



Dear Nongame Permit Holder:

The Texas Parks and Wildlife Department (TPWD) has proposed changes to the rules governing the possession and sale of nongame wildlife. Notice of the proposed changes has been published in the *Texas Register*, as required by Texas Government Code, Chapter 2001.

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In order to ensure that the regulated community is aware of the proposed changes, TPWD is sending a copy of the proposed rules, as published in the *Texas Register*, to each person holding a nongame or nongame dealer permit.

You may comment on the proposed rules by written response to the physical or e-mail address below or by visiting the TPWD website at:

http://www.tpwd.state.tx.us/business/feedback/public_comment/proposals/200705_nongame.phtml.

The Texas Parks and Wildlife Commission will consider adoption of the proposed rules on May 24, 2007. The meeting is open to the public and public comment will be accepted by the Commission at that time. The meeting will begin at 9:00 a.m. in the Commission Hearing Room at 4200 Smith School Rd., Austin, Texas.

Sincerely,

Robert Macdonald
Regulations Coordinator
Texas Parks and Wildlife Department
4200 Smith School Rd.
Austin, Texas 78744
(512) 389-4775
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Take a kid
hunting or fishing



Visit a state park
or historic site

TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.300(a)

Common Name	Botanical Name
Noxious plants	
alligatorweed	<i>Alternanthera philoxeroides</i>
balloonvine	<i>Cardiospermum halicacabum</i>
Brazilian peppertree	<i>Schinus terebinthifolius</i>
broomrape	<i>Orobanche ramosa</i>
camelthorn	<i>Alhagi camelorum</i>
Chinese tallow tree	<i>Triadica sebifera</i>
Eurasian watermilfoil	<i>Myriophyllum spicatum</i>
giant duckweed	<i>Spirodela oligorrhiza</i>
giant reed	<i>Arundo donax</i>
hedge bindweed	<i>Calystegia sepium</i>
hydrilla	<i>Hydrilla verticillata</i>
itchgrass	<i>Rottboellia cochinchinensis</i>
Japanese dodder	<i>Cuscuta japonica</i>
kudzu	<i>Pueraria montana var. lobata</i>
lagarosiphon	<i>Lagarosiphon major</i>
paperbark	<i>Melaleuca quinquenervia</i>
purple loosestrife	<i>Lythrum salicaria</i>
rooted waterhyacinth	<i>Eichhornia azurea</i>
saltcedar	<i>Tamarix spp.</i>
salvinia	<i>Salvinia spp.</i>
serrated tussock	<i>Nassella trichotoma</i>
torpedograss	<i>Panicum repens</i>
tropical soda apple	<i>Solanum viarum</i>
water spinach	<i>Ipomoea aquatica</i>
waterhyacinth	<i>Eichhornia crassipes</i>
waterlettuce	<i>Pistia stratiotes</i>

Invasive plants	
Chinese tallow tree	<i>Triadica sebifera</i>
kudzu	<i>Pueraria montana var. lobata</i>
saltcedar	<i>Tamarix</i> spp.
tropical soda apple	<i>Solanum viarum</i>

Figure: 31 TAC §65.331(b)

Frogs and Toads

Great Plains toad (*Bufo cognatus*)
Green toad (*Bufo debilis*)
Red-spotted toad (*Bufo punctatus*)
Texas toad (*Bufo speciosus*)
Gulf Coast toad (*Bufo valliceps*)
Woodhouse's toad (*Bufo woodhousei*)
Green treefrog (*Hyla cinerea*)
Bull frog (*Rana catesbeiana*)
Couch's spadefoot (*Scaphiopus couchii*)
Plains spadefoot (*Spea bombifrons*)
New Mexico spadefoot (*Spea multiplicata*)

Salamanders

Tiger salamander (*Ambystoma tigrinum*)

Lizards

Green anole (*Anolis carolinensis*)
Chihuahuan spotted whiptail (*Aspidoscelis exsanguis*)
Texas spotted whiptail (*Aspidoscelis gularis*)
Marbled whiptail (*Aspidoscelis marmoratus*)
Six-lined racerunner (*Aspidoscelis sexlineatus*)
Checkered whiptail (*Aspidoscelis tessellatus*)
Texas banded gecko (*Coleonyx brevis*)
Greater earless lizard (*Cophosaurus texanus*)
Collared lizard (*Crotaphytus collaris*)
Five-lined skink (*Eumeces fasciatus*)
Great plains skink (*Eumeces obsoletus*)
Texas alligator lizard (*Gerrhonotus infernalis*)
Lesser earless lizard (*Holbrookia maculata*)
Crevice spiny lizard (*Sceloporus poinsettii*)
Prairie lizard (*Sceloporus undulatus*)
Ground skink (*Scincella lateralis*)
Tree lizard (*Urosaurus ornatus*)
Side-blotched lizard (*Uta stansburiana*)

Snakes

Copperhead (*Agkistrodon contortrix*)
Cottonmouth (*Agkistrodon piscivorus*)
Glossy snake (*Arizona elegans*)
Trans-Pecos rat snake (*Bogertophis subocularis*)
Racer (*Coluber constrictor*)
Western diamondback rattlesnake (*Crotalus atrox*)
Rock rattlesnake (*Crotalus lepidus*)
Blacktail rattlesnake (*Crotalus molossus*)

Mojave rattlesnake (*Crotalus scutulatus*)
 Prairie rattlesnake (*Crotalus viridis*)
 Baird's rat snake (*Elaphe bairdi*)
 Great Plains rat snake (*Elaphe emoryi*)
 Texas rat snake (*Elaphe obsoleta*)
 Slowinski's cornsnake (*Elaphe slowinskii*)
 Western hognose snake (*Heterodon nasicus*)
 Eastern hognose snake (*Heterodon platirhinos*)
 Texas night snake (*Hypsiglena torquata*)
 Gray-banded kingsnake (*Lampropeltis alterna*)
 Prairie kingsnake (*Lampropeltis calligaster*)
 Speckled or desert kingsnake (*Lampropeltis getula*)
 Milk snake (*Lampropeltis triangulum*)
 Texas blind snake (*Leptotyphlops dulcis*)
 Coachwhip (*Masticophis flagellum*)
 Schott's whipsnake (*Masticophis schotti*)
 Striped whipsnake (*Masticophis taeniatus*)
 Texas coral snake (*Micrurus tener*)
 Blotched or yellowbelly water snake (*Nerodia erythrogaster*)
 Broad-banded water snake (*Nerodia fasciata*)
 Diamondback water snake (*Nerodia rhombifer*)
 Rough green snake (*Opheodrys aestivus*)
 Bullsnake or gopher snake (*Pituophis catenifer*)
 Texas longnose snake (*Rhinocheilus lecontei*)
 Western blackneck garter snake (*Thamnophis cyrtopsis*)
 Checkered garter snake (*Thamnophis marcianus*)
 Western ribbon snake (*Thamnophis proximus*)
 Big Bend patchnose snake (*Salvadora deserticola*)
 Texas or mountain patchnose snake (*Salvadora grahamiae*)
 Massasauga (*Sistrurus catenatus*)
 Pygmy rattlesnake (*Sistrurus miliarius*)
 Ground snake (*Sonora semiannulata*)
 Brown snake (*Storeria dekayi*)
 Flathead snake (*Tantilla gracilis*)
 Southwestern blackhead snake (*Tantilla hobartsmithi*)
 Plains blackhead snake (*Tantilla nigriceps*)
 Lined snake (*Tropidoclonion lineatum*)
 Rough earth snake (*Virginia striatula*)

Mammals

Texas Antelope Squirrel (*Ammospermophilus interpres*)
 Black-tailed Prairie Dog (*Cynomys ludovicianus*)
 Merriam's Kangaroo Rat (*Dipodomys merriami*)
 Eastern Flying Squirrel (*Glaucomys volans*)
 Black-tailed Jackrabbit (*Lepus californicus*)
 Spotted Ground Squirrel (*Spermophilus spilosoma*)
 Thirteen-lined Ground Squirrel (*Spermophilus tridecemlineatus*)
 Rock Squirrel (*Spermophilus variegatus*)

The genesis of modern game species management came about as a result of unregulated commercial exploitation of wildlife resources. By the middle of the 20th century, many species of wildlife were in serious decline or in danger of extirpation in many parts of the United States and Texas as a result of unregulated, large-scale, commercial harvest. However, as a result of regulatory and management efforts, most game species are now thriving. The proposed nongame rules are intended to prevent depletion of nongame species.

The proposed amendments would replace the current list of affected species with a list of species lawful for use in commercial activities. All other species of nongame would be unlawful for use in commercial activities. In determining the species for which commercial activities would be permitted, the department consulted the existing scientific literature and with members of the regulated community, herpetological societies, and academic specialists, soliciting input from approximately 300 people. The goal of the consultations was to develop a broad consensus concerning those species of nongame wildlife thought to be able to withstand some level of collection activity, based on distribution and abundance, and the understanding that there would be some type of mandatory reporting concerning commercial activity.

Among the nongame species of concern, scientists have especially expressed concern about Chelonian species (turtles). Because of factors such as delayed sexual maturity, long lifespans, and low reproductive and survival rates, turtles are highly sensitive to population alterations, especially in older age classes. The presence of turtles in some areas should not be taken as evidence that populations in those areas are necessarily viable. Long lifespans, long generation times, and relatively slow growth may give the appearance that populations are stable, even after recruitment has ceased or populations reach levels below which recovery is possible. Impacts to turtle populations, such as the loss of important nesting areas or unsustainable mortality of adults, may remain undetectable until populations reach critical levels or become extirpated. Known limiting factors such as water pollution, road mortality, and habitat loss are important components in turtle declines; but commercial collecting efforts in the wild intensify the impact of those threats by removing large numbers of adults and older juveniles from wild populations. The collection for food markets has devastated turtle populations in Asia, the destination of the bulk of turtles commercially collected in Texas. It is axiomatic that shifting the Asian demand for turtles to North American populations could result in similar impacts if commercial activity is not regulated. Therefore, the department is proposing to prohibit the commercial collection of all turtle species in the state.

Scientific evidence indicates that lakes that have been commercially harvested have a significantly lower catch-per-unit-effort than did lakes that had not been commercially harvested, which indicates that commercial collection is efficient in reducing turtle populations locally. In the literature examined by the department (cited later in this preamble), there is a consistent voice of concern about the sustainability of current harvest levels of turtles and agreement that stronger regulation is necessary, at least until more is known about the impacts of collection on wild populations. Much of the concern of the scientific community stems from the relationship of collection to the natural history of turtles, particularly their delayed maturation and resulting low recruitment into adult class animals. The youngest onset of maturity reflected in the literature is in painted turtles, at 6 - 8 years

for females. Other species tended to mature much later, with onset ages reported as high as 20 years.

Analysis of turtle population demographics consistently showed skewing to the adult age categories--the mature specimens most sought by commercial collectors for use as food product. This characteristic reflects the natural history of turtle species, their strong dependency on adult survivors to offset high mortality rates in eggs and juvenile categories. This characteristic alone makes it unlikely that populations can remain stable when high numbers of adults and older juveniles are steadily removed from a population.

As mentioned, the preferred targets of collectors are the adult and older juvenile age classes. Studies cite this (and other factors) in asserting that collection from the wild is a factor contributing to the decline of particular species, noting that, as a result, some states have banned commercial collection of wild-caught herpetological species either entirely or in part. A review of turtle regulations in the rest of the United States reveals that 38 states prohibit the take of at least one species of turtle, 34 states limit the commercial/and or recreational take of turtles in some fashion, and at least eight states prohibit the sale of native wildlife altogether.

Turtle collection in the United States and in Texas in particular is significant. The literature indicates that nationwide, more than 26 million wild-caught reptiles were exported from the U.S. between 1998 and 2002. In Texas, turtle exports increased to more than 100,000 individuals annually between 1996 and 2000. Based on the literature, the department may conclude that actual collection effort is significantly underreported by the regulated community and/or the current system does not completely account for collection effort. Some of these animals may represent re-exports (turtles captured outside of Texas but bought and resold within Texas for export). Current reporting does not allow for tracking re-exports but several species reported as exported from the state do not occur naturally within our borders; however, these were very minor numbers.

At the current time, other nongame populations in Texas are not generally believed to be as susceptible to over-collection as turtles by the scale of current commercial exploitation for the food or pet markets. However, after surveying academic experts and herpetological hobbyists and collectors, the department has determined that species that are habitat limited; sensitive to water quality degradation; or known to occur only in specific, limited geographical areas should not be subjected to commercial collection. Although there is a brisk trade in many species by hobbyists, much of the trade by hobbyists appears to involve captive-bred progeny. Therefore the department is proposing to allow commercial activities only for those species of nongame wildlife that are thought to be able to withstand some level of collection, which will be monitored by means of mandatory reporting requirements.

Literature Reviewed. In developing these proposed rules, the department reviewed and considered the following scientific publications:

Barco, Valerie A. and Jeffrey T. Briggler. 2006. Midland smooth softshell (*Apalone mutica*) and spiny softshell (*Apalone spinifer*) turtles in the Mississippi River; habitat associations, population structure and implications for conservation. *Chelonian Conservation and Biology* 5(2). 225 - 231.

Ceballos, Claudia P. and Lee A. Fitzgerald. 2004. The trade in native and exotic turtles in Texas. *Wildlife Society Bulletin* 32 (3). 881 - 892.

Congdon, Justin D. and Richard C. van Loben Sels. 1993. Relationships of reproductive traits and body size with attainment of sexual maturity and age in Blanding's turtles (*Emydoidea blandingi*). *Journal of Evolutionary Biology* 6(4). 547 - 557.

Cooley, Christopher R., Aaron O. Floyd, Amy Dolinger, Paul Tucker. 2003. Demography and diet of the painted turtle (*Chrysemys picta*) at high elevation sites in southwest Colorado. *The Southwestern Naturalist* 48(1). 47 - 53.

Gamble, Tony and Andrew M. Simons. 2004. Comparison of harvested and nonharvested painted turtle populations. *Wildlife Society Bulletin*. 32(4). 1269-1277.

Lindeman, Peter V. 2005. Aspects of the life history of the Texas Map Turtle (*Gratemys versa*). *The American Midland Naturalist* 153(2). 378 - 388.

Schlaepfer, Martin A.; Craig Hoover and C. Kenneth Dodd Jr. 2005. Challenges in evaluating the impact of the trade in amphibians and reptiles on wild populations. *Bioscience* 55(3). 256-264.

Whitfield-Gibbon, J.; David E. Scott; Travis J. Ryan; Kurt A. Buhmann; Tracey D. Turberville; Brian S. Metts; Judith L. Greene; Tony Mills; Yale Leiden; Sean Poppy; Christopher T. Winne. 2000. The global decline of reptiles, déjà vu amphibians. *Bioscience* 50(8). 653-666.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rules as proposed are in effect, there may be fiscal implications to state government as a result of enforcing or administering the rules as proposed. The proposed rules replace the current list of affected species for which permitting and reporting is required with a list of species authorized for commercial collection. As a result, there will be a number of species that will no longer be lawful to collect for commercial purposes, which could lead to a decline in permit issuance. The department surveyed each of the 331 persons licensed to collect and/or sell nongame wildlife and analyzed mandatory annual reports from dealers from the 2004-05 permit year (the last year for which complete data is available) to determine the species most sought by the regulated community. The department has determined that the persons most likely to discontinue to purchase permits will be those engaged in the collection of turtles, since the list of authorized species in proposed §65.331 contains those species in commercial demand other than turtles and those species will remain lawful for commercial collection. Of the 44 permitted dealers, there are 26 who collect, buy, and sell turtles. If those persons choose to stop purchasing permits, the department will incur a revenue loss of \$1,740 (25 resident dealer's permits at \$60 and one nonresident dealer's permit at \$240). The department cannot determine how many persons with nongame permits are engaged in the collection of turtles, as those persons are not required to file reports with the department. Although the department cannot accurately estimate the potential revenue loss if persons exclusively engaged in turtle collection choose to stop purchasing permits, the worst-case scenario would be a revenue loss of \$5,148 (286 nongame dealer's permits at \$18).

There will be no fiscal implications for other units of state or local government.

Mr. Macdonald also has determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection and conservation of publicly-owned nongame wildlife resources and the protection of native ecosystems from harmful alterations caused by overharvest of nongame species, which will be beneficial to all other organisms in the complex ecological systems associated with nongame wildlife.

There will be adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendments as proposed. The rules as proposed would prohibit commercial activities involving any species of nongame wildlife other than the 84 species listed in proposed §65.331.

Based on mandatory annual reports required from dealers under current rule, there is no commercial activity involving species that would be prohibited from commercial use, other than the plains garter snake, the prairie ringneck snake, and 20 species of turtles. Department records indicate that one plains garter snake was sold in 2005 and no sales of prairie ringneck snakes. Therefore, there will be minimal adverse economic effects on small businesses or microbusinesses as a result of the prohibition of commercial activities involving species other than turtles. However, there will be a greater adverse economic effect on small businesses and microbusinesses engaged in commercial activities involving the 20 species of turtles.

Analysis of Survey Responses. The department sent surveys to all 331 persons currently holding a nongame or nongame dealer permit to determine the approximate annual income realized as a result of permitted activities. Response to the survey was voluntary. A total of 64 persons responded to the survey. Twenty-one respondents identified themselves as hobbyists who do not collect for sale. The remaining 43 respondents reported one person, an average of employee average investment of 639 hours per year in regulated activities, and an average income of \$257.41 for Fiscal Year 2006. The hours spent in regulated activities represents hours spent engaging in commercial activities for all nongame species. The actual amount of labor devoted to commercial activities involving species that would be prohibited from use in commercial activities is probably much lower; however, the department will use the larger value in this analysis to ensure that all labor is captured for the purposes of this analysis.

Since it appears that there is very minimal commercial activity involving species other than turtles, this analysis will focus on the economic impact of the proposed rules on small and micro-businesses engaged in the turtle trade. The largest reported annual income reported in survey responses from commercial activities involving turtles was \$3,000. The smallest was \$50. Based on this data, the economic cost of compliance to the largest business affected by the rule would be \$3,000; and the economic cost to the smallest business would be \$50. More specifically, if a business employed one employee, the cost of compliance would be between \$50 and \$3,000 per employee. If a business employed 20 employees, the cost of compliance would be between \$2.50 and \$150 per employee. If a business employed 100 employees, the cost of compliance would be between \$0.05 and \$1.50 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

Analysis of Permittee Reports. The department also analyzed the annual reports submitted by holders of nongame dealer's permits. Nongame dealers are required to report all purchases

and sales of listed nongame wildlife. This report includes the purchase and sale of all species of turtles that the proposed rules would prohibit from use in commercial trade. The 26 nongame dealers who collected or purchased turtles reported an average of 731 turtles (all species) collected or purchased in the 2004-05 permit year. One dealer reported purchasing or collecting 18,716 turtles; one dealer reported purchasing or collecting 8,000 turtles; two dealers reported purchasing or collecting between 2,000 and 4,000 turtles; 12 dealers reported collecting or purchasing between 100 and 1,000 turtles; and nine dealers reported collecting or purchasing fewer than 100 turtles.

The permittees' annual reports do not include financial information from the sale of turtles. However, the largest reported commercial turtle dealer in Texas stated to the Regulations Committee of the Texas Parks and Wildlife Commission on April 4, 2007, that he paid \$1 per pound for snapping turtles and softshell turtles and \$0.20 per pound for all other species. Since a nongame permit holder dealer may only sell to a nongame dealer, the department can estimate the income received by nongame permit holders from the collection and sale of turtles to a nongame dealer.

The department does not require dealers to report the weight or approximate age of turtles collected or purchased by dealers. However, by assuming that most of the turtles collected and sold are mature individuals that are assumed to command higher prices, the department can use the average size of mature turtles to determine a rough approximation of the market value of turtles purchased for commercial trade and the profit realized from that commercial trade.

A mature common snapping turtle can weigh 30 pounds, making it worth \$30. Mature softshell turtles and red-eared sliders can weigh 4 pounds, making them worth \$4 per individual. Box turtle weights vary slightly by species, but are approximately one pound, making them worth \$0.20 per individual.

Of the small or micro-businesses affected by the rule, the most significant impact would be felt by the largest nongame dealer. This largest nongame dealer reported collecting or purchasing 1,332 common snapping turtles; 994 western spiny softshell turtles; 16,331 red-eared sliders; and 59 box turtles in 2005. If these species were purchased at the prices stated above, the nongame permit holder would have earned \$39,960 (\$30 x 1,332) for common snapping turtles; \$3,976 (\$4 x 994) for western spiny softshell turtles; \$65,324 (\$4 x 16,331) for red-eared sliders; and \$11.80 (\$0.20 x 59) for box turtles in 2005, for a total cost of \$109,271.80.

As previously noted, the department's rules do not require disclosure of financial information, so the actual sale price of the turtles purchased from the largest nongame dealer affected by the rule cannot be determined; but the department assumes that it must be larger than the price paid by the dealer to the nongame permit holder who collected turtles. Therefore, if the turtles were sold for double the amount paid by the dealer, the department estimates from dealer report that the dealer would have earned a profit of \$109,271.80 in 2005 from the sale of these turtle species. Therefore, the economic cost of complying with the rules for largest dealer affected by the rule will be approximately \$109,271.80. The cost of compliance for the smallest business affected by the rule will be less than \$50, using the same method of estimation. More specifically, if a business employed 1 employee, the cost of compliance would be between \$50 and \$109,271.80 per employee. If a business employed 20 employees, the cost of compliance would be between \$2.50 and \$5,463.59 per employee.

If a business employed 100 employees, the cost of compliance would be between \$0.05 and \$1,092.72 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

This analysis also applies to the requirements of Government Code, §2001.022, with respect to impacts on local economies. The proposed rules, because they would apply statewide, would prohibit any person currently engaging in the commercial collection of turtles from continuing to do so.

Regulatory Impact Analysis

Although Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rule, TPWD nonetheless provides the regulatory analysis, as follows. The benefit TPWD anticipates as a result of implementing the rule is protection of a valuable public resource.

Among the nongame species of concern, scientists have especially expressed concern about Chelonian species (turtles). Because of factors such as delayed sexual maturity, long lifespans, and low reproductive and survival rates, turtles are highly sensitive to population alterations, especially in older age classes. The presence of turtles in some areas should not be taken as evidence that populations in those areas are necessarily viable. Long lifespans, long generation times, and relatively slow growth may give the appearance that populations are stable, even after recruitment has ceased or populations reach levels below which recovery is possible. Impacts to turtle populations, such as the loss of important nesting areas or unsustainable mortality of adults, may remain undetectable until populations reach critical levels or become extirpated. Known limiting factors such as water pollution, road mortality, and habitat loss are important components in turtle declines; but commercial collecting efforts in the wild intensify the impact of those threats by removing large numbers of adults and older juveniles from wild populations. The collection for food markets has devastated turtle populations in Asia, the destination of the bulk of turtles commercially collected in Texas. It is axiomatic that shifting the Asian demand for turtles to North American populations result in similar impacts if commercial activity is not regulated. Therefore, the department is proposing to prohibit the commercial collection of all turtle species in the state.

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their strong dependency on adult survivors to offset high mortality rates in eggs and juvenile categories. This characteristic alone makes it unlikely that populations can remain stable when high numbers of adults and older juveniles are steadily removed from a population.

As mentioned, the preferred targets of collectors are the adult and older juvenile age classes. Studies cite this (and other factors) in asserting that collection from the wild is a factor contributing to the decline of particular species, noting that, as a result, some states have banned commercial collection of wild caught nongame species either entirely or in part. A review of turtle regulations in the rest of the United States reveals that 38 states prohibit the take of at least one species of turtle, 34 states limit the commercial/and or recreational take of turtles in some fashion, and at least eight states prohibit the sale of native wildlife altogether.

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Since it appears that most of the commercial activity involving nongame species involves turtles, this analysis will focus on the economic impact of the proposed rules on small and micro-businesses engaged in the turtle trade. The largest reported annual income reported in survey responses from commercial activities involving turtles was \$3,000. The smallest was \$50. Based on this data, the economic cost of compliance to the largest business affected by the rule would be \$3,000; and the economic cost to the smallest business would be \$50. More specifically, if a business employed one employee, the cost of compliance would be between \$50 and \$3,000 per employee. If a business employed 20 employees, the cost of compliance would be between \$2.50 and \$150 per employee. If a business employed 100 employees, the cost of compliance would be between \$0.05 and \$1.50 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

The department also analyzed the annual reports submitted by holders of nongame dealer's permits. Nongame dealers are required to report all purchases and sales of listed nongame wildlife. This report includes the purchase and sale of all species of turtles that the proposed rules would prohibit from use in commercial trade. The 26 nongame dealers who collected or purchased turtles reported an average of 731 turtles (all species) collected or purchased in the 2004-05 permit year. One dealer reported purchasing or collecting 18,716 turtles; one dealer reported purchasing or collecting 8,000 turtles; two dealers reported purchasing or collecting between 2,000 and 4,000 turtles; 12 dealers reported collecting or purchasing between 100 and 1,000 turtles; and nine dealers reported collecting or purchasing fewer than 100 turtles.

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A mature common snapping turtle can weigh 30 pounds, making it worth \$30. Mature softshell turtles and red-eared sliders can weigh 4 pounds, making them worth \$4 per individual. Box turtle weights vary slightly by species, but are approximately one pound, making them worth \$0.20 per individual.

Of the small or micro-businesses affected by the rule, the most significant impact would be felt by the largest nongame dealer. This largest nongame dealer reported collecting or purchasing 1,332 common snapping turtles; 994 western spiny softshell turtles; 16,331 red-eared sliders; and 59 box turtles in 2005. If these species were purchased at the prices stated above, the nongame permit holder would have earned \$39,960 (\$30 x 1,332) for common snapping turtles; \$3,976 (\$4 x 994) for western spiny softshell turtles; \$65,324 (\$4 x 16,331) for red-eared sliders; and \$11.80 (\$0.20 x 59) for box turtles in 2005, for a total cost of \$109,271.80.

As previously noted, the department's rules do not require disclosure of financial information, so the actual sale price of the turtles purchased from the largest nongame dealer affected by the rule cannot be determined; but the department assumes that it must be larger than the price paid by the dealer to the nongame permit holders who collected the turtles. Therefore, if the turtles were sold for double the amount paid by the dealer, the department estimates from dealer report data that the dealer would have earned a profit of \$109,271.80 in 2005 from the sale of these turtle species. Therefore, the economic cost of complying with the rules for largest dealer affected by the rule will be approximately \$109,271.80. The cost of compliance for the smallest business affected by the rule will be less than \$50, using the same method of estimation. More specifically, if a business employed 1 employee, the cost of compliance would be between \$50 and \$109,271.80 per employee. If a business employed 20 employees, the cost of compliance would be between \$2.50 and \$5,463.59 per employee. If a business employed 100 employees, the cost of compliance would be between \$0.05 and \$1,092.72 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

The department is considering regulatory options other than the prohibition of commercial take of all turtles, including the implementation of seasons and bag limits, means and methods requirements, the implementation of individual quotas for collection, the restriction of collection activities to private waters, and the creation of captive breeder regulations. The rules as pro-

posed may reflect one or more of these approaches as a method of reducing or eliminating impacts to small and microbusinesses while still accomplishing the department's goals of implementing regulations to manage nongame species, allow populations of nongame species to perpetuate themselves, and maintain the biological integrity of river system ecologies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Kristin Rathburn, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4505 (e-mail: Kristin.rathburn.wagner@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§65.325. *Applicability.*

(a) ~~This [Except as provided in §65.330 of this title (relating to Record and Reporting Requirements) and subsection (b) of this section; this] subchapter applies to all [only to the] nongame wildlife in this state [listed in §65.331 of this title (relating to Affected Species)], living or dead, including parts of nongame wildlife and captive-bred nongame wildlife.~~

(b) This subchapter does not apply to:

(1) fish;

(2) the purchase, possession, or sale of processed products made from the nongame wildlife listed in §65.331 of this title (relating to Species Authorized for Commercial Activity, except as provided in §65.327(g) [§65.327(d)] of this title (relating to Permit Required);

~~[(3) teachers at accredited primary or secondary educational institutions; provided that the nongame wildlife is possessed solely for educational purposes and is not sold or transferred to another person for the purpose of sale;]~~

(3) ~~[(4)]~~ persons or establishments selling nongame wildlife listed in §65.331 of this title for and ready for immediate consumption in individual portion servings, and which are subject to limited sales or use tax; or

(4) diamondback terrapin (*Malaclemys terrapin*), which are addressed under the provisions of §65.82 of this title (relating to Other Aquatic Life).

~~[(5) any person 16 years of age or younger, provided the person is not engaged in a commercial activity involving nongame wildlife; or]~~

~~[(6) aquatic products possessed under a valid bait dealer's license.]~~

(c) A person in lawful possession of nongame wildlife prior to the effective date of this section who would be in violation of this subchapter after the effective date of this section by continuing to pos-

sess the nongame wildlife for commercial activity must sell, donate, or otherwise dispose of the nongame wildlife by no later than August 31, 2007.

(d) A person in lawful possession of nongame wildlife prior to the effective date of this section who would be in violation after the effective date of this section and who possesses the nongame wildlife for personal, noncommercial use may continue to possess the nongame wildlife, provided:

(1) the person contacts the department by no later than July 1, 2008 and reports the person's name and address, and the species and number of the nongame wildlife in possession; and

(2) the person does not engage in any commercial activity involving the nongame wildlife possessed under this section.

§65.327. *Permit Required.*

(a) ~~Except as provided in this subchapter [section or in §65.325 of this title (relating to Applicability)], no person may [for the purpose of commercial activity:] take, attempt to take, possess, import, export, or cause the export of nongame wildlife [or possess more than 25 specimens of nongame wildlife unless that person possesses a valid nongame permit or nongame dealer's nongame permit issued by the department].~~

(b) Except as provided in this subchapter, no person may take, attempt to take, possess, import, export, or cause the export of nongame wildlife listed in §65.331 of this title unless the person possesses a valid nongame permit or valid nongame dealer permit issued by the department.

(c) [(b)] A person possessing a valid nongame permit may sell nongame wildlife listed in §65.331 of this title only to a person in possession of a valid nongame dealer [dealer's nongame] permit.

(d) [(e)] A person possessing a valid nongame dealer [dealer's nongame] permit may sell nongame wildlife listed in §65.331 of this title to anyone.

(e) A person may take or possess six or fewer specimens of a species of nongame wildlife not listed in §65.331 of this title, provided the person does not engage in commercial activity involving the nongame wildlife taken or possessed.

(f) person may take or possess 25 or fewer specimens of a species of nongame wildlife listed in §65.331 of this title, provided the person does not engage in commercial activity involving the nongame wildlife taken or possessed.

(g) [(d)] No person may collect nongame wildlife and subsequently treat it to create a processed product for sale, offer for sale, exchange, or barter unless that person possesses a valid dealer's nongame permit.

(h) [(e)] No person in this state may resell nongame wildlife unless that person possesses a valid dealer's nongame permit issued by the department.

(i) [(f)] A nongame dealer may, through commercial activity, acquire nongame wildlife only from a person permitted under this subchapter or a lawful out of state source.

(j) [(g)] Except as provided by subsection (h) of this section, a permit required by this subchapter shall be possessed on the person of the permittee during any activity governed by this subchapter. A separate permit is required for each permanent place of business. An employee of a nongame dealer may engage in commercial activity or the resale of nongame wildlife only at a permanent place of business operated by the permittee, provided that:

(1) the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter; and

(2) the place of business has been identified on the application required by §65.329 of this title (relating to Permit Application).

(k) [(h)] In the event that a nongame dealer conducts a commercial activity at a place in addition to the permittee's permanent place of business, that person shall possess on their person the original or a legible photocopy of a valid nongame dealer's permit.

(l) [(i)] This subchapter does not relieve any person of the obligation to possess an appropriate hunting license for any activity involving the take of nongame wildlife.

(m) [(j)] A permit issued under this subchapter is valid through the August 31 immediately following the date of issuance.

§65.331. *Species Authorized for Commercial Activity [Affected Species].*

(a) The department shall develop a policy for periodic evaluation of pertinent information or evidence to determine if a species should be added to or removed from the list of species in subsection (b) of this section. [The following species are subject to the provisions of this subchapter.]

[Figure: 31 TAC §65.331]

(b) Except as provided in this subchapter, no person may take, attempt to take, possess, import, export, or cause the export of any nongame wildlife not listed in this section.
Figure: 31 TAC §65.331(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701319

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 20, 2007

For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §85.7, §85.17

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §85.7 (Enrollment) and §85.17 (Grievance Procedure). Amended rule §85.7 concerns the automatic re-enrollment in the flexible benefits plan (the plan) under the Group Benefits Program (GBP). The amended rule is needed to provide for the establishment of this service and to clarify how automatic re-enrollment is administered for those employees with reimbursement account arrangements under the plan. Amended rule §85.17 is proposed in order to make this rule consistent with recent amendments made to Chapter 67 concerning the appeals process.

Section 85.7(a) is amended to add new paragraph (6) that provides for automatic re-enrollment in a reimbursement account(s) with the same elections during the annual enrollment period, and specifies the timeframe and method to change or decline benefits during this period. Section 85.7(b)(1) is amended to add new subparagraph (A) and (B) to clarify that employees who are automatically re-enrolled in a reimbursement account(s) and fail to change or decline benefits within the annual enrollment period shall be deemed an express election and informed consent to continue with the same elections for the new plan year.

Amended §85.17 is changed to conform the rule to recent changes made in the appeal process under Chapter 67, delegating responsibility for final decision making from the Board of Trustees to the executive director. Section 85.17(a) and (c) are amended to make clear that appeals are made under Chapter 67 to the executive director. Section 85.17(d) is deleted because the Board of Trustees has delegated appeals to the executive director.

Paula A. Jones, General Counsel, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the rules; and small businesses will not be affected. The proposed amendment to §85.7 will affect a participant in the plan during the annual enrollment period by establishing an automatic re-enrollment with the same elections and is consistent with the automatic re-enrollment in other GBP programs administered by ERS.

Ms. Jones also determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the rules as it applies to automatic re-enrollment in a reimbursement account(s) under the plan and the grievance procedure. There are no known anticipated economic costs to persons who are required to comply with these rules as proposed other than the monthly contributions to the health or dependent care plans.

Comments on the proposed rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on May 21, 2007.

The amendments to §85.5 are proposed under §§1551.051, 1551.052, 1551.055, and 1551.206, Texas Insurance Code, which authorizes the board of trustees to adopt rules and provide for the administration of the GBP. The amendments to §85.17 are proposed under Texas Government Code §815.511(d) and Insurance Code §1551.360 which provide the Board with authority to delegate its authority to decide contested case matters, and Insurance Code §1551.357(c) which authorizes the Board to adopt rules pertaining to the sanctions and adjudication process.

No other statutes are affected by these proposed rules.

§85.7. Enrollment.

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) The application fee for a special permit or special access permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a youth in a youth-only drawn hunt category.

(4) Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(5) The application fee for a special permit or special access permit is waived for on-site applications made under standby procedures at the time of a hunt.

(6) Incomplete or incorrectly completed applications will be disqualified.

(i) [(h)] Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(j) [(h)] Only one special, special access, or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(k) [(h)] Any applicable special, special access, or regular permit fees will be waived for youth under the supervision of a duly permitted authorized supervising adult.

(l) [(k)] Any applicable regular permit fees will be waived for persons possessing an APH permit.

(m) [(h)] Certain hunts may be conducted totally or in part by regular permit. It is an offense to fail to comply with established permit requirements specifying whether a regular permit is required of all participants or required only of adult participants who do not possess an APH permit.

(n) [(m)] Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possessing an APH permit or an LPU permit.

(o) [(n)] An access permit applies only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferable to another person.

(p) [(o)] A person who fails to obey the conditions of a permit issued under this subchapter commits an offense.

§65.201. Motor Vehicles.

(a) It is an offense to not confine motor vehicle use to designated roads, except parking is permitted on the shoulder of or immediately adjacent to designated roads, and as provided for a disabled person or for a person directly assisting a disabled person.

(b) It is unlawful to hunt any wildlife resource from a motor vehicle, motor-driven land conveyance, or possess a loaded firearm in or on the vehicle, except as provided for a disabled person.

(c) A disabled person may possess a loaded firearm in or on a motor vehicle and may hunt from a motor vehicle except only paraplegics and single or double amputees of legs may hunt migratory birds from a motor vehicle, provided the motor vehicle is not in motion, the engine is not running, and the motor vehicle is not located on a designated road, designated vehicle parking area, or designated campground.

(d) Except as authorized for specific areas and time periods by order of the executive director, or by written permission of the hunt supervisor or area manager, it is an offense for an individual other than a disabled person or a person directly assisting a disabled person to operate an off-road vehicle on public hunting lands.

(e) The provisions of Chapter 59, Subchapter J of this title (relating to Off-Highway Vehicle Trail and Recreational Area Program) do not apply to a disabled person or a person assisting a disabled person who is participating in department-sanctioned activities on public hunting lands.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701318

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 20, 2007

For further information, please call: (512) 389-4775

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325, 65.327, 65.331

The Texas Parks and Wildlife Department (department or TPWD) proposes amendments to §§65.325, 65.327, and 65.331, concerning commercial nongame permits. Collectively, the proposed amendments would revamp the department's regulations governing the collection, purchase, and sale of nongame wildlife.

The proposed amendment to §65.325, concerning Applicability, would conform internal references, eliminate provisions that are either unnecessary or would be irrelevant under the rules as amended, and add a reference to other rules affecting the take and possession of diamondback terrapin.

The proposed amendment would eliminate §65.325(b)(3), which provides an exception by allowing teachers to collect and possess nongame wildlife without a permit for educational purposes. If adopted as proposed, the rules would still allow teachers to possess fewer than 25 specimens of nongame wildlife listed in proposed §65.331 and six or fewer specimens of species not listed in §65.331, provided they do not engage in commercial activity.

The proposed amendment would eliminate §65.325(b)(5), which provides an exception to the provisions of the subchapter for persons 16 years of age and under. The current rule was intended to prevent the criminalization of the possession of turtles, frogs, lizards, snakes, and other nongame wildlife that children typically enjoy capturing and retaining as pets. Under the rules as proposed, anyone will be able to possess fewer than 25 specimens of nongame wildlife listed in proposed §65.331 or six or fewer specimens of species not listed in §65.331, provided they do not engage in commercial activity.

The proposed amendment would eliminate §65.325(b)(6), which provides an exception for aquatic products possessed under a bait dealer's license. The department has determined that any person possessing more than 25 specimens of the species listed in §65.331 must have a permit under the subchapter. The amendment is to prevent the unregulated passage of nongame species into commercial trade.

The proposed amendment to §65.325 would add new subsections (c) and (d) to provide for persons who are in lawful possession of specimens that would become unlawful to possess following the effective date of the rules, if adopted as proposed. Subsection (c) would allow dealers until August 31, 2007 to divest themselves of such specimens held as commercial inventory. The department believes that the time period proposed is an adequate amount of time for dealers to sell, give away, or otherwise terminate possession of nongame wildlife that would be unlawful under the rules, if adopted as proposed. New subsection (d) would allow persons not engaged in commercial activities until July 1, 2008 to identify themselves to the department and document the species and numbers of nongame wildlife that otherwise would be unlawful to possess. The department acknowledges that hobbyists and other persons not engaged in commercial activities are in possession of heretofore lawfully held specimens for personal use. By setting the proposed time period for persons to document non-commercial collections, the department seeks to provide an opportunity to "grandfather" specimens, provided the owner does not engage in commercial activities.

The proposed amendment would alter §65.325(b)(2) and (3) to clarify that the provisions of those paragraphs apply only to species listed in §65.331, and provide an exception for diamondback terrapin, which are regulated under the Statewide Hunting and Fishing Proclamation.

The proposed amendment to §65.327, concerning Permit Required, would restructure the current provisions for clarity's sake, implement a non-commercial possession limit for species prohibited for use in commercial activities, and alter internal references to make the section consistent with other provisions of the proposed rulemaking.

The proposed amendment to §65.327(a) would remove provisions regarding possession limits so the subsection would consist solely of a statement of applicability, clearly establishing the subchapter as applying to all nongame wildlife except as provided. The proposed amendment would create a new §65.323(b), which would clearly state the conditions under which a permit under the subchapter would have to be obtained. The proposed amendment would add references to proposed subsections (c) and (d) to clearly indicate that permit privileges apply only to the wildlife listed in proposed §65.331. The proposed amendment also would establish a possession limit for personal use of six specimens per species of nongame wildlife prohibited for commercial use. The department has determined that six specimens per species is adequate for personal use and that a larger possession limit might offer a method for clandestine collection efforts for commercial purposes. For species listed in §65.331, the proposed amendment would allow persons to possess up to 25 specimens of wildlife of species listed in §65.331 without a permit, provided the person does not engage in a commercial activity. The department believes that possession of nongame wildlife in excess of 25 specimens is evidence that a person may likely be involved in commercial activities.

The proposed amendment to §65.331, concerning Affected Species, would retitle the section, replace the current list of species with a larger list of species to which the permitting and reporting requirements of the subchapter apply, stipulate that any species not listed in the section may not be used in a commercial activity, and provide for periodic review to determine if species should be added to or deleted from the list.

Under Parks and Wildlife Code, Chapter 67, nongame wildlife is defined as those species of vertebrate and invertebrate wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters. Chapter 67 also authorizes the commission to "establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species," and authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and to charge a fee for such permits.

Nongame species comprise over 90 percent of the wildlife species that occur in Texas. Although the department is unable to monitor, survey, or conduct research on every nongame species in Texas, ongoing research is both conducted and monitored by the department. In 1999, the Parks and Wildlife Commission adopted the first regulations expressly intended to manage nongame wildlife in the state. The purpose of the program is to function as a 'canary in the coal mine' by tracking collection and sales activities involving specific species of nongame wildlife to provide the department with an early warning of possible declines in species populations. Under the current rule, all persons engaging in commercial activities involving affected species listed in the rule are required to possess a nongame permit or nongame dealer permit. A person with a nongame permit is authorized to sell species to a person with a nongame dealer permit, but may not sell species to the general public. However, a person with a nongame dealer permit is authorized to sell species to other permitted dealers and to the general public. In addition, persons with a nongame dealer permit are currently required to report sales and purchases to the department. The department uses the reported data to gauge potential impacts to native ecosystems and assist in determining if further regulatory protection is warranted. Based on data reported to and the information collected by the department, the department has determined that additional protective measures are needed for nongame species. Under current rule, no person is required to furnish commercial collection information on any species that is not on the list of affected species. Therefore, if a commercial market were to develop around a species not on the list of affected species, the department would not necessarily be able to detect it and develop additional regulatory measures to manage populations.

Nongame wildlife populations are problematic by their very nature, due to their numbers, diversity, and relative obscurity compared to game species. Historically, the most intensive management and research activities in the United States and Texas have been focused on game species popular with sport hunters, such as deer, turkey, pronghorn antelope, and others. However, game species represent a small fraction of the overall number of species in any ecosystem; in Texas, eight species of wildlife are designated by statute as game animals, whereas there are approximately 1,100 species of nongame vertebrate wildlife. Because the number of nongame species dwarfs the number of game species, nongame species, therefore, present a much more problematic management target within the traditional contexts. Management of game species typically involves intensive population, habitat, and harvest investigations. However, this type of management regime is unrealistic for the many nongame species that occur in the state.