



# The National Agricultural Law Center

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## State Endangered Species Act Statutes: *Texas*



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# A National Agricultural Law Center Research Publication

## State Endangered Species Act Statutes: Texas

### Parks and Wild. Code §§ 68.001 – 68.021

*Current through the 2019 Regular Session, 86<sup>th</sup> Legislature, and the 2019 election results*

#### **§ 68.001. Definitions**

In this chapter:

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

(2) "Management" means:

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

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

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

#### **§ 68.002. Endangered Species**

Species of fish or wildlife indigenous to Texas are endangered if listed on:

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

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

#### **§ 68.003. Statewide Extinction List**

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

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

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



- (2) its overutilization for commercial or sporting purposes;
- (3) disease or predation; or
- (4) other natural or man-made factors.

#### **§ 68.004. Amendments to List by Director**

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

#### **§ 68.005. Petition of Reclassification**

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

#### **§ 68.006. Permit for Taking Endangered Species**

The provisions of Subchapter C, Chapter 43, of this code [FN1] are applicable to all fish or wildlife classified as endangered, and it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code.



### **§ 68.007. Propagation Permit Required**

No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

### **§ 68.008. Original Propagation Permit**

(a) A person may apply for an original propagation permit by submitting an application containing information or statements as required by the department and by submitting an original propagation permit fee of \$300 or an amount set by the commission, whichever amount is more.

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

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

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

### **§ 68.009. Renewal Propagation Permit**

(a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit on application to the department and on the payment of a renewal propagation permit fee of \$550 or an amount set by the commission, whichever amount is more, if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.

(b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.

(c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

### **§ 68.010. Reports by Permittee**

A person holding a commercial propagation permit shall send to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and



(2) a written report on forms prepared by the department relating to propagation activities during the previous year.

#### **§ 68.011. Refusal or Cancellation of Permit**

(a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

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

#### **§ 68.012. Appeal**

(a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.

(b) The appeal shall be by trial de novo as are appeals from the justice court to the county court.

#### **§ 68.013. Disposition of Fish or Wildlife**

A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

#### **§ 68.014. Regulations**

The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:

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

(2) hearing procedures;

(3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter;

(4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products; and

(5) limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.



### **§ 68.015. Prohibited Acts**

- (a) No person may capture, trap, take, or kill, or attempt to capture, trap, take, or kill, endangered fish or wildlife.
- (b) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter.
- (c) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless:
- (1) the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter; or
  - (2) the goods were made from fish or wildlife lawfully taken in another state and the person presents documented evidence to the department to substantiate that fact.
- (d) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

### **§ 68.016. Sold Species to be Tagged**

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

### **68.017. Seizure of Fish or Wildlife**

- (a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.
- (b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.

### **§ 68.018. Disposition of Funds; Appropriations**

All revenue received under this chapter shall be deposited in the state treasury to the credit of the special nongame and endangered species conservation account.

### **§ 68.019. Applicability of Chapter**



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

### **§ 68.020. Exceptions**

(a) This chapter does not apply to:

(1) coyotes (prairie wolves);

(2) cougars;

(3) bobcats;

(4) prairie dogs; or

(5) red foxes.

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

### **§ 68.021. Penalty**

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

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

