or

(ii) Section 5103.0302, 5103.0304, or 5103.0305. (Parks & Wild. Code, Secs. 12.101(1), (2).)

Source Law

Sec. 12.101. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a device, including an airplane, ultralight airplane, or helicopter, that can be used for flight in the air.

(2) "Contraband" means:

(A) an aircraft, vehicle, firearm, or other device used to commit a violation of Subchapter G, Chapter 43, of this code or a regulation of the commission adopted under that subchapter;

(B) a vessel that is not documented by the United States Coast Guard or registered as provided by Chapter 31 and that is used to commit an offense under Section 66.006 of this code;

(C) equipment, including a vessel, seized as provided by Section 66.2011 of this code; or

(D) any aircraft or vessel used to commit a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005.

Revisor's Note

(1) Section 12.101(2)(B), Parks and Wildlife Code, refers to a vessel that is not registered as provided by Chapter 31 of that code. Chapter 31 is revised in Title 4 of this code, and the revised law is drafted accordingly. Although Title 4 also includes the revision of provisions not derived from Chapter 31, it is appropriate to refer to Title 4 in its entirety because those other provisions do not relate to the registration of a vessel.

(2) Section 12.101(2)(D), Parks and Wildlife Code, refers to a second or subsequent offense under

"Section 61.022." Throughout this subchapter, the revised law substitutes "Section 5101.9901 for a violation of Section 5101.0402" for "Section 61.022" for the reasons stated in the revisor's note to Section 5101.9905.

Revised Law

Sec. 5953.0502. COMMISSION RULES. The commission may adopt rules to implement this subchapter. (Parks & Wild. Code, Sec. 12.1106(g).)

Source Law

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

Revised Law

Sec. 5953.0503. SEIZURE AND DISPOSITION OF CONTRABAND. A peace officer may seize property without a warrant if the officer has probable cause to believe the property is contraband. (Parks & Wild. Code, Sec. 12.1106(a).)

Source Law

Sec. 12.1106. SEIZURE AND DISPOSITION OF CONTRABAND; IMMUNITY. (a) A game warden or other peace officer who has probable cause to believe property is contraband may seize the property without a warrant.

Revised Law

Sec. 5953.0504. NOTICE OF SEIZURE; HEARING. (a) A peace officer who seizes property under Section 5953.0503 shall give notice of the seizure, including a description of the seized property and the location and date of seizure, to the county judge or a judge of a county court at law, justice court, or district court in the county in which the seizure occurred:

(1) when a person pleads guilty or nolo contendere to, is convicted of, or is placed on deferred adjudication community supervision for:

(A) an offense under:

(i) Section 5104.0301, 5104.0302, or 5104.0305; or

(ii) Subchapter H, Chapter 5159;

(B) an offense punishable under Section 5101.9902(b) or 5254.0104(c); or

(C) a second or subsequent offense under:

(i) Section 5101.9901 for a violation of Section 5101.0402; or

(ii) Section 5103.0302, 5103.0304, or 5103.0305; or

(2) if no person is arrested for an offense immediately after the officer seizes the property.

(b) The court shall direct the sheriff or a constable to post a copy of the notice in the county courthouse for not less than 10 days. At the expiration of the 10 days, the court shall hold a hearing to determine if the seized property is contraband. (Parks & Wild. Code, Secs. 12.1106(b), (c).)

Source Law

> (b) The warden or officer shall give notice of the seizure, including a description of the seized property and the location and date of seizure, to the county judge or a judge of a county court at law, justice court, or district court of the county where the seizure occurred:
>
> (1) when a person pleads guilty or nolo contendere to, is convicted of, or is placed on deferred adjudication for:
>
> (A) an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code; or
>
> (B) a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005 of this code; or
>
> (2) if no person is arrested for an offense immediately after the warden or officer seizes the property.
>
> (c) The court shall direct the sheriff or a constable to post a copy of the notice in the county courthouse for not less than 10 days. At the expiration of 10 days, the court shall hold a hearing to determine if the seized property is contraband.

Revised Law

Sec. 5953.0505. DISPOSITION OF SEIZED PROPERTY. (a) The court shall order seized property for which a hearing is held under Section 5953.0504:

(1) forfeited to the department if the court determines by a preponderance of the evidence that the seized

property is contraband and:

(A) the person pleaded guilty or nolo contendere to, was convicted of, or was placed on deferred adjudication community supervision for:

(i) an offense described by Section 5953.0504(a)(1)(A) or (B); or

(ii) a second or subsequent offense described by Section 5953.0504(a)(1)(C); or

(B) no person was arrested for an offense immediately after the officer seized the property; or

(2) released to the owner if:

(A) the person charged with an offense described by Section 5953.0504(a)(1)(A) or (B) or a second or subsequent offense described by Section 5953.0504(a)(1)(C) is acquitted or the charge is dismissed; or

(B) the court determines that the seized property is not contraband.

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

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

(2) sell or transfer the property; or

(3) destroy the property.

(c) The department shall deposit money received under this section to the credit of the game, fish, and water safety account. (Parks & Wild. Code, Secs. 12.1106(d), (e), (h).)

Source Law

(d) The court shall order the seized property:

(1) forfeited to the department if the court determines by a preponderance of the evidence that:

(A) the seized property is contraband and a person pleaded guilty or nolo contendere to, was convicted of, or was placed on deferred adjudication for:

(i) an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code; or

(ii) a second or subsequent offense under Section 61.022, 62.003, 62.004, or

62.005 of this code; or

(B) the seized property is contraband and no person was arrested for an offense immediately after the warden or officer seized the property; or

(2) released to the owner if:

(A) the person charged with an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code or a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005 of this code is acquitted or the charge is dismissed; or

(B) the court determines that the seized property is not contraband.

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

(1) use the seized property in its normal operations;

(2) sell or transfer the property; or

(3) destroy the property.

(h) The department shall deposit money received under this section in the state treasury to the credit of the game, fish, and water safety account.

Revisor's Note

Sections 12.1106(e) and (h), Parks and Wildlife Code, refer to a forfeiture order or money, respectively, received by the Parks and Wildlife Department under Section 12.1106 of that code. The pertinent parts of Section 12.1106 are revised in this section, and the revised law is drafted accordingly.

Revised Law

Sec. 5953.0506. IMMUNITY FROM LIABILITY AND SUIT. A peace officer who seizes property under this subchapter is immune from liability and from suit for a seizure and disposition of property under this subchapter. (Parks & Wild. Code, Sec. 12.1106(f).)

Source Law

(f) A warden or officer who seizes property under this section is immune from liability and from suit for a seizure and disposition of property as authorized by this section.

CHAPTER 5954. RECOVERY BY STATE FOR VALUE OF CERTAIN WILDLIFE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 5954.0101. APPLICABILITY OF CHAPTER. This chapter applies only to a fish, shellfish, reptile, amphibian, bird, or animal. (New.)

Revisor's Note

The revised law adds a section restricting the applicability of this chapter to certain wildlife for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the section.

SUBCHAPTER B. RECOVERY BY STATE FOR VALUE OF CERTAIN WILDLIFE

Revised Law

Sec. 5954.0201. LIABILITY FOR VALUE OF WILDLIFE. A person who kills, catches, takes, possesses, or injures wildlife to which this chapter applies in violation of this code or a proclamation or regulation adopted under this code is liable to this state for the value of the wildlife. (Parks & Wild. Code, Sec. 12.301.)

Source Law

Sec. 12.301. LIABILITY FOR VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL. A person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of this code or a proclamation or regulation adopted under this code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

Revisor's Note

Section 12.301, Parks and Wildlife Code, provides that a person who kills, catches, takes, possesses, or injures certain wildlife in violation of that code or a proclamation or regulation adopted under that code is liable to the state for the value of the wildlife "unlawfully killed, caught, taken, possessed, or injured." The revised law omits the quoted language as unnecessary because it is clear from the context that the wildlife the value of which a person would be liable for is the same wildlife killed, caught, taken, possessed, or injured in violation of the Parks and Wildlife Code or a proclamation or regulation adopted under that code.

Revised Law

Sec. 5954.0202. VALUE OF WILDLIFE. The commission shall adopt rules to establish guidelines for determining the value of injured or destroyed wildlife to which this chapter applies for the purposes of this chapter and for determining damages under Section 7.109, Water Code. (Parks & Wild. Code, Sec. 12.302.)

Source Law

> Sec. 12.302. VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL. For purposes of this subchapter and for determining damages under Section 7.109, Water Code, the commission shall adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

Revised Law

Sec. 5954.0203. CIVIL SUIT FOR RECOVERY OF VALUE. (a) The attorney general or the county attorney of the county in which the wildlife to which this chapter applies was unlawfully killed, caught, taken, possessed, or injured may bring a civil suit under this subchapter in the name of this state to recover the value of the wildlife.

(b) A suit under this section shall be brought in the county in which the wildlife to which this chapter applies was unlawfully killed, caught, taken, possessed, or injured, except that the attorney general may bring suit in Travis County. (Parks & Wild. Code, Sec. 12.303.)

Source Law

> Sec. 12.303. CIVIL SUIT FOR RECOVERY OF VALUE. (a) The attorney general or the county attorney of the county in which the violation occurred may bring a civil suit under this subchapter in the name of the state to recover the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.
>
> (b) A suit under this section shall be brought in the county in which the violation occurred, except that the attorney general may bring suit in Travis County.

Revisor's Note

Section 12.303, Parks and Wildlife Code, refers to "the county in which the violation occurred" in the context of a suit brought to recover the value of

wildlife unlawfully killed, caught, taken, possessed, or injured. For clarity, the revised law substitutes "the county in which the wildlife to which this chapter applies was unlawfully killed, caught, taken, possessed, or injured" for the quoted language because it is clear from the context that the violation referred to is the unlawful killing, catching, taking, possessing, or injuring of wildlife the value of which the suit is being brought to recover.

Revised Law

Sec. 5954.0204. RECOVERY OF VALUE IN ADDITION TO FINE. The recovery amount provided by this subchapter is in addition to any fine, forfeiture, penalty, or costs imposed by other law. (Parks & Wild. Code, Sec. 12.305.)

Source Law

> Sec. 12.305. RECOVERY OF VALUE IN ADDITION TO FINE. The recovery amount provided by this subchapter is in addition to any fine, forfeiture, penalty, or costs imposed under another law.

Revised Law

Sec. 5954.0205. DISPOSITION OF RECOVERY. (a) Damages for injury to wildlife to which this chapter applies recovered in a suit brought by the attorney general shall be deposited to the credit of the game, fish, and water safety account.

(b) Damages for injury to wildlife to which this chapter applies recovered in a suit brought by a county attorney shall be deposited as follows:

(1) 50 percent in the general fund of the county; and

(2) 50 percent to the credit of the game, fish, and water safety account. (Parks & Wild. Code, Sec. 12.307.)

Source Law

> Sec. 12.307. DISPOSITION OF RECOVERY. (a) Any damages for injury to fish, shellfish, reptiles, amphibians, birds, or animals recovered in a suit brought by the attorney general shall be deposited to the credit of the game, fish, and water safety account.
>
> (b) Fifty percent of any damages for injury to fish, shellfish, reptiles, amphibians, birds, or animals recovered in a suit brought by a county

attorney shall be deposited in the general fund of the county. The remainder shall be deposited to the credit of the game, fish, and water safety account.

Revised Law

Sec. 5954.0206. CERTAIN COSTS RECOVERABLE. (a) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the department in a civil suit brought under this subchapter may be recovered in addition to damages for the value of the wildlife to which this chapter applies that was unlawfully killed, caught, taken, possessed, or injured.

(b) Money recovered under this section shall be credited to the same operating account from which the expenditure occurred. (Parks & Wild. Code, Sec. 12.308.)

Source Law

Sec. 12.308. CERTAIN COSTS RECOVERABLE. (a) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the department in a civil suit under this subchapter may be recovered in addition to damages for the value of any fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

(b) Any amounts recovered under this section shall be credited to the same operating accounts from which the expenditures occurred.

Revisor's Note

Section 12.308(b), Parks and Wildlife Code, refers to "amounts" recovered under Section 12.308 of that code. The revised law substitutes "money" for "amounts" for the reason stated in Revisor's Note (2) to Section 5449.0103.

Revised Law

Sec. 5954.0207. JOINT AND SEVERAL LIABILITY. If more than one defendant is named in a suit brought under this subchapter, each defendant against whom judgment is rendered is jointly and severally liable for the recovery provided by this subchapter. (Parks & Wild. Code, Sec. 12.304.)

Source Law

Sec. 12.304. MORE THAN ONE DEFENDANT. If more than one defendant is named in a suit brought under this subchapter, each defendant against whom judgment is rendered is jointly and severally liable for the

recovery provided by this subchapter.

Revised Law

Sec. 5954.0208. BOTH CIVIL SUIT AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a suit brought under this subchapter or a criminal prosecution for the same killing, catching, taking, possession, or injury does not bar the other action. (Parks & Wild. Code, Sec. 12.306.)

Source Law

> Sec. 12.306. BOTH CIVIL SUIT AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a suit brought under this subchapter or the pendency or determination of a criminal prosecution for the same killing, catching, taking, possession, or injury does not bar the other action.