

# CHAPTER 17

## GAME AND FISH AND OUTDOOR RECREATION

### ARTICLE 1

#### STATE GAME COMMISSION

##### 17-1-1. [Declaration of policy.]

It is the purpose of this act and the policy of the state of New Mexico to provide an adequate and flexible system for the protection of the game and fish of New Mexico and for their use and development for public recreation and food supply, and to provide for their propagation, planting, protection, regulation and conservation to the extent necessary to provide and maintain an adequate supply of game and fish within the state of New Mexico.

**History:** Laws 1921, ch. 35, § 1; C.S. 1929, § 57-101; Laws 1931, ch. 117, § 1; 1941 Comp., § 43-101; 1953 Comp., § 53-1-1.

#### ANNOTATIONS

**Cross references.** - For transfer of radio communication property of remote sites from department of game and fish to communications division of department of general services, see 15-2-4 NMSA 1978.

For public lands generally, see Chapter 19 NMSA 1978.

For the Off-Highway Motorcycle Act, see 66-3-1001 to 66-3-1016 NMSA 1978.

For water law generally, see Chapter 72 NMSA 1978.

For animals generally, see Chapter 77 NMSA 1978.

**Compiler's notes.** - The words "this act" were substituted by the 1931 amendment to this section for the words "this bill", which appeared in the 1921 act. If referring to the 1921 act, they would refer to 17-1-1 to 17-1-4, 17-1-14, 17-1-27 and 17-2-6 NMSA 1978. If referring to the 1931 act, they would refer to 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**Allocation of licenses based on residency, impermissible discrimination.** - The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, not offensive.** - The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**The state's power over public waters is plenary.** *State ex rel. State Game Comm'n v. Red River Valley Co.* 51 N.M. 207, 182 P.2d 421 (1945).

**State's powers are dedicated to fishing and recreation.** - Since public waters of the state by legislative enactment are dedicated to public uses of fishing and recreation, Conchas Lake is covered by these provisions. *State ex rel. State Game Comm'n v. Red River Valley Co.* 51 N.M. 207, 182 P.2d 421 (1945).

**Enclosing public waters cannot prevent fishing or hunting.** - Fact that an adjoining landowner encloses waters which belong to the public does not make thereof a privately owned enclosure, and its treatment as such by the state would involve granting of a special "right" or "privilege" which is prohibited by the constitution, so that a license holder could not be prevented from fishing or hunting on the enclosure. *State ex rel. State Game Comm'n v. Red River Valley Co.* 51 N.M. 207, 182 P.2d 421 (1945).

**Carrying firearms before hunting season opens may be prohibited.** - Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified periods of time before opening of the big game season. 1947-48 Op. Att'y Gen. No. 5135.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Waste of fish, constitutionality and construction of statutes for prevention of, 38 A.L.R. 1198.

Applicability of state fishing license laws or other public regulations as to fishing in private lake or pond, 15 A.L.R.2d 754.

Validity of regulation or prohibition of fishing to protect public water supply, 56 A.L.R.2d 790.

## **17-1-2. State game commission; appointment; term.**

To carry out the purpose of Chapter 17 NMSA 1978 and all other acts for like purpose, there is created a "state game commission" of seven members, not more than four of whom shall be of the same political party at the time of their appointment. The members of the commission shall be appointed by the governor with the advice and consent of the senate. The term of office for each member of the commission shall be four years. At the time of making the first appointments, the governor shall designate the commissioners' terms as being one, two, three or four years so that the term of no more than two commissioners shall expire each year.

In making appointments to the state game commission, one member shall be appointed from each of the following districts:

A. district one: Curry, De Baca, Roosevelt, Chaves, Lincoln, Otero, Eddy and Lea counties;

B. district two: Catron, Socorro, Grant, Hidalgo, Luna, Sierra and Dona Ana counties;

C. district three: San Juan, McKinley, Cibola, Valencia, Sandoval, Los Alamos and Rio Arriba counties;

D. district four: Santa Fe, Taos, Colfax, Union, Mora, Harding, Quay, San Miguel, Guadalupe and Torrance counties; and

E. district five: Bernalillo county.

The remaining two members shall be appointed at-large. At least one member of the commission shall manage and operate a farm or ranch that contains at least two species of wildlife on that part which is deeded land requiring licensing prior to legal pursuit under the provisions of Section 17-3-2 NMSA 1978. At least one member shall have a demonstrated history of involvement in wildlife and habitat protection issues and whose activities or occupation are not in conflict with wildlife and habitat advocacy. The state game commission as provided in Chapter 17 NMSA 1978 shall have the same authority, powers and duties as now vested in the state game commission by law, and each member of the state game commission shall serve until his successor has been appointed and qualified.

**History:** Laws 1921, ch. 35, § 2; C.S. 1929, § 57-102; 1941 Comp., § 43-102; Laws 1945, ch. 26, § 1; 1953 Comp., § 53-1-2; Laws 1985, ch. 107, § 1; 1991, ch. 103, § 1.

## ANNOTATIONS

**The 1991 amendment**, effective April 2, 1991, substituted "seven members" for "five members" and "four of whom" for "three of whom" in the first sentence; substituted "four years" for "five years" at the end of the third sentence; deleted "and five" preceding "years" and substituted "no more than two commissioners" for "one commissioner" and made a related stylistic change in the fourth sentence; and, following Subsection E, substituted the next three sentences for "provided that each existing member of the commission on the effective date of this 1985 act shall complete the term for which he was appointed, and, upon completion of such term, appointment shall be made in such manner so as to comply with the provisions of this section."

**Compiler's notes.** - Senate Joint Resolution No. 11 (Laws 1994) authorizes the state game commission to sell or exchange a parcel of land comprised of twenty-six and two-tenths acres located in the southwestern part of the city of Santa Fe in Santa Fe county. The proceeds from the sale or exchange shall be reinvested in property in Santa Fe

county for the purpose of consolidating department of game and fish offices and warehouse facilities.

**A district judge may serve as a member** of the state game commission. 1945-46 Op. Att'y Gen. No. 4735.

### **17-1-3. Members to serve without compensation; per diem and mileage.**

The members of the state game commission shall receive no pay for their services as members of the commission, but shall be allowed per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. All salaries, per diem and contingent expenses incurred by the department of game and fish or the state game commission shall be paid upon warrants of the secretary of finance and administration, supported by vouchers of the director of the department of game and fish.

**History:** Laws 1921, ch. 35, § 3; C.S. 1929, § 57-103; 1941 Comp., § 43-103; 1953 Comp., § 53-1-3; Laws 1977, ch. 247, § 160; 1979, ch. 273, § 6.

### **17-1-4. [Organization; annual and called meetings; secretary.]**

Within sixty days after this act [17-1-1 to 17-1-4, 17-1-14, 17-1-27 and 17-2-6 NMSA 1978] shall take effect, the state game commission shall meet at the capitol and organize by electing from its membership a chairman, and thereafter one meeting shall be held annually, and others at the call of the governor, or a majority of the commission. The state game warden [director of the department of game and fish] shall be secretary of the commission.

**History:** Laws 1921, ch. 35, § 4; C.S. 1929, § 57-104; 1941 Comp., § 43-104; 1953 Comp., § 53-1-4.

## **ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state game warden, "director of the department of game and fish" has been inserted in brackets in the second sentence. See 17-1-6 NMSA 1978. The bracketed language was not enacted by the legislature and is not a part of the law.

### **17-1-5. Employment and discharge of director and other employees; department of game and fish created.**

A. The state game commission shall employ a director who shall, under such authorization that the game commission shall approve, employ such conservation officers, clerks and other employees as he shall deem proper and necessary to enforce

and administer the laws and regulations relating to game and fish, and who shall prescribe their duties respectively, and who with the advice and consent of the state game commission shall fix the compensation of all the employees of the "department of game and fish," which is hereby created.

B. The state game commission may at any time discharge the director for reasons that the state game commission shall deem sufficient. The director may dismiss employees in accordance with the provisions of the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1931, ch. 117, § 5; 1941 Comp., § 43-105; 1953 Comp., § 53-1-5; Laws 1955, ch. 59, § 1; 1973, ch. 186, § 3.

### ANNOTATIONS

**Appropriations.** - Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operating that division; provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

Laws 2000 (2nd S.S.), ch. 23 § 10 appropriates to the department of game and fish \$925,000 to furnish, equip and complete the headquarters building in Santa Fe county and \$500,000 to correct the problem of accumulated sediment at Bear Canyon lake in Grant county. These amounts are for expenditure in fiscal years 2000 to 2005 and the unexpended balance shall revert to the game protection fund.

Laws 2002, ch. 110, § 59, effective March 6, 2002, appropriates \$3,750,000 from the game protection fund to the department of game and fish in fiscal years 2002 through 2007 for various purposes.

**Officers of the state game commission are state officers.** Allen v. McClellan, 77 N.M. 801, 427 P.2d 677 (1967), overruled on other grounds New Mexico Livestock Bd. v. Dose, 94 N.M. 68, 607 P.2d 606 (1980).

**Department of game and fish is not a constitutional agency.** 1957-58 Op. Att'y Gen. No. 57-268.

**Citizenship requirement for wildlife law enforcement officers.** - By operation of state law, wildlife law enforcement officers can be required to hold New Mexico and United States citizenship. 1979 Op. Att'y Gen. No. 79-30.

#### **17-1-5.1. Conservation services division; duties.**

A. The "conservation services division" is created within the department of game and fish.

B. The conservation services division is responsible for:

(1) management, enhancement, research and conservation of public wildlife habitat;

(2) the lease, purchase, enhancement and management of state wildlife habitat;

(3) assisting landowners in improving wildlife habitats;

(4) development of educational programs related to conservation of wildlife and the environment, including the expanded dissemination of wildlife publications; and

(5) communication and consultation with federal and other state agencies, local governments and communities, private organizations and affected interests responsible for habitat, wilderness, recreation, water quality and environmental protection to ensure comprehensive conservation services for hunters, anglers and nonconsumptive wildlife users.

**History:** Laws 1994, ch. 129, § 1.

#### **ANNOTATIONS**

**Cross references.** - For Wildlife Conservation Act, see 17-2-37 NMSA 1978 et seq.

**Effective dates.** - Laws 1994, ch. 129, § 2 makes the act effective on July 1, 1994.

**Appropriations.** - Section 4 of Laws 1994, ch. 6, the General Appropriations Act of 1994, effective February 11, 1994, provides that the general fund appropriation to the department of fish and game administration of \$500,000 for conservation services may be used to employ appropriate conservation services staff and the department's authorized full-time equivalent positions may be increased.

#### **17-1-6. [Transfer of duties and obligations.]**

The director shall fulfill all the duties and obligations heretofore imposed upon the state game warden, and shall exercise all the powers heretofore granted to the state game warden. The conservation officers appointed by the director shall assume those duties and powers heretofore imposed upon or granted to deputy game wardens.

**History:** 1953 Comp., § 53-1-5.1, enacted by Laws 1955, ch. 59, § 2.

#### **ANNOTATIONS**

**Cross references.** - For designation of state game commission employees to enforce antilittering statute, see 30-8-5 NMSA 1978.

#### **17-1-7. [Position of reserve conservation officer created.]**

There is hereby created within the department of game and fish the position of reserve conservation officer, which shall be a nonsalaried position.

**History:** 1953 Comp., § 53-1-5.2, enacted by Laws 1955, ch. 181, § 1.

### **17-1-8. [Qualifications of reserve conservation officers.]**

Reserve conservation officer commissions shall be issued only to the following:

A. persons who have successfully completed a school of at least twenty-five hours, conducted by the department of game and fish, covering procedures and techniques of wildlife management, law enforcement, public relations and such other subjects as may be deemed desirable by the department of game and fish.

B. the director may substitute a minimum of six months experience as an employee of a state or federal conservation agency or a state livestock law enforcement board in lieu of the aforementioned schooling. Any substitution made under the provisions of this paragraph shall be limited to personnel currently employed by one of the aforementioned conservation agencies. Any appointments the director may make under the provisions of this paragraph will terminate automatically with the termination of employment by said agency of the individual so appointed or the individual's transfer from the state.

**History:** 1953 Comp., § 53-1-5.3, enacted by Laws 1955, ch. 181, § 2.

### **ANNOTATIONS**

**Instruction but not classroom school is required.** - The statute does not require the "school" to be of the classroom type; the "school" of experience can ensure qualified reserve conservation officers as well as a classroom. If the persons in question have actual instruction as employees of the department in the subject areas of procedures and techniques of wildlife management, law enforcement, public relations and other subjects deemed desirable by the department, those persons have attended "school" in those subjects, an on-the-job training school conducted by the department. Mere employment by the department without instruction in each of those areas will not satisfy the statutory requirements. 1959-60 Op. Att'y Gen. No. 60-214.

### **17-1-9. Powers and duties of reserve conservation officers.**

A. Under the supervision of the department of game and fish and subject to such restrictions as may be provided by the state game commission, reserve conservation officers shall have authority to enforce laws and valid regulations of the state game commission relating to game and fish and perform such duties with respect to wildlife management and conservation education as may be assigned to them from time to time by the department of game and fish. When on duty, reserve conservation officers shall be covered by the Workmen's [Workers'] Compensation Act [Chapter 52, Article 1

NMSA 1978]. Reserve conservation officers shall have only the rights of private citizens in the enforcement of laws other than those relating to game and fish.

B. For the purpose of calculating the amount of reserve conservation officer's disability or death benefits pursuant to the Workmen's [Workers'] Compensation Act, the officer's average weekly wages shall be deemed to be the base wage of a wildlife management officer II as classified by the personnel board.

**History:** 1953 Comp., § 53-1-5.4, enacted by Laws 1955, ch. 181, § 3; 1985, ch. 33, § 1.

### **17-1-10. [Issuance of reserve conservation officer commissions; revocation.]**

Reserve conservation officer commissions shall be issued annually to such persons meeting the qualifications prescribed in Section 2 [17-1-8 NMSA 1978], as may be deemed necessary or desirable by the director of the department of game and fish. Such commissions may be revoked at any time by said director at his discretion.

**History:** 1953 Comp., § 53-1-5.5, enacted by Laws 1955, ch. 181, § 4.

### **17-1-11. Conservation officers; official duties; insurance.**

Conservation officers shall, in emergency situations, be considered on duty and within the scope of their employment for purposes of employee benefits, when they follow specific instructions from a duly qualified full-time peace officer and in aid of such peace officer in the carrying out of his duties. The state game commission shall expand current insurance coverage to provide protection in such situations.

**History:** 1953 Comp., § 53-1-5.6, enacted by Laws 1977, ch. 290, § 5.

### **17-1-12. Repealed.**

## **ANNOTATIONS**

**Repeals.** - Laws 1978, ch. 132, § 6, repeals 53-1-6 1953 Comp. (17-1-12 NMSA 1978), relating to bond of game and fish director, effective March 6, 1978.

### **17-1-13. [Seal of director.]**

The state warden [director of the department of game and fish] shall keep a seal of office which shall be used to authenticate all papers and documents issued and executed by him as such officer.



**History:** Laws 1912, ch. 85, § 46; Code 1915, § 2469; C.S. 1929, § 57-254; 1941 Comp., § 43-107; 1953 Comp., § 53-1-7.

## ANNOTATIONS

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-1-14. General powers and duties of state game commission; game protection fund.**

A. The state game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, and the fund, including all earned income therefrom, shall not be transferred to another fund. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978. The state game commission shall have authority:

(1) to establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) to declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) to establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves, or to close large areas to hunting;

(4) to purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) to receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) to apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) to designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) to close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) to propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, to suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) to adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges of a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) to conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) to establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and to charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) to permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races; and

(15) to adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the department of game and fish of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or his designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal.

B. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

C. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

D. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978.

**History:** Laws 1921, ch. 35, § 7; C.S. 1929, § 57-107; 1941 Comp., § 43-108; 1953 Comp., § 53-1-8; Laws 1973, ch. 278, § 1; 1977, ch. 290, § 1; 1983, ch. 155, § 1; 1992, ch. 29, § 1; 1993, ch. 331, § 1; 2001, ch. 66, § 1; 2002, ch. 70, § 1.

## ANNOTATIONS

**Cross references.** - For transfer of duties of state game warden to director, see 17-1-6 NMSA 1978.

For disposition of proceeds from sale of seized game or fish, see 17-2-21 to 17-2-23 NMSA 1978.

For conducting hunter training program, see 17-2-34 NMSA 1978.

For depositing license fees in game protection fund, see 17-3-7, 17-3-20 and 17-5-7 NMSA 1978.

For depositing federal funds in game protection fund, see 17-4-31 NMSA 1978.

For destroying commission's boundary markers, see 17-4-32 NMSA 1978.

For duty to administer laws regulating trappers and fur traders, see 17-5-4 NMSA 1978.

For revocation of trappers' and fur dealers' licenses, see 17-5-9 NMSA 1978.

For expenditure of funds to carry out Habitat Protection Act, see 17-6-7 NMSA 1978.

For shooting range fund and administration thereof, see 17-7-1 to 17-7-3 NMSA 1978.

**The 1992 amendment**, effective April 1, 1992, in Subsection F and the last paragraph of the section, inserted "state game"; added the Subsection L designation and the first paragraph thereunder; inserted "of the department of game and fish" in the third paragraph from the end; and made stylistic changes.

**The 1993 amendment**, effective June 18, 1993, designated the formerly undesignated paragraphs as Subsections A through D, redesignating former Subsections A through L as present Paragraphs (1) through (5) and (7) through (13) of Subsection A, added Paragraph (6) of Subsection A, and divided the former second sentence of Subsection A into the present second and third sentences by deleting "and".

**The 2001 amendment**, effective June 15, 2001, substituted "rules" for "regulations" in Paragraph A(11) and added Paragraph A(14).

**The 2002 amendment**, effective May 15, 2002, added Subsection A(15).

**Appropriations.** - Laws 2000, ch. 72, § 1 appropriates \$4,000,000 from the game protection fund to the department of game and fish for expenditure in fiscal years 2001 through 2009 to begin acquiring Eagle Nest Lake. The department may propose land for trade as a part of the purchase agreement and shall report to the legislature by December 1, 2000, on the progress toward finalization of the purchase. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the game protection fund.

**Compiler's notes.** - The section which originally prescribed a penalty for the violation of the 1921 act was repealed by Laws 1931, ch. 117, § 10. For present penalty for violation of this chapter or regulations of the commission, see 17-2-10 NMSA 1978.

**Allocation of licenses based on residency, impermissible discrimination.** - The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, is not offensive.** - The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Money in the game protection fund may be used only for the purposes provided** in the game and fish laws. 1975 Op. Att'y Gen. No. 75-38.

**Game and fish department funds may not be legally spent for out-of-state travel** by state game and fish department personnel for purposes of advertising New Mexico's game and fish resources. 1957-58 Op. Att'y Gen. No. 58-216.

**There are no provisions for reimbursement of license fees** in any circumstances; therefore, persons who have purchased a second license illegally are not entitled to reimbursement for the second license. 1975 Op. Att'y Gen. No. 75-38.

**Interest credited to game protection fund, not general fund.** - Any interest earned on the investment of money in the game protection fund must be credited to that fund, not the state general fund. 1982 Op. Att'y Gen. No. 82-1.

**Use of fire suppression fund appropriated to game and fish department.** - A fire suppression fund appropriated to the department of game and fish was not to actually be transferred to the forest conservation commission (now abolished). The department of game and fish was simply authorized to contract with the forest conservation commission to perform fire suppression activities reasonably necessary for the protection of game and fish. The formula to be utilized in providing and paying for such services was a contractual matter between these two agencies. 1961-62 Op. Att'y Gen. No. 61-54.

**"Public waters" are all unappropriated waters from natural streams.** - The term "public waters" as used in this section is synonymous with the definition of public waters given by the New Mexico supreme court in the case of *State ex rel. State Game Comm'n v. Red River Valley Co.*, 51 N.M. 207, 182 P.2d 421 (1945) where the court stated: "All of our unappropriated waters from 'every natural stream, perennial or torrential, within the state of New Mexico,' Article 16, Section 2, New Mexico Constitution, are public waters. These waters belong to the public until beneficially appropriated. And since the right to fish in public waters, by the test of any rule, is universally recognized, it cannot be said that the right to fish and to use the unappropriated public waters in question is less secure in the public because we determine their character as public by immemorial custom, and Spanish or Mexican law which we have adopted and follow in this respect. . . ." 1959-60 Op. Att'y Gen. No. 59-57.

**Public waters may be stocked.** - The waters of our streams, whether perennial or torrential in nature, are public waters such as may be stocked by the fish and game commission. 1961-62 Op. Att'y Gen. No. 61-38.

**Municipal reservoirs and waters on Indian and military reservations where fishing fee is charged may not be stocked.** - It is not legally proper for the department of game and fish to consider as public waters within the meaning of this section municipal reservoirs and waters on Indian and military reservations where public fishing is permitted, but only on condition of payment of a fee(s) in addition to possession of a valid fishing license. 1957-58 Op. Att'y Gen. No. 57-319.

Indian and military reservations are not instrumentalities of the state of New Mexico, and the lands adjacent thereto are not subject to state control as are the lands of the municipalities. This is true even though the waters running through such property are "public waters" as declared in *State ex rel. State Game Comm'n v. Red River Valley Co.*, 51 N.M. 207, 182 P.2d 421 (1945). In such instance, the general public would be trespassing upon land not open to the free access of the public. 1959-60 Op. Att'y Gen. No. 59-57.

**Small municipal charge for use of lake does not prevent stocking.** - A small charge by a municipality sufficient to cover sanitation and maintenance expense for recreational purposes does not change the character of a lake from that of "public waters," and it may be stocked by the state game commission at state expense. 1959-60 Op. Att'y Gen. No. 59-57.

**Private waters may be stocked.** - If stocking in private, lawfully posted water would not be to such an extent as to deprive the citizenry of a source of public recreation, it may be done. 1957-58 Op. Att'y Gen. No. 57-246.

**Private waters may be stocked only with fry and fingerlings and for consideration.** - By use of the terms "fry" and "fingerlings," the legislature thereby excluded the stocking of any fish larger than fry or fingerlings in private waters. Hence, the authorization to stock fish in private waters is limited to fry or fingerlings, and then for a consideration. 1957-58 Op. Att'y Gen. No. 57-246.

**Section lists purposes for which waters may be closed to fishing.** - The three purposes for which a public stream or lake or portion thereof may be closed to fishing are set forth in Subsection G [new Paragraph A(8)] of this section. These purposes are when it is necessary to protect recently stocked water, to protect spawning waters or to prevent undue depletion of fish. 1957-58 Op. Att'y Gen. No. 58-119.

**Purpose for which waters may be closed are exclusive.** - The state game commission is not authorized under this section to close any public stream or lake or portion thereof to fishing, when such action is not for the purpose of protecting a recently stocked water or to protect spawning waters, or to prevent undue depletion of the fish in such waters. 1957-58 Op. Att'y Gen. No. 58-119.

**Fishing in Elephant Butte Lake.** - The commission is authorized to issue permits to fish in Elephant Butte Lake. 1921-22 Op. Att'y Gen. No. 60.

**Disposition of land for federal fish hatchery.** - The state game commission has no authority to dispose of land owned by it to United States for a fish hatchery. 1931-32 Op. Att'y Gen. No. 59 (issued prior to enactment of 17-4-3 NMSA 1978).

**Dictates of experience and local regulations govern handling of explosives.** - The department of game and fish in transporting and storing explosives about the state and through cities and towns must adopt precautionary measures following the dictates of

good judgment, based on experience in handling explosives, and local regulations.  
1957-58 Op. Att'y Gen. No. 57-42.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 29, 31.

Power of game or fish commission to open or close season, 34 A.L.R. 832.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game § 50.

### **17-1-15. Disbursement of money; limitation on expenditures.**

All disbursements of moneys, including salaries, by the state game commission shall be by warrant of the secretary of finance and administration, supported by itemized voucher, certified to be correct by the state game director, and shall be paid out of moneys in the game protection fund.

Expenditures by the state game commission shall be limited to funds available in the game protection fund, and neither the state game commission nor any employee thereof shall incur or authorize any obligation for the payment of which sufficient funds are not then available in the game protection fund.

The state shall not be liable for any obligation created by the state game commission or any employee thereof, except to the extent of such game protection fund.

Neither the state game commission nor any employee thereof shall issue any voucher, nor shall the secretary of finance and administration approve any such voucher, for the payment of which moneys are not then available in the game protection fund.

**History:** Laws 1931, ch. 117, § 6; 1941 Comp., § 43-109; 1953 Comp., § 53-1-9; Laws 1977, ch. 247, § 162.

### **ANNOTATIONS**

**Cross references.** - For public purchases, see 13-1-28 to 13-1-199 NMSA 1978.

### **17-1-16. Short title.**

This act may be cited as the "Game and Fish Bond Act".

**History:** 1978 Comp., § 17-1-16, enacted by Laws 1964 (1st S.S.), ch. 18, § 1.

### **ANNOTATIONS**

**Compiler's notes.** - Laws 1964 (1st S.S.), ch. 18, compiled as 17-1-16 to 17-1-25 NMSA 1978, was not compiled in the 1953 Comp. but was set out as 15.1 in the appendix of bond issue laws following Chapter 11, 1953 Comp.

**Meaning of "this act".** - The term "this act", referred to in this section, means Laws 1964 (1st S.S.), Chapter 18, which appears as 17-1-16 to 17-1-22 and 17-1-23 to 17-1-25 NMSA 1978.

### **17-1-17. Purpose of act.**

The purpose of the Game and Fish Bond Act [17-1-16 NMSA 1978] is to provide for use of revenues derived from fees for hunting and fishing licenses to issue bonds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects and other similar capital outlay projects.

**History:** 1978 Comp., § 17-1-17, enacted by Laws 1964 (1st S.S.), ch. 18, § 2.

### **17-1-18. Bonding authority.**

Whenever the state game commission, by vote of a majority of its full membership entered in its minutes, determines by resolution that it is necessary to raise funds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects or other similar capital outlay projects, the commission may issue and sell bonds of the state of New Mexico as provided in the Game and Fish Bond Act [17-1-16 NMSA 1978], provided that, the total amount of such bonds issued under the authority of this act shall not exceed two million dollars (\$2,000,000). The purposes stated by the commission and the amount of each bond issue shall be approved by the state board of finance before issuance of the bonds. The commission shall report annually to the legislature any bonds issued pursuant to this act and the purpose for which issued.

**History:** 1978 Comp., § 17-1-18, enacted by Laws 1964 (1st S.S.), ch. 18, § 3; 1968, ch. 47, § 1; 1976 (S.S.), ch. 52, § 1.

## **ANNOTATIONS**

**Authorized amount.** - The 1976 amendments to the Game and Fish Bond Act authorized the state game commission to issue and sell up to \$2,000,000 worth of bonds. 1976 Op. Att'y Gen. No. 76-17.

### **17-1-19. Bonds; form; terms.**

Bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] shall be payable in consecutive order over a period of not more than twenty years from the date of issue. They shall be issued in denominations determined by the state game commission and shall be sold at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented. The form of the bonds shall be determined by the state game commission, and, except with respect to bonds issued in book entry or similar form without the delivery of physical securities,



signatures of the governor, the state treasurer and the chairman of the state game commission shall be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]. The form and terms of the bonds shall be approved by the state board of finance before issuance of the bonds.

**History:** 1978 Comp., § 17-1-19, enacted by Laws 1964 (1st S.S.), ch. 18, § 4; 1968, ch. 47, § 2; 1976 (S.S.), ch. 52, § 2; 1983, ch. 265, § 35.

### **17-1-20. Sale of bonds.**

Bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] shall be sold at a public or private sale as determined by the state game commission. If sold at public sale, the chairman of the commission shall give notice of the time, place and terms of the sale by publication in a newspaper of general circulation published in Santa Fe, New Mexico, not less than twenty days nor more than sixty days prior to the sale date.

**History:** 1978 Comp., § 17-1-20, enacted by Laws 1964 (1st S.S.), ch. 18, § 5; 1968, ch. 47, § 3; 1976 (S.S.), ch. 52, § 3.

### **17-1-21. Proceeds from sale of bonds.**

Proceeds from the sale of bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] shall be deposited in a special fund in the state treasury and used solely for the purposes for which the bonds were authorized. The cost of preparing, advertising and selling the bonds, including any necessary expense for financial and legal services, shall be paid out of the proceeds. Purchasers of the bonds are not responsible in any way for the application of the proceeds.

**History:** 1978 Comp., § 17-1-21, enacted by Laws 1964 (1st S.S.), ch. 18, § 6.

### **17-1-22. Security; retirement of bonds.**

A. There is created in the state treasury the "game and fish bond retirement fund." The state game commission shall place into the game and fish bond retirement fund the sum of one dollar (\$1.00) from each license enumerated in this subsection that is sold after April 1, 1976:

- (1) resident, fishing;
- (2) resident, small game;
- (3) resident, deer;
- (4) resident, general hunting;
- (5) resident, general hunting and fishing;

- (6) resident, trapper;
- (7) nonresident, fishing;
- (8) nonresident, small game;
- (9) temporary fishing, five days; and
- (10) nonresident, deer.

Such payments to the game and fish bond retirement fund shall be effective for all bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] up to the maximum limitation on the amount of bonds provided in that act.

B. Money in the game and fish bond retirement fund is first pledged for the payment of principal and interest on all state game commission bonds which have been issued and are outstanding at the time of the effective date of this 1983 amendment. Money in the game and fish bond retirement fund is further pledged for the payment of principal and interest on all state game commission bonds issued after the effective date of this 1983 amendment. The issuance and sale of bonds under the Game and Fish Bond Act [17-1-16 NMSA 1978] constitutes an irrevocable contract between the state game commission and the owner of any bond, and so long as any bond remains outstanding the fees pledged for payment shall not be reduced.

C. Bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] are payable solely from the game and fish bond retirement fund, and they are not general obligations of the state.

D. The state game commission shall continue to place in the game and fish bond retirement fund the sum of one dollar (\$1.00) from each of the licenses enumerated in Subsection A of this section, even after the fund is sufficient to pay the principal and interest of the outstanding bonds and after all bonds issued have been retired.

**History:** 1978 Comp., § 17-1-22, enacted by Laws 1964 (1st S.S.), ch. 18, § 7; 1968, ch. 47, § 4; 1976 (S.S.), ch. 52, § 4; 1983, ch. 143, § 1.

## ANNOTATIONS

**"Effective date of this 1983 amendment".** - The phrase "effective date of this 1983 amendment" means June 17, 1983, the effective date of Laws 1983, ch. 143, § 1.

### **17-1-22.1. Game and fish capital outlay fund; created; transfer of money; state board of finance approval.**

A. There is created in the state treasury the "game and fish capital outlay fund."

B. Upon request of the state game commission, approved by the state board of finance, the state treasurer shall transfer to the game and fish capital outlay fund all money in the game and fish bond retirement fund except the amount necessary to meet all principal and interest payments on state game commission bonds due in the ensuing twelve months.

C. Money in the game and fish capital outlay fund may be expended by the department of game and fish to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvements and other similar capital projects.

D. Projects to be funded pursuant to Subsection C of this section shall be approved by the state game commission and the state board of finance prior to any money being encumbered for the project.

E. At any time that the game and fish bond retirement fund is insufficient to pay the principal and interest on all bonds which have been issued and are outstanding, the unencumbered balance in the game and fish capital outlay fund shall be transferred to the game and fish bond retirement fund.

**History:** 1978 Comp., § 17-1-22.1, enacted by Laws 1983, ch. 143, § 2.

### **17-1-23. Construction.**

The Game and Fish Bond Act [17-1-16 NMSA 1978] is full authority for authorization and issuance by the state game commission of bonds authorized by the state board of finance, and the commission may do anything necessary to carry out the powers granted by the Game and Fish Bond Act [17-1-16 NMSA 1978].

**History:** 1978 Comp., § 17-1-23, enacted by Laws 1964 (1st S.S.), ch. 18, § 8.

### **17-1-24. Tax exemptions.**

The principal and income of bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] are exempt from all taxation by the state or any of its political subdivisions except for inheritance and succession taxes.

**History:** 1978 Comp., § 17-1-24, enacted by Laws 1964 (1st S.S.), ch. 18, § 9.

### **17-1-25. Refunding.**

Any bonds issued under the Game and Fish Bond Act [17-1-16 NMSA 1978] may be refunded under the terms of resolutions adopted by the state game commission, subject to any contractual limitations involved with any outstanding bonds, claims or other obligations. The proceeds of refunding bonds shall be applied to retirement of the bonds to be retired or refunded, or placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders. Refunding bonds shall be issued under

all applicable conditions prescribed in the Game and Fish Bond Act [17-1-16 NMSA 1978] for issuance of the original bonds.

**History:** 1978 Comp., § 17-1-25, enacted by Laws 1964 (1st S.S.), ch. 18, § 10.

### **17-1-26. [Commission's power to establish rules and regulations; predatory animals; eradication.]**

The state game commission is hereby authorized and directed to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of this act, and all other acts relating to game and fish, and in making such rules and regulations and in providing when, to what extent, if at all, and by what means game animals, birds and fish may be hunted, taken, captured, killed, possessed, sold, purchased and shipped, the state game and fish commission [state game commission] shall give due regard to the zones of temperatures, and to the distribution, abundance, economic value and breeding habits of such game animals, birds and fish.

The state game commission is hereby authorized to spend such reasonable amounts as in its judgment is desirable and necessary annually from their funds not otherwise needed for the eradication of predatory animals.

**History:** Laws 1931, ch. 117, § 2; 1941 Comp., § 43-111; Laws 1947, ch. 53, § 1; 1953 Comp., § 53-1-11.

### **ANNOTATIONS**

**Cross references.** - For penalty for violating game and fish regulations, see 17-2-10 NMSA 1978.

For promulgation of hunter training program rules and regulations, see 17-2-34 NMSA 1978.

For regulations concerning endangered species, see 17-2-41 to 17-2-43 NMSA 1978.

For shooting preserve regulations, see 17-3-36 NMSA 1978.

For regulations concerning nonpredatory fur-bearing animals, see 17-5-3 and 17-5-4 NMSA 1978.

For regulations under Habitat Protection Act, see 17-6-3 NMSA 1978.

For regulations as to shooting ranges, see 17-7-3 NMSA 1978.

**Meaning of "this act".** - The words "this act" refer to Laws 1931, ch. 117, compiled as 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**State game and fish commission.** - The reference to the "state game and fish commission" in the middle of the first sentence should have been to the "state game commission," as it is elsewhere referred to in this section. See 17-1-2 NMSA 1978.

**Constitutionality.** - Laws 1931, ch. 117, is a proper exercise of police power of state and is not an unconstitutional delegation of legislative power, except as to § 3(a), compiled as 17-2-1A NMSA 1978, authorizing the commission to define game birds, animals and fish. State ex rel. Sofeico v. Heffernan, 41 N.M. 219, 67 P.2d 240 (1936).

**Redelegation of duties is not authorized.** - The state game commission is not authorized to redelegate any of its delegated powers to anyone not under its immediate control. 1937-38 Op. Att'y Gen. No. 111.

**Commission must oppose agency charging fishing fees.** - The state game commission is charged with the duty of regulating fishing in the public streams and lakes and to oppose any individual agency from charging or collecting fees for such fishing. 1937-38 Op. Att'y Gen. No. 111.

**Commission may fix open fishing season not specified by statute.** - The state game commission may fix the open fishing season except where it is fixed specially by statute. 1935-36 Op. Att'y Gen. No. 49.

**Commission may prohibit carrying of firearms before open hunting season.** - Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified period of time before opening of the big game season. 1947-48 Op. Att'y Gen. No. 5135.

**Commission may make it unlawful to apply for elk licenses in succeeding years.** - A state game commission regulation providing in part that it shall be unlawful for anyone to apply for a public elk license for a "P" area, or a general bull elk license, if he held a similar elk license the previous year, is within the commission's broad power to ". . . make such rules and regulations . . . as it may deem necessary to carry out all the provisions and purposes of this act," and there is no constitutional objection to the imposition of the burden of ascertaining whether an application had been made the previous year on the public. 1975 Op. Att'y Gen. No. 75-38.

**Deputy game wardens may enter on private lands without warrants** in the interest of game protection. 1947-48 Op. Att'y Gen. No. 4974.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 31.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game §§ 45, 46, 50.

## **17-1-27. [Hearings on rules and regulations; petition; publication of notice of hearing.]**

Whenever three percent of the duly qualified electors of any county affected by a rule or regulation promulgated by the commission, concerning hunting or fishing within said county, shall petition the commission in writing, requesting a hearing, the commission shall grant a public hearing, the time, place and purpose of which shall be set forth by advertising in one or more newspapers of general circulation within the state not less than ten (10) days before the date of such hearing; and shall, on the date of hearing, give full opportunity for all persons to be heard on the point in controversy. But nothing in this section shall be construed as suspending or invalidating any such rule or regulation, unless it is suspended or revoked by the commission.

**History:** Laws 1921, ch. 35, § 10; C.S. 1929, § 57-110; 1941 Comp., § 43-113; 1953 Comp., § 53-1-13.

### **ANNOTATIONS**

**Cross references.** - For adoption of regulations and their effective date, see 17-2-5 NMSA 1978.

## **17-1-28. [Assent to act of congress concerning wildlife restoration projects.]**

The state of New Mexico hereby assents to the provisions of the act of congress of the United States of America entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 7 [2], 1937 (Public Number 415, 75th Congress), and the state game commission is hereby authorized and directed to perform all such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined by said act of congress, and in compliance with said act, and rules and regulations promulgated by the secretary of agriculture [secretary of the interior] thereunder.

**History:** Laws 1939, ch. 19, § 1; 1941 Comp., § 43-114; 1953 Comp., § 53-1-14.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed figure "2" was inserted by the compiler, the act of congress mentioned having been approved September 2, 1937. The bracketed material was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** - The federal act referred to in this section is compiled in 16 U.S.C. § 669 et seq.

In 1939 the functions of the secretary of agriculture relating to the conservation of wildlife, game and migratory birds were transferred to the secretary of the interior by 1939 Reorg. Plan No. II.

### **17-1-29. [Distribution of moneys received from United States government.]**

The state game commission is authorized to receive any moneys to which the state of New Mexico may become entitled under the aforesaid act of congress, such moneys, when received, to be deposited with the treasurer of the state of New Mexico to the credit of the state game protection fund, expended for the purpose designated and withdrawn and as other moneys are withdrawn from the state game protection fund.

**History:** Laws 1939, ch. 19, § 2; 1941 Comp., § 43-115; 1953 Comp., § 53-1-15.

## **ARTICLE 2 HUNTING AND FISHING REGULATIONS**

### **PART 1 GENERAL PROVISIONS**

#### **17-2-1. Commission powers.**

The state game commission, in addition to the powers now vested in it and not as a limitation of those powers, is expressly authorized and empowered by regulation adopted and promulgated in the manner provided in Chapter 17 NMSA 1978 to:

- A. define game birds, game animals and game fish;
- B. establish open and closed seasons for the killing or taking of all kinds of game animals, game birds and game fish and to change such open seasons from year to year and to fix different seasons for different parts of the state;
- C. establish bag limits covering all kinds of game animals, game birds and game fish and the numbers thereof which may be killed or taken by any one person during any one day or during any one open season;
- D. authorize or prohibit the killing or taking of any game animals, game birds or game fish of any kind or sex;
- E. prescribe the manner, methods and devices which may be used in hunting, taking or killing game animals, game birds and game fish; and

F. prescribe rules and regulations to prohibit any vehicle or vehicles used in transporting persons engaged in hunting, taking or killing game animals, game birds and game fish from leaving established roadways.

**History:** Laws 1931, ch. 117, § 3; 1941 Comp., § 43-201; 1953 Comp., § 53-2-1; Laws 1983, ch. 224, § 1.

## ANNOTATIONS

**Cross references.** - For establishing open season for fur-bearing animals, see 17-5-3 NMSA 1978.

**Commission's authority to fix open season on game animals is constitutional.** - Authority given to the state game commission to promulgate rules and regulations is not an unconstitutional delegation of legislative power; the rule fixing an open season on hunting bear is validated by the statute defining bears as game animals. State ex rel. Sofeico v. Heffernan, 41 N.M. 219, 67 P.2d 240 (1936).

**Power to define game animals is unconstitutional.** - Laws 1931, ch. 117, is a proper exercise of the police power of the state. It is not an unconstitutional delegation of legislative power, except as to Subdivision A of this section. State ex rel. Sofeico v. Heffernan, 41 N.M. 219, 67 P.2d 240 (1936).

**Authority over wild horses.** - Although the Wildlife Conservation Act defines the term "wildlife" as any nondomestic animal, wild horses on the White Sands Missile Range do not fall within the classification. Because the authority of the State Game Commission is limited by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

**Commission cannot exempt landowners and lessees from hunting license requirement.** - State game commission cannot exempt owners and lessees of nonurban lands residing thereon and members of their families from buying a license to hunt rabbits. 1935-36 Op. Att'y Gen. No. 120.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 31.

Power of game or fish commission to open or close season, 34 A.L.R. 832.

Applicability, to domesticated or captive game, of game laws relating to closed season and the like, 74 A.L.R.2d 974.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game §§ 45, 46, 50.

**17-2-2. Game to be protected.**



The game animals and quadrupeds, game birds and fowl, and game fish as herein defined shall be protected and hunting, taking, capturing, killing or possession, or attempt to hunt, take, capture or kill of any or all species named herein shall be regulated by the state game commission under the authority of Chapter 117 of the 1931 Session Laws of the state of New Mexico.

**History:** Laws 1937, ch. 23, § 1; 1941 Comp., § 43-202; 1953 Comp., § 53-2-2.

## ANNOTATIONS

**Cross references.** - For Wildlife Conservation Act, see 17-2-37 to 17-2-46 NMSA 1978.

For protection of fur-bearing animals, see 17-5-1, 17-5-2 NMSA 1978.

For prohibiting snowmobile pursuit of protected animal or bird, see 66-9-8 NMSA 1978.

**Compiler's notes.** - Laws 1931, ch. 117, referred to in this section, is compiled as 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**Carrying firearms before hunting season opens may be prohibited.** - Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified period of time before opening of the big game season. 1947-48 Op. Att'y Gen. 5135.

### 17-2-3. Protected wildlife species and game fish defined.

A. The following mammals are game mammals:

(1) all of the family Tayassuidae (javelina);

(2) within the family Bovidae:

(a) all of the genus Bison (American bison) except where raised in captivity for domestic or commercial meat production;

(b) all of the genus Capra (ibex) except for the domestic species of goats;

(c) all of the genus Ovis (bighorn sheep) except for the domestic species of sheep;

(d) all of the genus Ammotragus (aoudad);

(e) all of the genus Tragelaphus (kudu); and

(f) all of the genus Oryx (oryx);

(3) all of the family Antilocapridae (American pronghorn);

- (4) all of the family Cervidae (elk and deer);
- (5) all of the family Ochotonidae (pikas);
- (6) all of the genus Sciurus (squirrels);
- (7) all of the genus Tamiasciurus (red squirrels);
- (8) all of the genus Marmota (marmots) of the family Sciuridae;
- (9) all of the family Ursidae (bear); and
- (10) all of the species Concolor (cougar) of the genus Felis and family Felidae.

B. The following birds are game birds:

- (1) all of the family Anatidae (waterfowl);
- (2) all of the family Tetraonidae (grouse and ptarmigans);
- (3) all of the family Phasianidae (quail, partridges and pheasants);
- (4) all of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
- (5) all of the family Perdixidae (francolins);
- (6) all of the family Gruidae (cranes);
- (7) all of the family Rallidae (rails, coots and gallinules);
- (8) all of the family Charadriidae (plovers, turnstones and surfbirds);
- (9) all of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews);
- (10) all of the family Recurvirostridae (avocets and stilts);
- (11) all of the family Phalaropodidae (phalaropes); and
- (12) all of the family Columbidae (wild pigeons and doves) except for the domestic strains of pigeons.

C. The following fish are game fish:

- (1) all of the family Salmonidae (trout);
- (2) all of the family Esocidae (pike);

- (3) all of the family Ictaluridae (catfish);
- (4) all introduced species of the family Serranidae (sea bass and white bass);
- (5) all of the family Centrarchidae (sunfish, crappie and bass);
- (6) all of the family Percidae (walleye pike and perch);
- (7) all introduced species of the family Pomadasyidae (sargo); and
- (8) all introduced species of the family Sciaenidae (corvina, bairdiella and redfish).

**History:** 1953 Comp., § 53-2-3, enacted by Laws 1967, ch. 8, § 1; 1971, ch. 75, § 1.

### ANNOTATIONS

**Cross references.** - For protection of fur-bearing animals, see 17-5-1, 17-5-2 NMSA 1978.

**Repeals and reenactments.** - Laws 1967, ch. 8, § 1, repealed former 53-2-3, 1953 Comp., defining game animals, game birds and game fish and enacted a new 53-2-3 NMSA 1978.

**Authority over wild horses.** - Although the Wildlife Conservation Act defines the term "wildlife" as any nondomestic animal, wild horses on the White Sands Missile Range do not fall within the classification. Because the authority of the State Game Commission is limited by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

### 17-2-4. Repealed.

### ANNOTATIONS

**Repeals.** - Laws 2001, ch. 66, § 3 repeals 17-2-4 NMSA 1978, as enacted by Laws 1937, ch. 217, § 1, regarding the classification of bullfrogs as a protected species, effective June 15, 2001. For provisions of former section, see 1995 Replacement Pamphlet. For present comparable provisions, see 17-2-4.2 NMSA 1978.

### 17-2-4.1. Jaguar to be protected.

In the event the jaguar is de-listed as a federal endangered species, the department of game and fish shall prohibit the taking, possession and sale of jaguars or parts thereof.

**History:** 1978 Comp., § 17-2-4.1, enacted by Laws 1999, ch. 31, § 1.

### ANNOTATIONS

**Effective dates.** - Laws 1999, ch. 31 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **17-2-4.2. Amphibians and reptiles; protected; permits; unlawful taking; misdemeanor; penalties.**

A. All species, except for those collected in rattlesnake roundups, for fish bait or for lizard races, of native, free-ranging amphibians and reptiles are hereby classified as protected nongame animals for commercial taking purposes. The commercial taking or capturing of native, free-ranging amphibians and reptiles is prohibited except by a permit issued by the state game commission.

B. The state game commission shall adopt rules necessary to administer Paragraph (14) of Subsection A of Section 17-1-14 NMSA 1978 and this section to assure that viable populations of native, free-ranging amphibians and reptiles are maintained in the state.

C. If the state game commission determines that it will offer permits to take or capture native, free-ranging amphibians or reptiles, the commission shall adopt a rule listing protected native, free-ranging amphibians and reptiles that may be taken or captured after taking into consideration any criteria that can be shown to have an effect from commercial takings on the viability of the species population in the state.

D. Unlawful taking of a native, free-ranging amphibian or reptile consists of intentionally taking or capturing, for commercial purposes, a regulated native, free-ranging amphibian or reptile without a valid permit from the state game commission.

E. Amphibians and reptiles may be removed, captured or destroyed without a permit, by any person, in emergency situations involving an immediate threat to human life or private property.

F. Whoever commits unlawful taking of a native, free-ranging amphibian or reptile is guilty of a misdemeanor and shall be fined not less than fifty dollars (\$50.00) per occurrence and not more than one thousand dollars (\$1,000) per occurrence or be imprisoned for not more than one year or both.

G. As referred to in this section, "taking" means the act of seizing amphibians or reptiles for a commercial purpose.

**History:** 1978 Comp., § 17-2-4.1, enacted by Laws 2001, ch. 66, § 2.

### **ANNOTATIONS**

**Effective dates.** - Laws 2001, ch. 66 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

**Compiler's notes.** - This section was originally enacted as 17-2-4.1 NMSA 1978, but was redesignated as 17-2-4.2 because Laws 1999, ch. 31, § 1, previously enacted a 17-2-4.1.

### **17-2-5. Adoption of regulations; effective date.**

Any written regulation of the state game commission adopted by an affirmative vote of a majority of the members of the state game commission, signed by the chairman and attested by the secretary of the commission, filed in the office of the director of the department of game and fish, and filed in accordance with Section 4-10-13 New Mexico Statutes Annotated, 1953 Compilation, is duly adopted and promulgated and effective immediately. A copy of any regulation certified by the director of the department of game and fish to be a true copy of an adopted regulation is prima facie evidence in any court in this state of the adoption and promulgation of the regulation.

**History:** Laws 1931, ch. 117, § 4; 1941 Comp., § 43-205; 1953 Comp., § 53-2-5; Laws 1961, ch. 106, § 1.

### **ANNOTATIONS**

**Cross references.** - For hearings on objections to rules and regulations, see 17-1-27 NMSA 1978.

**Compiler's notes.** - Section 4-10-13, 1953 Comp., cited in this section was repealed by Laws 1967, ch. 275, § 13. See now Chapter 14, Article 4 NMSA 1978.

**Authority to promulgate orders is constitutional.** - Authority given to the game commission to promulgate orders is not an unconstitutional delegation of legislative power. *State ex rel. Sofeico v. Heffernan*, 41 N.M. 219, 67 P.2d 240 (1936).

**Proper promulgation of rules presumed.** - In habeas corpus proceeding to discharge one convicted of violating regulations of state game commission, the court assumes that the regulations have been properly promulgated. *State ex rel. Sofeico v. Heffernan*, 41 N.M. 219, 67 P.2d 240 (1936).

### **17-2-6. Game and fish management areas; closed lakes or streams; notice.**

All game and fish management areas, rest grounds and closed lakes or streams or closed portions of lakes or streams shall be conspicuously posted with posters setting forth their purpose and the penalties for violating the rules and regulations applicable to

them. This posting is legal notice against the violation of applicable laws, rules or regulations.

**History:** Laws 1921, ch. 35, § 8; C.S. 1929, § 57-108; 1941 Comp., § 43-206; 1953 Comp., § 53-2-6; Laws 1961, ch. 106, § 2.

### **17-2-7. Unlawful hunting or fishing.**

A. Except as permitted by regulations adopted by the state game commission or as otherwise allowed by law, it is unlawful to:

(1) hunt, take, capture, kill or attempt to take, capture or kill, at any time or in any manner, any game animal, game bird or game fish in the state; or

(2) possess, offer for sale, sell, offer to purchase or purchase in the state all or any part of any game animal, game bird or game fish.

B. Notwithstanding any other law, the owner of domestic livestock in this state or his regular employee may hunt, take, capture or kill any cougar or bear which has killed domestic livestock. The owner of livestock or his regular employee who takes action under this provision will report this action to the department of game and fish, who will verify the necessity of the action taken.

C. Violation of this section is a misdemeanor and shall be punished as provided in Section 17-2-10 NMSA 1978.

D. The provisions of this section shall not be deemed to prohibit the possession of game animals, birds or fish taken legally in any other jurisdiction.

**History:** Laws 1931, ch. 117, § 8; 1941 Comp., § 43-207; 1953 Comp., § 53-2-7; Laws 1971, ch. 75, § 2; 1979, ch. 340, § 1.

### **ANNOTATIONS**

**Cross references.** - For penalty for taking fish or killing animals in state park, see 16-2-32 NMSA 1978.

**Return of game or proceeds after wrongful confiscation.** - Where the department of game and fish confiscated an elk from a person charged with a hunting misdemeanor, and the magistrate court dismissed the case because the game officer failed to identify the defendant at the hearing as the person charged, the department was not required to return the elk, or the proceeds from the sale of the elk, to that person. 1988 Op. Att'y Gen. No. 88-43.

**Evidence of unlawful possession held sufficient.** - Where evidence showed defendant had no permit to possess elk meat, refrigerator in the home of defendant

contained three packages of elk meat and defendants had discussed the tracking and killing of the elk before witnesses, evidence supported conviction for unlawful possession of elk meat. State v. Booher, 78 N.M. 76, 428 P.2d 478 (1967).

**Cruelty to animals provisions inapplicable to wild animals.** - Section 30-18-1 NMSA 1978 applies only to cruelty to domesticated animals and wild animals previously reduced to captivity, and under the "general-specific" rule of statutory construction, treatment of wild animals is presumed to be governed by the comprehensive hunting and fishing laws contained in this chapter. State v. Cleve, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 38.

Entrapment with respect to violation of fishing or game laws, 75 A.L.R.2d 709.

Possession of game or of specified hunting equipment as prima facie evidence of violation, 81 A.L.R.2d 1093.

Right to kill game in defense of person or property, 93 A.L.R.2d 1366.

Validity, construction, and application of state wildlife possession laws, 50 A.L.R.5th 703.

36A C.J.S. Fish § 28; 38 C.J.S. Game §§ 8, 22-28, 30, 51, 76.

### **17-2-7.1. Interference prohibited; criminal penalties; civil penalties; revocation of license, certificate or permit.**

A. It is unlawful for a person to commit interference with another person who is lawfully hunting, trapping or fishing in an area where hunting, trapping or fishing is permitted by a custodian of public property or an owner or lessee of private property.

B. A person who commits a:

(1) first offense of interference is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) second or subsequent offense of interference is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. When a person who commits interference possesses a license, certificate or permit issued to him by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to the provisions of Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section, "interference" means:

(1) intentionally placing oneself in a location where a human presence may affect the behavior of a game animal, bird or fish or the feasibility of killing or taking a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing;

(2) intentionally creating a visual, aural, olfactory or physical stimulus for the purpose of affecting the behavior of a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing; or

(3) intentionally affecting the condition or altering the placement of personal property used for the purpose of killing or taking a game animal, bird or fish.

E. Nothing in this section shall be construed to include a farmer or rancher in pursuit of his normal farm or ranch operation or law enforcement officer in pursuit of his official duties.

**History:** Laws 1993, ch. 94, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and construction of statutes prohibiting harassment of hunters, fishermen, or trappers, 17 A.L.R.5th 837.

### **17-2-7.2. Landowner taking; conditions; department responsibilities.**

A. A landowner or lessee, or employee of either, may take or kill an animal on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that presents an immediate threat to human life or an immediate threat of damage to property, including crops; provided, however, that the taking or killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed, in accordance with regulations adopted by the commission.

B. A landowner or lessee, or employee of either, may take or kill animals on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that present a threat to human life or damage to property, including crops, according to regulations adopted by the commission. The regulations shall:

(1) provide a method for filing a complaint to the department by the landowner or lessee, or employee of either of them, of the existence of a depredation problem;

(2) provide for various departmental interventions, depending upon the type of animal and depredation;



- (3) require the department to offer at least three different interventions, if practical;
- (4) require the department to respond to the initial and any subsequent complaints within ten days with an intervention response to the complaint, and to carry out the intervention, if agreed upon between the department and the landowner, within five days of that agreement;
- (5) permit the landowner or lessee to reject for good cause the interventions offered by the department;
- (6) require a landowner or lessee to demonstrate that the property depredation is greater in value than the value of any wildlife-related income or fee collected by the landowner or lessee for permission to take or kill an animal of the same species, on the private property or portion of the private property identified in the complaint as the location where the depredation occurred; and
- (7) permit the landowner, lessee or employee, when interventions by the department have not been successful and after one year from the date of the filing of the initial complaint, to kill or take an animal believed responsible for property depredation.

C. For purposes of this section:

- (1) "commission" means the state game commission;
- (2) "department" means the department of game and fish; and
- (3) "intervention" means a solution proposed by the department to eliminate the depredation.

**History:** Laws 1997, ch. 224, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 224, § 4, makes the act effective on July 1, 1997.

### **17-2-8. Waste of game.**

It is unlawful for any person:

A. who hunts or fishes and takes any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978, any game bird or any game fish to fail to transport the edible portions of the meat obtained to his home for human consumption or to provide for the human consumption thereof under any commission regulations pertaining to exportation, transportation and donation of game; or

B. who wounds or may have wounded any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978 to fail to go to the place where the mammal sustained or may have sustained the wound and make a reasonable attempt to track the mammal and reduce it to possession.

**History:** 1953 Comp., § 53-2-7.1, enacted by Laws 1977, ch. 70, § 1.

### **17-2-9. Jurisdiction of magistrate court.**

The magistrate court has jurisdiction in all cases arising under Chapter 17 NMSA 1978 and regulations promulgated by the state game commission. In addition to other jurisdiction, a magistrate has jurisdiction over such cases arising in any magistrate district adjoining at any point that in which he serves with the consent of the accused.

**History:** Laws 1931, ch. 117, § 9; 1941 Comp., § 43-208; 1953 Comp., § 53-2-8; Laws 1963, ch. 213, § 1; 1971, ch. 184, § 1.

### **ANNOTATIONS**

**Jurisdiction extends to game law violations.** - It is within the jurisdiction of justices of the peace (now magistrates) to try game law violation cases. 1953-54 Op. Att'y Gen. No. 5860; 1939-40 Op. Att'y Gen. No. 98.

**Jurisdiction does not extend to revocation of licenses.** - The revocation of a hunting or fishing license is not within the jurisdiction of a justice of the peace (now magistrate) but such power rests exclusively with the director of the department of game and fish of this state, as an administrative matter. 1965 Op. Att'y Gen. No. 65-79.

### **17-2-10. Violation of game and fish laws or regulations; penalties.**

A. Any person violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed six months. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars (\$400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars (\$1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars (\$100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars (\$400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars (\$200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars (\$400);

(7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars (\$100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars (\$300);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars (\$1,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars (\$2,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars (\$500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars (\$600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars (\$1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars (\$400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars (\$600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars (\$600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars (\$600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars (\$250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars (\$500);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars (\$1,500);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars (\$4,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars (\$1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred, and not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars (\$1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars (\$3,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars (\$1,000);

(4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars (\$1,200);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars (\$1,000);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars (\$1,200);

(7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars (\$1,000);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars (\$1,000);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars (\$3,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars (\$6,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars (\$2,000).

D. Any person who is convicted of a violation of any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped or of a violation of any of the provisions of Chapter 17 NMSA 1978, for which a punishment is not set forth under this section, shall be fined not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500) or imprisoned not more than six months or both.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of

game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department.

**History:** Laws 1931, ch. 117, § 7; 1941 Comp., § 43-209; 1953 Comp., § 53-2-9; Laws 1963, ch. 213, § 2; 1977, ch. 290, § 2; 1979, ch. 340, § 2; 1997, ch. 119, § 1; 1997, ch. 224, § 1; 1999, ch. 31, § 2.

## ANNOTATIONS

**Cross references.** - For revocation of license for violation of law, see 17-2-30, 17-3-34 and 17-5-9 NMSA 1978.

For penalties for violations as to endangered species, see 17-2-45 NMSA 1978.

For fines constituting current school fund, see N.M. Const., art. XII, § 4.

**1997 amendments.** - Laws 1997, ch. 119, § 1, amending this section effective April 9, 1997 by making minor stylistic changes throughout the section and adding a Subsection C providing penalties for violation of 17-2A-3 NMSA 1978, was approved April 9, 1997. However, Laws 1997, ch. 224, § 1, also amending this section effective July 1, 1997 by adding "In addition, the person" at the beginning of the last sentence of the introductory language in Subsection A, adding Subsections B and C and redesignating the following subsection accordingly, adding Subsections E and F, and making stylistic changes throughout the section, was approved April 11, 1997. This section is set out as amended by Laws 1997, ch. 224, § 1. See 12-1-8 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, added Paragraphs A(10), A(11), B(10), B(11), C(10), and C(11), inserted "or Barbary sheep" following "ibex" in Paragraph B(2), and made minor stylistic changes.

**Compiler's notes.** - Laws 1997, ch. 119, § 6 provides that in the event the act is not enacted with the emergency clause, its provisions shall be made retroactive in operation to April 1, 1997. Although the act was enacted with the emergency clause, it was not signed by the Governor until April 9, 1997.

**Defendant pleading guilty may be fined or jailed.** - A justice of the peace (now magistrate) has the right to fine or send to jail a defendant pleading guilty to the charge of having violated the game laws of the state. 1938-39 Op. Att'y Gen. No. 98.

**No power to remit fixed fine.** - Justices of the peace (now magistrates) have no power to remit fines where the amount of the fine is fixed by statute. 1923-24 Op. Att'y Gen. No. 162 (issued under former statutory provisions).

**Erroneous habeas corpus judgment held res judicata.** - A judgment in habeas corpus proceeding, not appealed from, discharging a defendant prosecuted for killing a

bear out of season, on the ground that a bear was not a game animal defined by statute, was res judicata on that issue, although erroneous, barring a further prosecution for having in possession a bear skin, from the same animal. State ex rel. Sofeico v. Heffernan, 41 N.M. 219, 67 P.2d 240 (1936).

**Money collected as informer's fee** should be paid over to person instituting prosecution, who may recover it by legal action if not so paid. 1931-32 Op. Att'y Gen. No. 100.

### **17-2-10.1. Game and fish penalty assessment misdemeanors; definition; schedule of assessments.**

A. As used in Chapter 17 NMSA 1978, "penalty assessment misdemeanor" means a violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

| COMMON NAME OF OFFENSE VIOLATED      | PENALTY   | SECTION |
|--------------------------------------|-----------|---------|
| ASSESSMENT                           |           |         |
| Fishing without a license            | \$ 75.00  | 17-3-   |
| Hunting small game without a license | \$100.00. | 17-3-   |

B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

C. With the assessment collected for each penalty assessment misdemeanor pursuant to this section, there shall be assessed and collected the cost of the appropriate license that the violator failed to produce. Upon presentation of proof of payment of the penalty assessment, the director of the department of game and fish shall issue the appropriate license.

**History:** Laws 1995, ch. 177, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 177 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **17-2-10.2. Game and fish penalty assessment; payment.**

A. Unless a warning notice is given to an alleged violator, at the time the alleged violator is charged with a penalty assessment misdemeanor, the conservation officer shall offer the alleged violator the option of accepting a penalty assessment. The signature of the alleged violator on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice. The acknowledgment shall be included in accrual of points toward revocation of licenses as provided for in Section 17-3-34 NMSA 1978 or in regulations adopted to implement that section.

B. Payment of any penalty assessment, including cost of the appropriate license, shall be mailed to the state game commission within thirty days from the date of charge. Payment of penalty assessments are timely if postmarked within thirty days from the date of the charge. The commission may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

C. No record of any penalty assessment payment is admissible as evidence in court in any civil action.

**History:** Laws 1995, ch. 177, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 177 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **17-2-10.3. Game and fish penalty assessment; license revocation.**

A. The state game commission is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or regulation.

B. The state game commission may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of any single offense that, if committed in New Mexico, would be grounds for revocation of license.

**History:** Laws 1995, ch. 177, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 177 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after



adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **17-2-10.4. Game and fish penalty assessment revenue; disposition.**

The department of game and fish shall remit all penalty assessment receipts to the state treasurer to be credited to the game protection fund in accordance with the provisions of Section 17-1-14 NMSA 1978.

**History:** Laws 1995, ch. 177, § 4.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 177 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **17-2-11. [Witness testifying for state; evidence not to be used against him.]**

In any prosecution under this chapter, any participant in a violation thereof, when so requested by the district attorney, state warden [director of the department of game and fish] or other officer instituting the prosecution, may testify as a witness against any other person charged with violating the same, and his evidence so given shall not be used against him in any prosecution for such violation.

**History:** Laws 1912, ch. 85, § 40; Code 1915, § 2463; C.S. 1929, § 57-248; 1941 Comp., § 43-212; 1953 Comp., § 53-2-12.

#### **ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." Chapter 47, 1915 Code, comprised the whole of Laws 1912, ch. 85, the presently effective provisions of which are compiled as 17-1-12, 17-1-13, 17-2-11, 17-2-13, 17-2-17 to 17-2-20, 17-2-21, 17-2-23 to 17-2-28, 17-3-7, 17-3-29, 17-3-30, 17-3-33, 17-3-34, 17-4-6, 17-4-8 to 17-4-29 NMSA 1978.

**Immunity statutes have only been passed as to particular crimes.** - The legislature has gone no further than to pass immunity statutes applicable only in prosecutions for

particular crimes, such as this section. *Apodaca v. Viramontes*, 53 N.M. 514, 212 P.2d 425 (1949).

### **17-2-12. Refuges; firearms on; prohibited; exceptions.**

It is unlawful for any person to carry, transport or have in his possession, bows, arrows, crossbows or firearms of any kind or description within or upon any game refuge or to discharge any firearm or arrow into or within any state game refuge in New Mexico; provided this section shall not apply to any county, state or federal officer in the discharge of his official duties, nor to persons crossing refuges over public roads and trails with firearms unloaded or taken down; provided further that permits may be issued by the director to stockmen, trappers, ranchers and property owners, or their employees, to carry firearms while engaged in the discharge of their legitimate affairs on or within game refuges.

**History:** Laws 1937, ch. 23, § 3; 1941 Comp., § 43-213; 1953 Comp., § 53-2-13; Laws 1979, ch. 340, § 3.

#### **ANNOTATIONS**

**Section is limited to state game refuges.** - It was the intent of the legislature to limit the application of this section to state game refuges. 1955-56 Op. Att'y Gen. No. 6155.

**State may not have power as to federal game refuges.** - Any attempt on the part of the state to control the disposition of game on a federal game refuge contrary to the wishes of the federal government might be beyond the power of the state. 1955-56 Op. Att'y Gen. No. 6155.

### **17-2-13. Songbirds; trapping, killing or injuring prohibited.**

It shall be unlawful for any person to shoot, ensnare or trap for the purpose of killing or in any other manner to injure or destroy any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*Geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills [whippoorwills], woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects. This section does not prohibit the killing of such birds for scientific purposes under permits from the department of game and fish.

**History:** Laws 1912, ch. 85, § 55; Code 1915, § 2478; Laws 1915, ch. 101, § 16; C.S. 1929, § 57-263; 1941 Comp., § 43-215; 1953 Comp., § 53-2-15; Laws 1967, ch. 119, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Protection of migratory birds as within scope of treaty-making power, 4 A.L.R. 1388, 134 A.L.R. 882.

Power of Congress to protect migratory birds, 11 A.L.R. 991.

38 C.J.S. Game §§ 8, 22-28, 30, 51, 76.

### **17-2-14. Hawks, vultures and owls; taking, possessing, trapping, destroying, maiming or selling prohibited; exception by permit; penalty.**

A. It is unlawful for any person to take, attempt to take, possess, trap or ensnare or in any manner to injure, maim or destroy birds of the order Falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order Stringiformes, comprising all of the species and varieties of owls. It is also unlawful to purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of these birds.

B. The director of the department of game and fish may issue permits to allow any person to take, possess, trap, ensnare or destroy any bird protected by this section or to possess, give, purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of any birds protected by this section. Permits shall be granted for the following purposes:

(1) Indian religious purposes;

(2) scientific purposes in accordance with law and the regulations of the department of game and fish; or

(3) falconry purposes in accordance with law and the regulations of the department.

C. Notwithstanding any other law, any person engaged in the commercial raising of poultry or game birds may take, capture or kill any hawk, owl or vulture that has killed such poultry or game birds. The owner of such game or poultry farm who takes action under this provision shall report this action to the department of game and fish, which shall verify the necessity of the action taken.

D. Any person violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-2-15.1, enacted by Laws 1973, ch. 104, § 1; 1979, ch. 340, § 4; 1992, ch. 29, § 2.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1973, ch. 104, § 1, repealed former 53-2-15.1 relating to protection of hawks, vultures and owls, and enacted a new 17-2-14 NMSA 1978.

**The 1992 amendment,** effective April 1, 1992, in Subsection A, deleted the former last sentence, which read "The provisions of this subsection shall not apply to the genera of Aquila and Haliaeetus of the family Accipitridae"; in Subsection B, deleted "upon application and without charge to any person" preceding "for the following purposes" in the second sentence and "of game and fish" from the end of Paragraph (3); and made stylistic changes.

### **17-2-15. [Horned toads; killing, selling or shipping from state unlawful.]**

It shall be unlawful for any person to willfully kill or to sell horned toads within the state of New Mexico, or to ship them from the state.

**History:** Laws 1941, ch. 32, § 1; 1941 Comp., § 43-216; 1953 Comp., § 53-2-16.

#### **ANNOTATIONS**

**Owner may carry toad out of state.** - This section does not prohibit one who owns a horned toad from carrying it across the state line. 1951-52 Op. Att'y Gen. No. 5551.

### **17-2-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 2001, ch. 66, § 3, repeals 17-2-16 NMSA 1978, as amended by Laws 1979, ch. 340, § 5, regarding the prohibition of the capturing or killing of bullfrogs, effective June 15, 2001. For provisions of former section, see 1995 Replacement Pamphlet. For present comparable provisions, see 17-2-4.2 NMSA 1978.

### **17-2-17. [Storage of game or fish.]**

No game or fish shall be received or held in storage except as follows, namely:

A. during the open season therefor and for five days thereafter when the same is stored for the person lawfully in possession of the same;

B. at any time of the year when there is attached thereto a proper and valid officer's invoice as provided in this chapter relating to the seizure of game and fish for not more than thirty days after the date of such invoice;

C. when there is attached thereto a proper and valid certificate or permit signed by the state warden [director of the department of game and fish] or deputy [conservation officer] and on its face authorizing storage of the article named therein and during the period therein stated.

**History:** Laws 1912, ch. 85, § 26; Code 1915, § 2449; C.S. 1929, § 57-235; 1941 Comp., § 43-222; 1953 Comp., § 53-2-20.

### ANNOTATIONS

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state game warden and deputy wardens, "director of the department of game and fish" and "conservation officer" have been inserted in Subsection C. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act" in Subsection B. For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

### 17-2-18. [Menu as evidence of possession of game or fish.]

The naming of game and fish upon any menu or bill of fare as food for patrons shall be prima facie evidence of the possession of the same by the proprietor of such hotel, restaurant, cafe or boardinghouse.

**History:** Laws 1912, ch. 85, § 28; Code 1915, § 2451; C.S. 1929, § 57-237; 1941 Comp., § 43-223; 1953 Comp., § 53-2-21.

### ANNOTATIONS

**Cross references.** - For possession of game or fish without invoice, see 17-4-20 NMSA 1978.

### 17-2-19. Enforcement of game laws; powers of conservation officers.

A. The director of the department of game and fish, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce Chapter 17 NMSA 1978 and shall:

(1) seize any game or fish held in violation of that chapter;

(2) with or without warrant, arrest any person whom he knows to be guilty of a violation of that chapter; and

(3) open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of that chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers may, under the direction of the state game commission and the director of the department of game and fish:

(1) establish from time to time, as needed for the proper functioning of the game and fish research and management division, checking stations at points along established roads, or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws and the regulations referred to in Section 17-2-10 NMSA 1978;

(2) under emergency circumstances and while on official duty only enforce the provisions of the Criminal Code [30-1-1 NMSA 1978] and the Motor Vehicle Code [66-1-1 NMSA 1978]; and

(3) while on official duty only, enforce the provisions of:

(a) Sections 30-14-1 and 30-14-1.1 NMSA 1978 pertaining to criminal trespass;

(b) Section 30-7-4 NMSA 1978 pertaining to negligent use of a deadly weapon;

(c) Section 30-15-1 NMSA 1978 pertaining to criminal damage to property;

(d) Section 30-22-1 NMSA 1978 pertaining to resisting, evading or obstructing an officer; and

(e) Section 72-1-8 NMSA 1978 pertaining to camping next to a manmade water hole.

**History:** Laws 1912, ch. 85, § 57; Code 1915, § 2480; Laws 1915, ch. 101, § 17; C.S. 1929, § 57-265; 1941 Comp., § 43-224; 1953 Comp., § 53-2-22; Laws 1955, ch. 54, § 1; 1967, ch. 36, § 1; 1975, ch. 86, § 1; 1977, ch. 265, § 1; 1977, ch. 290, § 3; 1981, ch. 99, § 1; 1983, ch. 27, § 1; 2001, ch. 74, § 1.

## ANNOTATIONS

**Cross references.** - For enforcement powers with respect to endangered species, see 17-2-46 NMSA 1978.

**The 2001 amendment**, effective July 1, 2001, in Subsection C, deleted "and except as otherwise provided in Paragraph (3) of this subsection," in Paragraph (2), added the paragraph designation (3)(a), and added Paragraphs (3)(b) to (e).

**"Emergency" defined.** - There are three elements to an "emergency" as that term is used in subsection C(2): (1) the gravity of the threatened harm; (2) the likelihood of the harm occurring; and (3) the lack of time in which action can be taken to avert the harm, especially whether it was feasible to summon a regular law enforcement officer. These factors must be considered from the conservation officer's point of view. *State v. Creech*, 111 N.M. 490, 806 P.2d 1080 (Ct. App. 1991).

**"Reason to believe" defined.** - The legislature intended subsection A(3) as a limit on the authority of conservation officers and in using the phrase "reason to believe" should be understood to have required individualized suspicion. *State v. Creech*, 111 N.M. 490, 806 P.2d 1080 (Ct. App. 1991).

**Officers of state game commission are state officers.** *Allen v. McClellan*, 77 N.M. 801, 427 P.2d 677 (1967), overruled on other grounds, *New Mexico Livestock Bd. v. Dose*, 94 N.M. 68, 607 P.2d 606 (1980).

**Conservation officers may enter private lands without warrants.** - Deputy game wardens (now conservation officers) may enter on private lands without warrants in the interest of game protection. 1947-48 Op. Att'y Gen. No. 4974.

**County sheriffs and their deputies must enforce game laws.** - County sheriffs and their deputies are required to enforce game laws in their counties and need not be appointed deputy game wardens (now conservation officers). 1931-32 Op. Att'y Gen. 132.

**Conservation officer may carry sidearms.** - A state game department (now game commission) conservation officer may carry sidearms while in the lawful discharge of his duties. 1963-64 Op. Att'y Gen. No. 63-107.

**Role of conservation officers in enforcing other state laws.** - In respect to the enforcement of other state laws, state conservation officers stand in the same position as private citizens. 1963-64 Op. Att'y Gen. No. 63-107.

Express statutory authority is not spelled out by legislative enactment authorizing conservation officers to enforce other state laws, and in the absence of such express authority their power to act as official peace officers and to make arrests is generally restricted in nature. 1963-64 Op. Att'y Gen. No. 63-107.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 52 to 54.

Validity of roadblocks by state or local officials for purpose of enforcing fish or game laws, 87 A.L.R.4th 981.

Who may conduct border search pursuant to 19 USCS §§ 482, 1401(i), 1581(a), (b), and 1582, 61 A.L.R. Fed. 290.

36A C.J.S. Fish §§ 37, 42; 38 C.J.S. Game §§ 50, 61, 63, 64, 67.

### **17-2-20. [Seizure of devices used for violating law; nuisance; destruction; firearms excepted.]**

Every net, trap, explosive, poisonous or stupefying substance, or device used or intended for use in taking or killing game or fish in violation of this chapter, and set, kept or found in or upon any of the streams or waters in this state or upon the shores thereof, and every trap, device, blind or deadfall found baited in violation of this chapter, is declared to be a public nuisance and may be abated and summarily destroyed by any person and it shall be the duty of every officer authorized to enforce this chapter to seize and summarily destroy the same and no prosecution or suit shall be maintained for such destruction; provided, that nothing in this chapter shall be construed as affecting the right of the state warden [director of the department of game and fish] to use such means as may be proper for the promotion of game and fish propagation and culture, nor as authorizing the seizure or destruction of firearms.

**History:** Laws 1912, ch. 85, § 31; Code 1915, § 2454; C.S. 1929, § 57-240; 1941 Comp., § 43-225; 1953 Comp., § 53-2-23.

### **ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

**Taking over and operating fish hatchery authorized.** - Laws 1912, ch. 85, should be liberally construed to allow the state game warden (now director of the department of game and fish) to take over and pay expenses of a fish hatchery offered him for the propagation and delivery of fish. 1912-13 Op. Att'y Gen. No. 271.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Jury trial in case of seizure or destruction of appliances, 17 A.L.R. 574, 50 A.L.R. 97.

36A C.J.S. Fish § 42; 38 C.J.S. Game §§ 61, 63, 64, 67.



## **17-2-20.1. Seizure and forfeiture; property subject.**

A. All firearms and bows and arrows may be subject to seizure and forfeiture when used as instrumentalities in the commission of the following crimes:

- (1) illegal possession or transportation of big game during closed season;
- (2) taking big game during closed season;
- (3) attempting to take big game by the use of spotlight or artificial light; and
- (4) exceeding the bag limit on any big game species during open season.

B. Any motor vehicle shall be subject to seizure and forfeiture when operated in violation of the provisions of Section 17-2-31 NMSA 1978, regarding hunting by spotlight.

C. The provisions of the Forfeiture Act [31-27-1 to 31-27-8 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsections A and B of this section.

**History:** 1978 Comp., § 17-2-20.1, enacted by Laws 1979, ch. 321, § 1; 1991, ch. 53, § 1; 2002, ch. 4, § 9.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, in the catchline substituted "Seizure and forfeiture" for "Forfeitures"; added the subsection designations throughout the section and added the paragraph designations in Subsection A; in Paragraph (3) of Subsection A substituted "attempting to take" for "taking"; added Subsections C and D; and made minor stylistic changes in Subsections A and B.

**The 2002 amendment**, effective July 1, 2002, deleted former Subsection B, which read: "Provided that no firearms or bows and arrows shall be subject to forfeiture if the violation was without the knowledge or consent of the owner"; redesignated former Subsection C as present Subsection B and deleted the last sentence of that section, which directed that seized and forfeited motor vehicles were to be disposed of in accordance with the provisions of Section 17-2-20.2 NMSA 1978; deleted former Subsection D, which read: "No conveyance is subject to forfeiture under this section by reason of any act or omission established for the owner to have been committed or omitted without his knowledge or consent. A forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission"; and added present Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 52 to 54.

Right to jury trial in case of seizure of property alleged to be illegally used, 17 A.L.R. 568, 50 A.L.R. 97.

Forfeiture of property for unlawful use before trial of individual offender, 3 A.L.R.2d 738.

Validity, construction, and effect of statutes or regulations making possession of fish and game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d), 57 A.L.R. Fed. 234.

37 C.J.S. Forfeitures § 3; 38 C.J.S. Game §§ 61, 63, 64, 67.

## **17-2-20.2. Forfeiture; procedure. [Repealed.]**

### **ANNOTATIONS**

**Repeals.** - Laws 2002, ch. 4, § 22 repeals 17-2-20.2 NMSA 1978, as enacted by Laws 1979, ch. 321, § 2, relating to standards and procedures for the forfeiture of property subject to forfeiture and disposal under 17-2-20.1 NMSA 1978, effective July 1, 2002. For provisions of former section, see 1995 Replacement Pamphlet. For present comparable provisions, see 31-27-1 NMSA 1978 et seq.

## **17-2-20.3. Penalties.**

The following violations shall constitute a misdemeanor:

- A. illegal possession or transportation of big game during closed season;
- B. taking or attempting to take big game during closed season;
- C. taking or attempting to take big game by the use of spotlight or artificial light;
- D. selling or attempting to sell big game or parts thereof, except as permitted by regulation of the state game commission; and
- E. exceeding the bag limit on any big game species during open season.

**History:** 1978 Comp., § 17-2-20.3, enacted by Laws 1979, ch. 321, § 3.

## ANNOTATIONS

**Cross references.** - For general penalties, see 17-2-10 NMSA 1978.

For civil liability, see 17-2-26 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 46 to 52.

Applicability, to domesticated or captive game, of game laws relating to closed season and the like, 74 A.L.R.2d 974.

Validity, construction, and effect of statutes or regulations making possession of fish and game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.

38 C.J.S. Game §§ 8, 22-28, 30, 41, 51, 58, 76.

### **17-2-21. [Sale or disposition of game or fish after seizure; invoice furnished purchaser or donee; disposition of proceeds of sale.]**

All game and fish seized under the game laws shall without unnecessary delay be sold by the officer making such seizure, or by the state warden [director of the department of game and fish], except when such sale is impracticable or likely to incur expenses exceeding the proceeds, in which case the same shall be donated to some charitable institution or needy person not concerned in the unlawful killing, or possession thereof. The officer making such seizure shall sign and give to each purchaser or donee an invoice stating the time and place of disposition, the kind and weight as near as may be of the game or fish disposed of and the name of the purchaser or donee. Such invoice shall authorize possession, transportation and use within the state, and storage for thirty days from date. The proceeds from such sale, after deducting the cost of seizure and sale shall, if made by the state warden [director] or any deputy [conservation officer] under salary, be paid into the game protection fund, but if made by a deputy warden [conservation officer] not under salary, or any other officer, shall be paid one-half to the officer making such seizure.

**History:** Laws 1912, ch. 85, § 23; Code 1915, § 2446; C.S. 1929, § 57-232; 1941 Comp., § 43-226; 1953 Comp., § 53-2-24.

## ANNOTATIONS

**Cross references.** - For sale of skins, pelts or furs involved in violation, see 17-5-9 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state warden and deputies, "director of the department of game and fish," "director" and

"conservation officer" have been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Return of game or proceeds after wrongful confiscation.** - Where the department of game and fish confiscated an elk from a person charged with a hunting misdemeanor, and the magistrate court dismissed the case because the game officer failed to identify the defendant at the hearing as the person charged, the department was not required to return the elk, or the proceeds from the sale of the elk, to that person. 1988 Op. Att'y Gen. No. 88-43.

### **17-2-22. Sale of evidence in cases of appeal.**

A. For the purpose of avoiding waste, game or fish confiscated and held as evidence in any prosecution for violation of the game laws, if fit for human consumption, shall be sold by the conservation officer or other officer having jurisdiction in the prosecution as soon as possible after the filing of any appeal from the decision of the court to any higher court.

B. The evidence shall be sold for the highest cash price offered and the proceeds of the sale forwarded to the main office of the department of game and fish at Santa Fe to be deposited in the game protection fund. A copy of the receipt of sale shall be delivered to the court and shall be attached to the papers forwarded to the higher court on appeal.

C. If the higher court finds the defendant to be not guilty of the charge he shall be reimbursed within ten days after such decision by the department of game and fish for the full amount of the proceeds from the sale of evidence.

**History:** 1953 Comp., § 53-2-24.1, enacted by Laws 1963, ch. 216, § 1.

### **17-2-23. [Reports of seizures and sales.]**

In all cases the officer making a seizure or sale shall, within ten days thereafter, report all the particulars thereof and an itemized statement of the proceeds, expenses and fees and the disposition thereof, and pay the remainder of the proceeds, if any, to the state treasurer to be by him paid into the game protection fund.

**History:** Laws 1912, ch. 85, § 24; Code 1915, § 2447; C.S. 1929, § 57-233; 1941 Comp., § 43-227; 1953 Comp., § 53-2-25.

### **17-2-24. [Officer's right to use animal or vehicle transporting seized game or fish; public conveyances excepted.]**

Where game or fish while being transported is seized under this chapter, the officer making such seizure shall have authority upon payment of reasonable compensation therefor, to also take possession of and use any animals and vehicles used in such

transportation for the purpose of conveying the game or fish seized to a convenient railroad station or place of safekeeping or sale, and also for conveying any person arrested for the unlawful possession of such game or fish to a place of hearing or trial, and no liability shall attach to such officer by reason thereof, but this section shall not apply to any animal or vehicle while being used as a public conveyance for passengers or mails, or any railroad car.

**History:** Laws 1912, ch. 85, § 25; Code 1915, § 2448; C.S. 1929, § 57-234; 1941 Comp., § 43-228; 1953 Comp., § 53-2-26.

**ANNOTATIONS**

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

**17-2-25. [Game or fish in possession of passenger; carrier exempt from liability; seizure.]**

Nothing in this chapter shall make a common carrier liable for transportation of game and fish when same is in the possession of a passenger, but such fact shall not exempt the same from seizure if unlawfully taken, killed, held in possession or transported.

**History:** Laws 1912, ch. 85, § 37; Code 1915, § 2460; C.S. 1929, § 57-245; 1941 Comp., § 43-229; 1953 Comp., § 53-2-27.

**ANNOTATIONS**

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "in this chapter" for the words "herein." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

**17-2-26. Civil liability.**

A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof, and recover judgment for the following minimum sums as damage for the taking, killing or injuring:

.....for each elk .....\$ 500.00

|                             |           |
|-----------------------------|-----------|
| for each deer               | 250.00    |
| for each antelope           | 250.00    |
| for each mountain sheep     | 1,000.00  |
| for each Barbary sheep      | 250.00    |
| for each black bear         | 500.00    |
| for each cougar             | 500.00    |
| for each bison              | 600.00    |
| for each ibex               | 1,000.00  |
| for each oryx               | 1,000.00  |
| for each javelina           | 100.00    |
| for each beaver             | 65.00     |
| for each bird               | 20.00     |
| for each fish               | 5.00      |
| for each endangered species | 500.00    |
| for each raptor             | 200.00    |
| for each turkey             | 150.00    |
| for each jaguar             | 2,000.00. |

B. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

E. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department.

**History:** Laws 1912, ch. 85, § 45; Code 1915, § 2468; C.S. 1929, § 57-253; 1941 Comp., § 43-230; 1953 Comp., § 53-2-28; Laws 1963, ch. 276, § 1; 1969, ch. 28, § 1; 1971, ch. 75, § 3; 1997, ch. 224, § 2; 1999, ch. 31, § 3.

### ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, revised the schedule of fees in Subsection A, added Subsections D and E, and made minor stylistic changes.

**The 1999 amendment**, effective June 18, 1999, added the judgment amount with regard to jaguars at the end of Subsection A, and inserted "of game and fish" in Subsection E.

**Sums of money listed constitute minimum amount** of money in a civil liability suit. 1968 Op. Att'y Gen. No. 68-7.

**Officer bringing action has discretion in requesting amount.** - This section vests discretion in the director or other officer bringing the action to set the request for the defendant's liability at any level consonant with the statutory minimum. 1968 Op. Att'y Gen. No. 68-7.

**Officer bringing action may ask for sum within jurisdiction of magistrate.** - If, in the exercise of his discretion, the officer bringing the suit on behalf of the state should determine that the suit should ask for no more than the statutory jurisdictional maximum amount, then the suit may be heard by a justice of the peace (now magistrate). 1968 Op. Att'y Gen. No. 68-7.

### **17-2-27. [District attorneys to prosecute and defend actions under fish and game laws.]**

It shall be the duty of each of the district attorneys in this state to prosecute and defend for the state in all courts of the county or counties in their respective districts, all causes, criminal and civil, arising under the provisions of this chapter, in which the state may be a party or interested or concerned.

**History:** Laws 1912, ch. 85, § 81; Code 1915, § 2504; C.S. 1929, § 57-323; 1941 Comp., § 43-231; 1953 Comp., § 53-2-29.

## ANNOTATIONS

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

### **17-2-28. [Indians hunting off reservations; hunting on reservations; application of laws.]**

The provisions of this chapter shall apply to all Indians off the reservation within this state, or coming into this state from adjoining states, and to all persons hunting on any Indian reservation within this state; provided, however, that no Indian shall be required to have a license to hunt or fish within the limits of the reservation where said Indian resides.

**History:** Laws 1912, ch. 85, § 7; Code 1915, § 2430; Laws 1919, ch. 133, § 1; C.S. 1929, § 57-212; 1941 Comp., § 43-233; 1953 Comp., § 53-2-31.

## ANNOTATIONS

**Compiler's notes.** - The words "this chapter" refer to Chapter 47, 1915 Code. For disposition of Chapter 47 in NMSA 1978, see note to 17-2-11 NMSA 1978.

**In absence of treaty Indian outside Indian country is subject to state laws.** - As a general rule, if there is no treaty or agreement between the United States and the Indian tribe recognizing or granting rights to Indians to hunt and fish outside the Indian country, an Indian hunting or fishing in New Mexico outside the Indian country is subject to the laws of the state of New Mexico the same as any other person. 1953-54 Op. Att'y Gen. No. 6041.

An Indian may be assessed a license fee and regulated off the reservation for hunting and fishing the same as any other person of the state, except the Navajos must be permitted to hunt free of charge off the reservation. 1953-54 Op. Att'y Gen. No. 6041.

**Indian is exempt in Indian country even if off his reservation.** - An Indian hunting or fishing on a reservation not his own is still an Indian in Indian country and is exempt from the game laws of the state. 1953-54 Op. Att'y Gen. No. 6041.

**Non-Indian may be prosecuted for violation in Indian country.** - The state of New Mexico has jurisdiction to prosecute non-Indians violating the hunting and fishing laws of this state even though such violation occurs on an Indian reservation. 1973 Op. Att'y Gen. No. 73-18; 1953-54 Op. Att'y Gen. No. 6041.

Section 2 of N.M. Const., art. XXI, provides that until the title of Indians shall have been extinguished, the lands shall be under the absolute jurisdiction and control of the congress of the United States, but this clearly does not deprive the state of jurisdiction



over offenses committed by a non-Indian against a non-Indian in Indian country, nor does it prevent the enforcement of the game laws against non-Indians in the Indian country. 1953-54 Op. Att'y Gen. No. 6041.

The application on the Mescalero Apache tribe reservation, of New Mexico's hunting and fishing laws to nonmembers of the tribe is preempted by the operation of federal law. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983).

**State has jurisdiction of hides, etc., taken on Indian reservation only if taken by non-Indian.** - So far as possession of hides, skins, pelts, heads and game animals, birds or fish, or parts thereof, taken by a non-Indian on an Indian reservation, the state would have jurisdiction the same as though taken anywhere else in the state; but in the case of such items taken by an Indian on an Indian reservation and transported elsewhere, the state would have absolutely no jurisdiction whatsoever. 1953-54 Op. Att'y Gen. No. 6041.

**Law reviews.** - For article, "New Mexico v. Mescalero Apache Tribe: When Can a State Concurrently Regulate Hunting and Fishing by Nonmembers on Reservation Land?," see 14 N.M.L. Rev. 349 (1984).

For article, "The Native American's Right to Hunt and Fish: An Overview of the Aboriginal, Spiritual and Mystical Belief System, the Effect of European Contact and the Continuing Fight to Observe a Way of Life," see 19 N.M.L. Rev. 377 (1989).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians §§ 64 et seq., 155 et seq..

42 C.J.S. Indians §§ 122 to 129.

### **17-2-29. [Hunting and boating while intoxicated or under the influence of narcotic drugs prohibited.]**

In order to prevent hunting and boating accidents and to promote the public safety, it shall hereafter be unlawful for any person, while clearly intoxicated as a result of drinking alcoholic liquors or under the influence of any narcotic drug, to hunt, kill or attempt to take in any manner any game or nongame mammal or bird, or to carry firearms of any kind or bow and arrows in any hunting area; or to go or to be upon the waters of any lake in a boat or on a raft.

**History:** 1941 Comp., § 43-240; Laws 1953, ch. 98, § 1; 1953 Comp., § 53-2-32.

### **ANNOTATIONS**

**Cross references.** - For prohibited operation of motorboats, vessels, etc., see 66-12-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

**17-2-30. [Person convicted of hunting or boating while intoxicated or under influence of narcotic drugs; revocation and withholding of hunting and fishing license privileges.]**

In the event any person shall be convicted of a violation of this act [17-2-29, 17-2-30 NMSA 1978], his hunting and fishing license shall be revoked and all hunting and fishing license privileges withheld for a period of twelve months.

**History:** 1941 Comp., § 43-244; Laws 1953, ch. 98, § 5; 1953 Comp., § 53-2-36.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

**17-2-31. [Hunting by spotlight or artificial light prohibited.]**

It shall be unlawful for any person or one or more of a group of persons together to throw or cast the rays of a spotlight or other artificial light into any field, pasture, woodland, forest or prairie wherein big game or domestic livestock may be, or may be reasonably expected to be, while having in his possession or their possession or under control a firearm or other implement whereby any big game animal or domestic animal could be killed by aid of an artificial light; provided, however, that all officers authorized to enforce the game and livestock laws of the state of New Mexico and all landowners or lessees, while on their own lands in connection with their legitimate activities, and employees of such landowners and lessees shall be exempt from the provisions of this act [section].

**History:** 1941 Comp., § 43-235; Laws 1951, ch. 171, § 1; 1953 Comp., § 53-2-37.

**ANNOTATIONS**

**Cross references.** - For penalty for violation of this section, see 17-2-10 A NMSA 1978.

**17-2-32. Diseased rabbits; hunting and trapping.**

The department of game and fish may restrict hunting and trapping of rabbits in any area when notified by the department of public health [department of health] that rabbits in the area are infected with bubonic plague. Any restriction under this section shall be terminated when the department of public health [department of health] notifies the department of game and fish that danger, of public health significance, no longer exists in the area with respect to these diseased rabbits.

**History:** 1953 Comp., § 53-2-45, enacted by Laws 1963, ch. 150, § 1.

## ANNOTATIONS

**Bracketed material.** - The bracketed references to the department of health were inserted by the compiler. By Laws 1968, ch. 37, § 3, the functions of the department of public health were transferred to the department of health and social services. The department of health and social services was abolished and its health functions transferred to the health and environment department under 9-7-4 NMSA 1978 by Laws 1977, ch. 253, §§ 3 and 5. However, Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978 and enacts a new 9-7-4 NMSA 1978 creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Section is not void for uncertainty.** State v. Barber, 91 N.M. 764, 581 P.2d 27 (Ct. App. 1978).

**Absence of criminal intent element does not violate due process.** - Given the public interest concerned and the difficulties involved in the protection of big game animals and livestock, together with the apparent general public attitude, it appears that the legislature intended to eliminate the element of criminal intent so that it is the doing of the act alone which is prohibited, and this does not violate due process. State v. Barber, 91 N.M. 764, 581 P.2d 27 (Ct. App. 1978).

## PART 2 HUNTER TRAINING ACT

### 17-2-33. Use of firearms by minors.

A. It is unlawful after April 1, 1972, for any person born after January 1, 1958, to hunt with or shoot a firearm, unless:

(1) he is supervised by a parent, legal guardian or a responsible adult designated by the parent or guardian; or

(2) he carries a certificate indicating that he has successfully completed the New Mexico hunter training course or the hunter training course of another state which is approved by the New Mexico department of game and fish; or

(3) he is eighteen years of age or older.

B. It is unlawful after April 1, 1976, for any person under the age of eighteen years to hunt with or shoot a firearm unless he is carrying a certificate indicating that he has successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.

C. Any person violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-2-46, enacted by Laws 1971, ch. 61, § 2.

### **17-2-34. Hunter training program; instructor certification; certificate of competency.**

A. The department of game and fish shall provide a course instruction in the safe handling of firearms for individuals interested in obtaining a certificate of competency in the safe handling of firearms. The department may cooperate with the superintendent of public instruction or any reputable association or organization as determined by the department and having as one of its objectives the promotion of safety in firearm handling.

B. The department of game and fish shall prescribe the type of instruction and the qualifications of instructors and shall designate annually those persons qualified to give instruction in the safe handling of firearms. Persons designated by the department of game and fish to be instructors are authorized to give the course of instruction in the safe handling of firearms to all interested persons. Upon the completion of the course and certification to the department by the instructor, the department shall cause to be issued, to the person instructed, a certificate of competency in the safe handling of firearms, which shall be valid unless revoked by the department of game and fish for such cause as determined by regulation of the department to be unsafe handling of a firearm.

C. The department of game and fish shall promulgate rules and regulations to implement the provisions of the Hunter Training Act [17-2-33 to 17-2-36 NMSA 1978].

**History:** 1953 Comp., § 53-2-47, enacted by Laws 1971, ch. 61, § 3.

### **17-2-35. Exemption.**

Nothing in the Hunter Training Act [17-2-33 to 17-2-36 NMSA 1978] shall prohibit any person from carrying or shooting a firearm while participating in an organized and supervised shooting program, or while under the immediate and direct supervision of a parent, guardian or responsible adult, or while participating in a course of instruction in the safe handling of firearms offered by the department of game and fish. However, no exemption shall permit hunting without possession of a valid hunter training certificate.

**History:** 1953 Comp., § 53-2-48, enacted by Laws 1971, ch. 61, § 4; 1981, ch. 306, § 1.

### **17-2-36. Short title.**

This act [17-2-33 to 17-2-36 NMSA 1978] may be cited as the "Hunter Training Act."

**History:** 1953 Comp., § 53-2-49, enacted by Laws 1971, ch. 61, § 1.

## **PART 3 WILDLIFE CONSERVATION ACT**

### **17-2-37. Short title.**

Sections 17-2-37 through 17-2-46 NMSA 1978 may be cited as the "Wildlife Conservation Act".

**History:** 1953 Comp., § 53-2-50, enacted by Laws 1974, ch. 83, § 1; 1995, ch. 145, § 1.

### **ANNOTATIONS**

**Cross references.** - For the powers and the duties of the conservation services division, see 17-1-5.1 NMSA 1978.

**The 1995 amendment,** substituted "Sections 17-2-37 through 17-2-46 NMSA 1978" for "Sections 53-2-50 through 53-2-59 NMSA 1953".

**Appropriations.** - Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operating that division; provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

**County ordinances conflicting with Wildlife Conservation Act are invalid.** - County land use ordinances attempting to restrict traditional federal and state regulatory authority conflict with, and thus are preempted by, the state Wildlife Conservation Act. These ordinances cannot lawfully grant to the counties the option of taking over the state's designated role in planning for the recovery and management of threatened or endangered species. 1994 Op. Att'y Gen. No. 94-01.

**Allocation of licenses based on residency impermissible discrimination.** - The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, not offensive.** - The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Criminal prosecution under Endangered Species Act of 1973 (16 USCS §§ 1531-1543), 128 A.L.R. Fed. 271.

## **17-2-38. Definitions.**

As used in the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978]:

- A. "commission" means the state game commission;
- B. "director" means the director of the department of game and fish;
- C. "ecosystem" means a system of living organisms and their environment;
- D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
  - (1) the present or threatened destruction, modification or curtailment of its habitat;
  - (2) overutilization for scientific, commercial or sporting purposes;
  - (3) the effect of disease or predation;
  - (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or
  - (5) any combination of the foregoing factors.

The term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered species, provided that the commission adopts those lists in whole or in part. The term shall not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) and shall not include any species of the class insecta determined by the director to constitute a pest whose protection

under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;

E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the director suspects that a species may be threatened or endangered and which consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program of, including but not limited to, research, census, law enforcement, propagation, acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species, improvement and maintenance, education and related activities or protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "species" means any species or subspecies;

K. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

L. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

M. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as threatened species, provided that the commission adopts the list in whole or in part; and

N. "wildlife" means any nondomestic mammal, bird, reptile, amphibian, fish, mollusk or crustacean or any part, egg or offspring, or the dead body or parts thereof.

**History:** 1953 Comp., § 53-2-51, enacted by Laws 1974, ch. 83, § 2; 1995, ch. 145, § 2.

## ANNOTATIONS

**The 1995 amendment,** in Subsection D, deleted "or are likely within the foreseeable future to become so" following "jeopardy" in the introductory language, deleted "or subspecies" following "species" and "or threatened" following "endangered" in the next to last sentence and added the language beginning "and shall not include" at the end of the last sentence; added Subsections E and F; redesignated former Subsection E as Subsection G and substituted "acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species" for "acquisition" therein; added Subsections H through K and M; redesignated former Subsections F and G as Subsections L and N; inserted "or 'taking'" in Subsection L; and made minor stylistic changes.

**Compiler's notes.** - Section 4 of the federal Endangered Species Act of 1973 is compiled as 16 U.S.C. § 1533.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

**Authority over wild horses.** - The definition of wildlife in this section does not encompass the wild horses on the White Sands Missile Range. Therefore, because the authority of the State Game Commission is limited by statute, and a state agency has no powers not delegated to it by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

### 17-2-39. Findings and declarations.

The legislature finds and declares that:

A. species of wildlife indigenous to the state that may be found to be threatened or endangered should be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat;



B. the state should assist in the management of species of wildlife that are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offering for sale or shipment within this state of species of wildlife listed on the United States lists of endangered fish and wildlife, unless such actions will assist in preserving or propagating the species;

C. adequate funding should be made available to the department of game and fish by annual appropriations from the general fund or from other sources separate and apart from the game protection fund for management of threatened or endangered species; and

D. because the management and recovery of threatened or endangered species are the responsibility of and a benefit to all of society, the costs of management and recovery should be the responsibility of all sectors of society, and those costs should be minimized and should be borne by federal, state and local governments with contributions from the private sector.

**History:** 1953 Comp., § 53-2-52, enacted by Laws 1974, ch. 83, § 3; 1995, ch. 145, § 3.

## ANNOTATIONS

**Cross references.** - For the game protection fund, see 17-1-14 NMSA 1978.

**The 1995 amendment,** in Subsection A, deleted "and subspecies" following "species" and inserted "threatened or" preceding "endangered"; deleted "or subspecies" following "species" in three places in Subsection B; in Subsection C, inserted "should" following "funding", deleted "and fish" preceding "protection fund" and inserted "threatened or"; and added Subsection D.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

### **17-2-40. Biennial review; investigations; recommendations of the director; procedures.**

A. The director shall conduct a biennial review of all species of wildlife named on the list required by Section 17-2-41 NMSA 1978. The director may conduct investigations at

any time of those other species of wildlife indigenous to the state that are suspected of being threatened or endangered in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine his recommendations for listing or not listing a species and management measures and requirements necessary for their survival. The director shall also conduct, within a reasonable time, an investigation to support listing or delisting of a species based upon new evidence or, with the advice and consent of the commission, based upon substantial public interest. Upon completion of an investigation or investigations, he shall make written recommendations to the commission to list or not list any unlisted species or to delist any listed species investigated. In conducting any investigation for new listing or delisting required or undertaken pursuant to this subsection, the director shall comply with the procedures established in Subsections B through L of this section. Species listed as threatened or endangered on the state list through adoption of the United States list pursuant to Subsections D and M of Section 17-2-38 NMSA 1978 shall not be subject at the time of adoption to the listing procedures established in Subsections B through K of this section.

B. The director shall select a researcher to conduct an investigation pursuant to Subsection A of this section and request the appointment of a peer review panel composed of one qualified individual from each of the four-year state universities to be appointed by the presidents of the respective universities. The peer review panel shall be requested to submit comments according to a schedule determined by the director. The researcher shall submit his research design to the peer review panel.

C. When additional field research is undertaken as part of an investigation, the peer review panel shall examine the proposed research design for methodology for collection and analysis of data. Upon receipt of the peer review panel's submitted comments, the researcher shall initiate the field research regarding the designated species.

D. To the extent practicable, as part of his investigation the researcher shall meet and consult with private landowners, lessees and land and resource managers who are or may be affected by or have information pertinent to the investigation.

E. When the researcher initiates his investigation, the director shall:

(1) create a public repository file in which copies of all documents filed with the director pertaining to the investigation or a potential recovery plan, to be developed pursuant to Section 17-2-40.1 NMSA 1978, including all peer review comments, shall be maintained;

(2) mail a notice of the initiation of the investigation to federal and state agencies, local and tribal governments that are or may be affected by the results of the investigation and individuals and organizations that have requested notification of department actions regarding threatened or endangered species;

(3) notify the general public of the initiation of the investigation by information releases to the media in the area of the state affected;

(4) indicate, in all notices and information releases, where and until what date information may be submitted for inclusion in the public repository file;

(5) accept data, views or information about the biological or ecological status of the species for use in both the investigation and the development of the potential recovery plan; and

(6) accept data, views and information on the potential economic or social impacts or opportunities of a change in the legal status of the species for inclusion in the recovery plan.

F. The director shall file all written comments, data, views and information furnished pursuant to Subsection D of this section in the public repository file and shall preserve that file for use in connection with the listing process and development of any recovery plan developed pursuant to the provisions of Section 17-2-40.1 NMSA 1978. The director shall file in the public repository file all records indicating contact by the director, the researcher, employees or contractors with land owners or public or private resource managers affected by the potential action.

G. Information from the public repository file relating to social and economic impacts shall not be considered by the director in making his recommendation or the commission in making its decision to list, delist, not list, continue to list, upgrade or downgrade a species, but shall be considered only in the development of any recovery plan for the species.

H. The commission shall adopt, notwithstanding the provisions of Section 14-2-1 NMSA 1978, regulations by January 1, 1996 governing the confidentiality of data from an investigation.

I. The researcher shall prepare and submit draft reports to the peer review panel and to the public repository file. The peer review panel will be requested to examine and comment on the draft report in a timely manner.

J. After consideration of the peer review panel's submitted comments on the draft reports, the researcher shall prepare final reports and file them and all peer review panel comments with the director and in the public repository file. The peer review panel shall not be compelled to attend any hearing before the commission.

K. Upon receipt of the researcher's final reports, the director shall make recommendations to the commission to list, not list or delist the species based upon criteria listed in Subsection L of this section. The commission shall establish dates and locations for public hearings on the recommended actions and give notice of the public hearings in the same manner and to the same persons as notice was given of the

initiation of the investigation and, in addition, publish legal notice in a newspaper of general circulation in the area affected at least ninety days before the date set for the hearing. Public hearings shall be held at a place within any quadrant of the state affected by the recommended actions when the director determines that there is substantial public interest indicated in holding a hearing in that quadrant. All hearings on the recommended actions shall be held within six months of the date the director makes his recommendations. The notice shall:

- (1) include the date, time and location of all hearings on the matter;
- (2) include a statement of the recommended action;
- (3) include an indication of the location and availability of the public repository file;
- (4) indicate where and by what date written comments and testimony to be included in the hearing record may be filed;
- (5) indicate that views, data and comments pertaining to the final report may be presented orally at or in writing to the hearing;
- (6) specify that notice of intent to present technical and scientific testimony and a written copy of the testimony to be presented shall be submitted to the commission not less than thirty days prior to the initial hearing; and
- (7) specify that the public record shall remain open for comments for thirty days after the date of the final hearing.

L. The commission shall make its decisions and take action based upon relevant and reliable evidence to list, not list or delist a species at its next regularly scheduled meeting within no more than thirty days after the close of the hearing record. The commission shall:

- (1) list or maintain a species as endangered and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository file and based upon biological and ecological evidence received in the public hearings; and
- (2) list or maintain a species as threatened and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository file and biological and ecological evidence received in public hearings.

M. Whenever the director finds that there is an emergency posing a significant risk to the well-being of any species and that risk is likely to jeopardize the continued survival or recruitment of the species within the state, the director shall recommend to the

commission that the species should be listed as endangered. The commission shall act upon the director's recommendation immediately and shall either list or not list the species by regulation based upon the evidence supporting the recommendation if it finds that the continued survival of the species is in jeopardy. If the commission lists the species as endangered, it shall waive the requirements of Subsections A through L of this section. Whenever the commission adopts a regulation listing a species as endangered pursuant to this subsection, it shall give notice of the listing in the same manner and to the same persons as notice is given in the initiation of investigations and in addition shall publish legal notice in a newspaper of general circulation in the area affected. The emergency listing shall cease to have force and effect at the close of a three-year period following the date of the finding unless, during the three year period, the procedures for listing pursuant to Subsections B through L of this section or continuing to list pursuant to commission regulations for the biennial review are completed.

**History:** 1953 Comp., § 53-2-53, enacted by Laws 1974, ch. 83, § 4; 1995, ch. 145, § 4.

## ANNOTATIONS

**The 1995 amendment** rewrote the section heading which read "Investigation"; designated the existing provisions as Subsection A and rewrote the subsection and added Subsections B through M.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

### **17-2-40.1. Recovery plans; procedures.**

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both.

C. As the initial action in the development of a recovery plan, the director shall, within one year of listing, schedule a public information meeting in each of the quadrants of the state determined by the director to be affected by the development of a recovery plan. These meetings shall be held in a manner calculated to provide a reasonable opportunity for individuals and private and public entities to participate and express their views about the development of a recovery plan for one or more species and the attendant adverse social or economic impacts, if any, that may result from implementation of a recovery plan. At these meetings the director shall present background information about the basis of the listing, an explanation of the process to develop a recovery plan and the probable content in general terms, if known, of the recovery plan and if needed, the process to develop a social and economic mitigation plan.

D. Upon completion of the public information meeting or meetings on a recovery plan, the director shall consult and cooperate with other states or countries when appropriate and shall solicit interest from representatives of affected local governments, tribal governments, landowners, state and federal agencies and other interested individuals and organizations to serve on an advisory committee. He shall appoint to the advisory committee all of those who are willing to participate in the development of the recovery plan. When necessary, he may appoint from the membership of the advisory committee a working group reflecting the diversity of the advisory committee.

E. With the assistance of the advisory committee, the director shall develop a draft recovery plan to achieve the following objectives:

- (1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to the delisting of the species;
- (2) avoidance or mitigation of adverse social or economic impacts;
- (3) identification of social or economic benefits and opportunities; and
- (4) use of volunteer resources and existing economic recovery and assistance programs and funding available from public and private sources to implement the plan.

F. The director shall mail the draft recovery plan to federal and state agencies, local and tribal governments that are or may be affected by the recovery plan and individuals and organizations that have requested notification of department actions regarding threatened or endangered species.

G. The final recovery plan shall be presented to the commission for its consideration not later than two years from the date the species was listed. If the commission determines that the proposed plan has achieved the objectives set forth in Subsection E of this section, it shall approve the recovery plan or approve with conditions. After approval of the plan, the director shall seek cooperation with other states and countries, when appropriate, and landowners, state and federal agencies and local and tribal

governments for implementation of the recovery plan and when appropriate submit the recovery plan to the secretary of the interior for approval pursuant to the federal Endangered Species Act of 1973.

**History:** 1978 Comp., § 17-2-40.1, enacted by Laws 1995, ch. 145, § 5.

## **ANNOTATIONS**

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

**Endangered Species Act of 1973.** - The federal Endangered Species Act of 1973, referred to near the end of Subsection G, principally appears as 16 U.S.C. § 1531 et seq.

### **17-2-41. Endangered species.**

A. On the basis of investigations concerning wildlife, other available scientific and commercial data and after consultation with wildlife agencies in other states, appropriate federal agencies, local and tribal governments and other interested persons and organizations, the commission shall by regulation develop a list of those species of wildlife indigenous to the state that are determined to be threatened or endangered within the state, giving their common and scientific names by species and subspecies.

B. The director shall conduct a review of the state list of threatened or endangered species and shall present biennially to the commission his recommendations for appropriate action. The commission shall act on the director's biennial recommendations at its next regularly scheduled meeting. The commission shall adopt, no later than January 1, 1996, regulations providing procedures for commission actions on the director's recommendations to continue to list or to upgrade or downgrade a species.

C. Except as otherwise provided in the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978], it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife appearing on any of the following lists:

(1) the list of wildlife indigenous to the state determined to be endangered within the state as set forth by regulations of the commission; and

(2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by regulations of the commission; provided that any species of wildlife appearing on any of the lists set forth in this subsection, transported into the state from another state or from a point outside the territorial limits of the United States and which is destined for a point beyond the state, may be transported across the state without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state or otherwise in accordance with the laws of another state.

D. The provisions of Subsection C of this section shall not apply to a taking of wildlife by a Native American for religious purposes, unless it materially and negatively affects an endangered species or threatened species.

**History:** 1953 Comp., § 53-2-54, enacted by Laws 1974, ch. 83, § 5; 1995, ch. 145, § 6.

### ANNOTATIONS

**The 1995 amendment**, in Subsection A, inserted "local and tribal governments", deleted "not later than one year after the effective date of the Wildlife Conservation Act" preceding "the commission shall", deleted "and subspecies" following "species" and inserted "threatened or" preceding "endangered"; in Subsection B, inserted the language beginning "of threatened or" for "of endangered species biennially commencing within two years of the effective date of the Wildlife Conservation Act and may present to the commission recommendations for appropriate additions to or deletions from the list" in the first sentence and added the second and third sentences; deleted "or subspecies" following "species" in two places in Subsection C; added Subsection D; and made minor stylistic changes.

**Compiler's notes.** - Section 4 of the federal Endangered Species Act of 1973 is compiled as 16 U.S.C. § 1533.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 50.5.

16D C.J.S. Constitutional Law § 1416.

## **17-2-42. Management programs.**

A. The director shall establish such programs, including programs for research and the acquisition of land or aquatic habitat, as authorized and deemed necessary by the commission for the management of endangered species.

B. In carrying out programs authorized by the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978], the director may enter into agreements with federal agencies, political subdivisions of the state or with private persons for administration and management of any program established under this section or utilized for management of endangered species.

C. The director may authorize by permit the taking, possession, transportation, exportation or shipment of species or subspecies which have been deemed by the commission to be in need of management as provided in the Wildlife Conservation Act, so long as such use is for scientific, zoological or educational purposes, for propagation in captivity of such wildlife or to protect private property.

D. Endangered species may be removed, captured or destroyed where necessary to alleviate or prevent damage to property or to protect human health. Such removal, capture or destruction may be carried out only by prior authorization by permit from the director, unless otherwise provided by law; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life or private property. Regulations governing the removal, capture or destruction of endangered species shall be adopted by the commission within one year after the effective date of the Wildlife Conservation Act.

**History:** 1953 Comp., § 53-2-55, enacted by Laws 1974, ch. 83, § 6.

### **ANNOTATIONS**

**"Effective date of the Wildlife Conservation Act".** - The phrase "effective date of the Wildlife Conservation Act" means February 26, 1974, the effective date of Laws 1974, Chapter 83.

**County ordinances conflicting with Wildlife Conservation Act are invalid.** - County land use ordinances attempting to restrict traditional federal and state regulatory authority conflict with, and thus are preempted by, the state Wildlife Conservation Act. These ordinances cannot lawfully grant to the counties the option of taking over the state's designated role in planning for the recovery and management of threatened or endangered species. 1994 Op. Att'y Gen. No. 94-01.

## **17-2-43. Commission; power to regulate.**

The commission is authorized and directed to establish such regulations as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978].

**History:** 1953 Comp., § 53-2-56, enacted by Laws 1974, ch. 83, § 7.

### **17-2-43.1. Judicial review; administrative actions.**

A. Any person adversely affected by an order of the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person adversely affected by a regulation adopted by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. Upon appeal, the court of appeals shall set aside the regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the regulation being appealed may be granted:

- (1) by the commission; or
- (2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals.

**History:** Laws 1995, ch. 145, § 8; 1999, ch. 265, § 26.

### **ANNOTATIONS**

**The 1999 amendment**, effective July 1, 1999, added Subsection A; redesignated former Subsection A as Subsection B, and in that subsection, substituted "a regulation adopted by the commission" for "an administrative action taken by the commission" in

the first sentence, and substituted the language beginning "filing of the regulation" for "action" in the second sentence; and deleted former Subsection B, which read "For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act".

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

#### **17-2-44. Director; land or aquatic habitat interest acquisition.**

In addition to other powers and duties, the director:

A. may acquire land or aquatic habitat interests for the conservation, management, restoration, propagation and protection of threatened or endangered species; and

B. shall conduct studies to determine the status and requirements for survival of threatened or endangered species.

**History:** 1953 Comp., § 53-2-57, enacted by Laws 1974, ch. 83, § 8; 1995, ch. 145, § 7.

#### **ANNOTATIONS**

**The 1995 amendment** rewrote the section heading which read "Commission; land acquisition; state plan studies"; in Subsection A, substituted "land or aquatic habitat interests" for "lands, waters or interests therein" and inserted "threatened or"; deleted former Subsection B, relating to public hearings on a state plan for endangered species; and redesignated former Subsection C as Subsection B and inserted "threatened or" therein.

**Contingent effective date.** - Laws 1995, ch. 145, § 9 provides that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriates \$450,000 from the general fund to the conservation services division of the department of game

and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

### **17-2-45. Penalty.**

A. Any person who fails to procure any permit required by Subsection C or D of Section 17-2-42 NMSA 1978 or who fails to abide by the terms of such permit, is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) or be imprisoned for not more than ninety days, or both.

B. Any person who violates the provisions of Subsection C of Section 17-2-41 NMSA 1978, or any regulations issued pursuant to that section is guilty of a misdemeanor and upon conviction shall be fined one thousand dollars (\$1,000) or imprisoned for a term of not less than thirty days nor more than one year, or both.

**History:** 1953 Comp., § 53-2-58, enacted by Laws 1974, ch. 83, § 9.

### **17-2-46. Enforcement; powers of conservation officers.**

A. The director, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978] and with probable cause shall:

(1) seize any wildlife, including any wild mammal, bird, amphibian, reptile, fish, mollusk or crustacean held in violation of the Wildlife Conservation Act;

(2) arrest any person whom he knows to be guilty of a violation of the Wildlife Conservation Act; and

(3) open, enter and examine all camps, cars, vehicles, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of the Wildlife Conservation Act is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers under the direction of the director may establish checking stations at points along established roads as needed.

**History:** 1953 Comp., § 53-2-59, enacted by Laws 1974, ch. 83, § 10.

## **ANNOTATIONS**

**Citizenship requirement for wildlife law enforcement officers.** - By operation of state law, wildlife law enforcement officers can be required to hold New Mexico and United States citizenship. 1979 Op. Att'y Gen. No. 79-30.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 52 to 54.

36A C.J.S. Fish §§ 37, 42; 38 C.J.S. Game §§ 50, 61, 63, 64, 67.

## **ARTICLE 2A**

### **STATEWIDE SYSTEM FOR HUNTING ACTIVITIES**

#### **17-2A-1. Definitions.**

For the purposes of Chapter 17 NMSA 1978:

A. "hunt code" means a description used to identify and define the species, weapon type and time frame authorized for a specific hunt;

B. "outfitter" or "guide" means a person who advertises or holds himself out to the public for hire or is employed or accepts compensation for providing, within the unit where a hunt occurs, facilities, equipment or services for hunting activities; provided, however, that "outfitter" or "guide" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities; and

C. "unit" means a geographically bound area in the state that is used to manage game species.

**History:** Laws 1996, ch. 89, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1996, ch. 89, § 8 makes the act effective on July 1, 1996.

**Compiler's notes.** - Laws 1997, ch. 119, § 4B repeals Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

#### **17-2A-2. Statewide system for hunting activities.**

The state game commission shall develop a statewide system for hunting activities that increases participation by New Mexico residents and considers hunter safety, quality hunts, high demand areas, guides and outfitters, quotas and local and financial interests.

**History:** Laws 1996, ch. 89, § 4.

## **ANNOTATIONS**

**Effective dates.** - Laws 1996, ch. 89, § 8 makes the act effective on July 1, 1996.

**Compiler's notes.** - Laws 1997, ch. 119, § 4B repeals Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

### **17-2A-3. Hunting guides and outfitters.**

A. Effective April 1, 1997, it is unlawful to be a hunting guide or outfitter in New Mexico without being registered, except for a private landowner or his authorized agent who outfits or guides pursuant to a landowner permit issued by the department of game and fish for the landowner's property or for the landowner's shared private and public unit.

B. The state game commission shall adopt regulations by September 1, 1997 to govern the granting of non-interim registration, permits and certificates to hunting guides and outfitters and to regulate the operations and professional conduct of registered hunting guides and outfitters. Regulations shall be adopted in accordance with the following procedures and standards:

(1) the commission shall establish dates and locations for a public hearing and provide reasonable prior public notice of a hearing. A public hearing shall be held at a place within any quadrant of the state affected by the proposed regulation when the commission determines there is substantial public interest in holding a hearing in that quadrant;

(2) a hearing shall be held within six months of the date a proposed regulation is issued;

(3) notice of a hearing shall:

(a) include the date, time and location of the hearing;

(b) include a statement of the recommended action;

(c) include an indication of the location and availability of the public file on the regulation;

(d) indicate where and by what date written and oral comments and testimony may be received; and

(e) specify that the public record shall remain open for comments for thirty days after the date of the final hearing; and

(4) the commission shall make its decision and take action based upon relevant and reliable evidence.

C. No person shall be allowed to work as a registered hunting guide or outfitter in New Mexico:

(1) without being registered by the state game commission;

(2) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;

(3) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated; or

(4) if the person has been convicted of a felony.

D. The state game commission shall develop a point system for the suspension or revocation of a guide or outfitter registration. The point system shall be similar to the point system that governs individual hunting and fishing license privileges.

E. To be granted a registration to be a guide, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least eighteen years of age; and

(2) pass a written or oral examination approved by the department of game and fish at a date and time approved by the department.

F. A registered or interim registered guide shall work only under the supervision of a New Mexico registered or interim registered outfitter and in an area designated by the registered or interim registered outfitter.

G. The department of game and fish may provide a registration for a temporary emergency guide, provided the registration is limited to a maximum seven-day period and is granted only in emergency circumstances as determined by the department. The fee for a temporary emergency guide registration is ten dollars (\$10.00).

H. To be granted a registration to be an outfitter, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least twenty-one years of age;

(2) have operated as a New Mexico registered guide for at least three years or have been granted an interim outfitter's registration;

(3) not be a convicted felon or have a history of violation of federal or state game and fish laws or regulations or federal or state guide or outfitter licensing or registration laws or regulations; and

(4) pass a written or oral examination approved by the department of game and fish at a date and time determined by the department.

I. A registered outfitter shall:

(1) provide proof of commercial liability insurance of at least five hundred thousand dollars (\$500,000);

(2) responsibly supervise each registered guide working under his direction;

(3) provide a written contract for outfitting services, signed by the registered outfitter and identifying the outfitter's registration number, to each resident and nonresident who seeks to use the services of a registered outfitter;

(4) register with the taxation and revenue department and provide proof of that registration to the department of game and fish; and

(5) provide at least one registered guide or outfitter for every four or fewer resident or nonresident hunters who have contracted for an outfitter's guided services.

J. The department of game and fish shall provide to the taxation and revenue department a copy of each outfitter registration that is granted.

K. Except as provided in this subsection, no person shall be allowed to charge a processing or other fee to obtain for a resident or nonresident a license that is granted from a special drawing for a hunt on public lands pursuant to the provisions of Section 17-3-16 NMSA 1978, except that nothing in this subsection shall prohibit the department of game and fish from collecting an application fee. Persons involved in licensing services, booking agencies or license brokering that do not provide direct guide and outfitter services shall not be required to register with the department of game and fish and may charge a fee, other than the application fee for a license, for their services.

L. A New Mexico resident registered outfitter shall be a registered outfitter who is a resident as defined in Section 17-3-4 NMSA 1978. The state game commission shall adopt regulations that set forth additional requirements and that shall include at a minimum that a resident registered outfitter shall maintain a business address in New Mexico and, except as provided in Subsection Q of this section, derive at least fifty percent of his guiding or outfitting income from guiding or outfitting in New Mexico, as determined by gross receipts or corporate or individual income tax returns for the immediately preceding three years.



M. The department of game and fish shall maintain for public distribution a list of New Mexico registered outfitters.

N. The annual registration fee for a registered guide in New Mexico is fifty dollars (\$50.00) for a resident and one hundred dollars (\$100) for a nonresident.

O. The annual registration fee to be a registered outfitter in New Mexico is five hundred dollars (\$500) for either a resident or a nonresident.

P. Annual registration fees for guides and outfitters shall be deposited in the game protection fund.

Q. A resident interim registered or registered outfitter may apply for inactive status of his registration for any period in which he does not operate as an outfitter. The state game commission shall reactivate an outfitter registration at the request of the outfitter and upon proof that the outfitter complies with the provisions of this section and upon payment of the annual registration fee for the year the registration is being reinstated and payment of a reinstatement fee of not to exceed fifty dollars (\$50.00).

R. The state game commission shall adopt by September 1, 1996 interim regulations, consistent to the greatest extent practicable with the provisions of this section, to provide for the granting of interim registrations to guides and outfitters. The commission shall issue interim registrations prior to mailing applications for 1997 licensed hunts to persons who qualify for interim registration and submit applications to the department of game and fish.

S. A person adversely affected by an action, other than a regulation, taken pursuant to the provisions of this section, including the denial, suspension or revocation of a registration, license, permit or certificate, may seek review of the action pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

T. A person adversely affected by a regulation adopted by the state game commission pursuant to this section may appeal to the court of appeals. All appeals shall be made upon the record at the hearing and shall be taken to the court of appeals within thirty days following the date of the action. The date of the action shall be the date of the filing of the regulation by the commission, pursuant to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

U. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

V. After a hearing and a showing of good cause by the appellant, a stay of a regulation being appealed may be granted:

(1) by the state game commission; or

(2) by the court of appeals if the state game commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

W. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals.

**History:** Laws 1996, ch. 89, § 5; 1997, ch. 119, § 2; 2001, ch. 63, § 1.

### **ANNOTATIONS**

**The 1997 amendment**, effective April 9, 1997, deleted former Paragraphs E(3) and H(5) relating to being endorsed by a registered outfitter; rewrote Paragraphs I(3) and (5); inserted "resident or" preceding "nonresident" and added the clause beginning with "except" in Subsection K; deleted former Subsection L, relating to a point system to provide preferences to registered outfitters who are New Mexico residents; added Subsection Q; and redesignated Subsections M through Q as Subsections L through P.

**The 2001 amendment**, effective June 15, 2001, in Subsection K, inserted "Except as provided in this subsection" and inserted the last sentence, that begins "Persons involved in licensing services".

**Effective dates.** - Laws 1996, ch. 89, § 8 makes the act effective on July 1, 1996.

**Severability clauses.** - Laws 1996, ch. 89, § 7 provides that the provisions of this act are not severable.

**Compiler's notes.** - Laws 1997, ch. 119, § 4B repeals Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

Laws 1997, ch. 119, § 6 provides that in the event the act is not enacted with the emergency clause, its provisions shall be made retroactive in operation to April 1, 1997. Although the act was enacted with the emergency clause, it was not signed by the Governor until April 9, 1997.

## **ARTICLE 3 LICENSES AND PERMITS**

### **PART 1 GENERAL PROVISIONS**

### **17-3-1. Current license required.**

Each license issued under Chapter 17 NMSA 1978, runs from April 1 through March 31 of the following calendar year. No person shall shoot, hunt, kill, injure or take, in any manner, any game animal, game bird or game fish without paying for, and having in his possession, the proper license required by law for the year in which the shooting, hunting, fishing or taking is done. No nonresident shall shoot, hunt, kill or take, in any manner, any nongame animal or nongame bird without paying for, and having in his possession, any one of the nonresident hunting licenses listed in Section 17-3-13 NMSA 1978 required by law for the year in which the shooting, hunting or taking is done.

**History:** 1953 Comp., § 53-3-1, enacted by Laws 1964 (1st S.S.), ch. 17, § 1; 1967, ch. 4, § 1.

#### **ANNOTATIONS**

**Cross references.** - For what are game mammals, game birds and game fish, see 17-2-3 NMSA 1978.

For penalty for violation of fish and game laws, see 17-2-10 NMSA 1978.

For licenses for Indians and Indian reservations, see 17-2-28 NMSA 1978 and notes thereto.

For permits respecting endangered species, see 17-2-42 and 17-2-45 NMSA 1978.

For license and permit fees, see 17-3-13 NMSA 1978.

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 17, § 1, repealed former 53-3-1, 1953 Comp., relating to hunting and fishing licenses and shipping permits, and enacted a new 17-3-1 NMSA 1978.

**A state may enact game laws which discriminate against nonresidents** in the enjoyment of the privileges of hunting and fishing. 1964 Op. Att'y Gen. No. 64-91.

**State may require special season deer tag on Jicarilla reservation and Tierra Amarilla grant.** - The state game commission may lawfully require that one who hunts in the Jicarilla reservation and Tierra Amarilla grant obtain a \$2.00 special season deer tag. 1961-62 Op. Att'y Gen. No. 62-135.

**A New Mexico license is required of persons fishing in the Elephant Butte** reservoir, although a part of the United States reclamation service. This opinion was confirmed by the chief counsel of the United States reclamation service. 1917-18 Op. Att'y Gen. No. 68.

**Bear as game animal.** - A statute denominating bear as a game animal could not validate a previous unauthorized regulation of the game commission classifying bear as a game animal, especially as the statute did not purport to be a validating statute; but where a previous statute had specified the closed season for bear, it sufficiently showed the statutory intent to define bear as a game animal. *State ex rel. Sofeico v. Heffernan*, 41 N.M. 219, 67 P.2d 240 (1936). See 17-2-1, 17-2-3 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 45.

Power of game commission to open or close season, 34 A.L.R. 832.

Validity of discrimination against nonresidents, 61 A.L.R. 337, 112 A.L.R. 63.

Applicability of state fishing license laws or other public regulations to fishing in private lake or pond, 15 A.L.R.2d 754.

Rights of boating and fishing on inland lakes, 57 A.L.R.2d 569.

Right of public to use shore of inland navigable lakes between high and low water mark, 40 A.L.R.3d 776.

36A C.J.S. Fish § 36; 38 C.J.S. Game §§ 61, 63, 64, 67.

## **17-3-2. Classes of licenses.**

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "bison" entitles the licensee to hunt bison during the open season;

(15) "oryx" entitles the licensee to hunt oryx during the open season;

(16) "ibex" entitles the licensee to hunt ibex during the open season;

(17) "cougar" entitles the licensee to hunt cougar during the open season;

(18) "turkey" entitles the licensee to hunt turkey during the open season;

(19) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(20) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(21) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer;

(22) "gazelle" entitles the licensee to hunt gazelle during the open season; and

(23) "temporary small game" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license.

B. No hunting license entitles the licensee to hunt, kill or take game animals or birds within or upon any park or enclosure licensed or posted as provided by law or within or upon any privately owned enclosure without consent of the owner or within or upon any game refuge or game management area.

C. No fishing license entitles the licensee to fish for or take fish within or upon any park or enclosure licensed or posted as provided by law or within or upon any privately owned enclosure without consent of the owner or in or on any closed waters.

D. A junior-senior fishing license may be purchased by any resident who has reached his twelfth birthday but has not reached his fifteenth birthday or by any resident who has reached his sixty-fifth birthday. A junior-senior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A nonresident junior fishing license may be purchased by any nonresident who has reached his twelfth birthday but has not reached his fifteenth birthday. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. A senior general hunting license may be purchased by any resident who has reached his sixty-fifth birthday. A senior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

G. A handicapped fishing license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by any resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species.

H. A handicapped general hunting license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species.

I. A fishing license may be obtained at no cost by any resident who has reached his seventieth birthday.

**History:** 1953 Comp., § 53-3-1.1, enacted by Laws 1964 (1st S.S.), ch. 17, § 2; 1969, ch. 28, § 2; 1971, ch. 75, § 4; 1973, ch. 268, § 1; 1977, ch. 180, § 1; 1979, ch. 286, § 1; 1983, ch. 117, § 1; 1989, ch. 129, § 1; 1992, ch. 28, § 1; 1993, ch. 189, § 1; 1995, ch. 87, § 1; 1998, ch. 51, § 1.

## ANNOTATIONS

**Cross references.** - For power of state game commission to establish open and closed seasons, see 17-2-1 NMSA 1978.

For special nonresident bird licenses for regulated shooting preserves, see 17-3-39 NMSA 1978.

For hunting and fishing in licensed private parks or lakes, see 17-4-15 NMSA 1978.

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 17, § 2, repealed former 15-3-1.1, 1953 Comp., relating to special hunting licenses for military personnel, and enacted a new 17-3-2 NMSA 1978.

**The 1989 amendment**, effective April 1, 1989, added the second sentence of Subsection G.

**The 1992 amendment**, effective April 1, 1992, in Subsection A, deleted former Paragraphs (13), (15), and (25), relating to special season deer tag, retention, and class D trout stamp, respectively, and redesignated the remaining paragraphs accordingly; and made stylistic changes.

**The 1993 amendment**, effective April 1, 1994, in Subsection A, deleted "license" after "deer" in Paragraph (3), after "bear" in Paragraph (11), after "cougar" in Paragraph (17), and after "turkey" in Paragraph (18), substituted "valid nonresident" for "special five-day" in Paragraph (21), substituted "resident" for "valid one-day fishing license or a" and deleted "and" from the end, in Paragraph (22), added present Paragraph (23), and renumbered former Paragraph (23) as present Paragraph (24); in Subsection D, substituted "fifteenth" for "fourteenth" in the first sentence; and added present Subsection E, redesignating the remaining subsections accordingly.

**The 1995 amendment**, effective June 16, 1995, in Subsection A, deleted former Paragraphs (20) through (23), relating to class A, class B, class C and class D trout stamps, added present Paragraphs (20) and (21), and redesignated former Paragraph (24) as Paragraph (22); and added Subsection J.

**The 1998 amendment**, effective July 1, 1998, added Paragraph A(23); deleted Subsection F and redesignated the remaining subsections accordingly; and deleted the proviso at the end of Subsection G.

**This section applies to non-Indians on Indian lands.** 1973 Op. Att'y Gen. No. 73-18. See 17-2-28 NMSA 1978 and notes thereto.

**Applicability to Indians constitutional.** - This section is constitutional if, in application, Indian lands are brought into its scope via non-Indian action. 1973 Op. Att'y Gen. No. 73-18.

**License covering birds does not cover rabbits.** - Holders of bird (now small game) licenses cannot kill rabbits. 1935-36 Op. Att'y Gen. No. 121.

**License not required to fish private property.** - Where fish from private lakes or ponds are private property, a fishing license is not required. 1933-34 Op. Att'y Gen. No. 118.

### **17-3-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 117, § 6, repeals 17-3-3 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 17, § 3, relating to prohibited shipments and penalties therefor, effective April 1, 1983.

### **17-3-4. Residence.**

As used in Chapter 17 NMSA 1978:

A. a "resident" entitled to purchase resident hunting and fishing licenses is any person:

(1) who is a United States citizen and who, for a period of not less than ninety days immediately preceding the date of application for the license, has been domiciled in New Mexico and has not claimed residency elsewhere for any purpose;

(2) who is not a citizen of the United States but who is legally within the United States and has actually lived in this state for ninety days immediately preceding his license application;

(3) not otherwise entitled to claim residence, who is a student attending any educational institution in this state, has so attended and actually lived in this state for at least one full term immediately preceding his license application and presents with his application a certificate of such attendance from proper authorities of the educational institution;

(4) not otherwise entitled to claim residence, who is a member of the armed forces of the United States and permanently assigned to a military installation located within this state and presents with his license application a certificate of such assignment from his commanding officer or designated representative, or the spouse or dependent of such person, not otherwise entitled to claim residence, living within the same household and similarly certified by the person's commanding officer; or

(5) not otherwise entitled to claim residence, who is a member of the armed forces of the United States and officially stationed at a military reservation located partially in this state and partially in an adjacent state but only for a special license valid only for hunting and fishing in this state on those reservations; and

B. a "nonresident" who must purchase nonresident hunting and fishing licenses is any person not a resident, including any temporary resident who maintains his home outside of the state.



**History:** 1953 Comp., § 53-3-1.3, enacted by Laws 1964 (1st S.S.), ch. 17, § 4; 1967, ch. 22, § 1; 1971, ch. 17, § 1; 1971, ch. 170, § 1; 1979, ch. 340, § 6.

## ANNOTATIONS

**A state may enact game laws which discriminate against nonresidents** in the enjoyment of the privileges of hunting and fishing. 1964 Op. Att'y Gen. No. 64-91.

**A "resident" is one making his home in the state**, voting or meaning to vote here, for at least six months (now 90 days). 1923-24 Op. Att'y Gen. No. 69.

**No resident license without residence for required period.** - A person who is a bona fide resident of this state may not procure a resident hunting license prior to his having resided in this state for a period of six months (now 90 days). 1957-58 Op. Att'y Gen. No. 57-228.

**Owning property is not sufficient.** - A nonresident property-owner of the state is not entitled to a resident fishing or hunting license. 1919-20 Op. Att'y Gen. No. 15.

**Army service alone is not sufficient** to enable person to acquire bona fide resident in state for purpose of obtaining residence hunting or fishing license. 1931-32 Op. Att'y Gen. No. 108.

**Soldier without prior state residence is not entitled to resident license.** - Soldiers stationed outside of New Mexico and with no prior residence therein are not entitled to resident hunting or fishing license. 1935-36 Op. Att'y Gen. No. 88; 1931-32 Op. Att'y Gen. No. 108; 1925-26 Op. Att'y Gen. No. 27.

**Being stationed out of state does not end in-state residence.** - A soldier with prior bona fide New Mexico residence and stationed outside of the state may be deemed a resident for purpose of obtaining a hunting or fishing license. 1931-32 Op. Att'y Gen. No. 108.

**Military dependent may become resident.** - A dependent of a permanently assigned military person is qualified to purchase a resident hunting or fishing license after residing in New Mexico six months (now 90 days) prior to applying for same. 1957-58 Op. Att'y Gen. No. 58-116.

**Los Alamos residents** for six months (now 90 days) or more are not by reason of such residence entitled to resident licenses unless they had previously established a bona fide residence elsewhere in the state and have not abandoned such other place as their legal New Mexico residence. 1947-48 Op. Att'y Gen. No. 5175.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 35, 45.  
36A C.J.S. Fish § 36; 38 C.J.S. Game §§ 52, 53.

### **17-3-5. Application for hunting or fishing licenses; contents; filing.**

A. The director of the department of game and fish shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within the state. Except as provided in Subsection B of this section, each person, before receiving any fishing or hunting license, shall make application on a blank so provided. Among other matters that may be shown by the application shall be a statement showing the exact residence of the applicant. Except as provided in Subsection B of this section, the application shall be signed by the applicant. All applications for licenses shall be filed with and issued by license vendors appointed by the director. All fishing and hunting licenses and the applications therefor shall contain the place of residence of the person to whom any license may be issued.

B. License vendors, as authorized by the director of the department of game and fish, shall be allowed to take applications for hunting and fishing licenses or authorizations via telephone. The vendor shall fill out a license application and collect the same information as required for other applications. The vendor shall mail the license to the applicant, and the license must be in the possession of the hunter or angler unless otherwise provided in Chapter 17 NMSA 1978. All money collected through telephone sales shall be remitted to the director by the tenth day of the month following the sale. An individual receiving a license pursuant to this subsection is not required to sign an application prior to issuance of the license; provided, however, that such individual is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if he had signed an application for license.

C. Upon request, the applicant for a fishing or small game license shall receive an authorization number as assigned by the director of the department of game and fish through the vendor. The authorization number may be used in lieu of the actual license only by the individual who applies and meets the requirements for a license. The authorization number shall serve as a license for the purposes of Sections 17-3-1 and 17-3-17 NMSA 1978. It is a misdemeanor to hunt or fish with an invalid authorization number or a number issued to another person.

D. Each license vendor authorized to sell licenses via telephone may collect the actual cost, not to exceed five dollars (\$5.00), of shipping and handling the application and license issuance.

**History:** Laws 1923, ch. 129, § 1; C.S. 1929, § 57-218; 1941 Comp., § 43-302; Laws 1945, ch. 99, § 2; 1953 Comp., § 53-3-2; Laws 1973, ch. 63, § 1; 1995, ch. 99, § 1.

#### **ANNOTATIONS**

**Cross references.** - For power of state game commission to withhold license, see 17-1-14 NMSA 1978.

For blank forms and applications for licenses, see 17-3-7 NMSA 1978.

**The 1995 amendment**, effective June 16, 1995, designated the existing provision as Subsection A; added Subsections B through D; and, in Subsection A, inserted "of the department of game and fish" in the first sentence, added "except as provided in Subsection B of this section" at the beginning of the second and third sentences, and made minor stylistic changes.

**It would not be legal for any person to sign the name of another as an applicant** when applying for a hunting or fishing license in New Mexico. 1957-58 Op. Att'y Gen. No. 58-116.

**False certificate by witness is subject to prosecution.** - Witness who makes a false certificate concerning the residence of an applicant for a fishing or hunting license is subject to prosecution under 17-3-6 NMSA 1978 since signature by the witness corroborates the applicant's statement and is an essential part of the application. 1941-42 Op. Att'y Gen. No. 3973.

### **17-3-6. False statements; using license issued to another; hunting without license lawfully procured; altering licenses.**

It is a misdemeanor:

A. to certify or sign any false or fraudulent statement relative to the residence of any applicant for a hunting or fishing license or permit;

B. for any nonresident of New Mexico, for the purpose of securing a New Mexico hunting or fishing license, to make, or cause to be made, any false or fraudulent statements or representations to any person issuing hunting and fishing licenses in this state;

C. to use a hunting or fishing license issued to, or in the name of, any other person, or in the name of any fictitious person;

D. to hunt game or fish in New Mexico without a license lawfully procured; or

E. for any license vendor or any licensee to alter or predate or postdate any license, certificate or permit.

**History:** Laws 1923, ch. 129, § 2; C.S. 1929, § 57-219; 1941 Comp., § 43-303; Laws 1945, ch. 99, § 3; 1953 Comp., § 53-3-3; Laws 1963, ch. 213, § 3; 1979, ch. 340, § 7.

### **ANNOTATIONS**

**Cross references.** - As to penalties for acts described in this section, see 17-2-10 NMSA 1978.

**False certificate by witness is subject to prosecution.** - Witness who makes a false certificate concerning the residence of an applicant for a fishing or hunting license is subject to prosecution under this section since his signature corroborates the applicant's statement and is an essential part of the application. 1941-42 Op. Att'y Gen. No. 3273.

**Magistrate has jurisdiction of violations of this section.** - See 1953-54 Op. Att'y Gen. No. 5860.

**17-3-7. Blank forms; license issued only on application; false statement voids license; records; reports; accounting for fees collected.**

A. The director of the department of game and fish shall prescribe and procure the printing of all forms and blanks that may be required to carry out the intent of Chapter 17 NMSA 1978. All necessary blanks shall be furnished by the director to the several license collectors. No license shall be issued except as provided in Section 17-3-5 NMSA 1978. Any false statement in any application shall render the license issued void.

B. Each license collector shall keep a correct and complete record of such license issued by him, which record shall remain in his office and be open to inspection by the public at all times.

C. Each license collector may collect and retain a vendor fee for each license or permit issued; provided the fee shall be just and reasonable, as determined by regulation of the state game commission, and shall not exceed one dollar (\$1.00) for each license or permit issued; and provided further that no such fee shall be collected by the department of game and fish from the purchaser of a special license. "Special license" includes those licenses for the following species: antelope, elk, Barbary sheep, bighorn sheep, bison, oryx, ibex, gazelle and javelina.

D. Each license collector shall remit to the director of the department of game and fish the statutory fee of all licenses and permits sold by him on or before the tenth day of the month following and shall by the same time report the number and kind of licenses issued.

E. The director of the department of game and fish shall forthwith turn over all money so received to the state treasurer to be credited by him to the game protection fund.

**History:** Laws 1912, ch. 85, § 48; Code 1915, § 2471; C.S. 1929, § 57-256; Laws 1937, ch. 210, § 1; 1941 Comp., § 43-305; 1953 Comp., § 53-3-5; Laws 1959, ch. 64, § 1; 1973, ch. 140, § 1; 1977, ch. 180, § 2; 1978, ch. 105, § 1; 1992, ch. 29, § 3; 1995, ch. 99, § 2.

**ANNOTATIONS**

**Cross references.** - For preparation and contents of forms and filing of applications, see 17-3-5 NMSA 1978.

**The 1992 amendment**, effective April 1, 1992, inserted "of the department of game and fish", made a section reference substitution, and made stylistic changes in Subsection A; rewrote Subsection C; in Subsection D, substituted "Each license collector shall remit" for "He shall remit"; and, in Subsections D and E, inserted "of the department of game and fish".

**The 1995 amendment**, effective June 16, 1995, in Subsection A, substituted "the director of the department of game and fish shall" for "It is the duty of the director of the department of game and fish and he has the authority to" at the beginning of the first sentence and substituted "as provided in Section 17-3-5 NMSA 1978" for "on an application signed by the applicant" in the third sentence.

**It would not be legal for any person to sign the name of another as an applicant** when applying for a hunting or fishing license in New Mexico. 1957-58 Op. Att'y Gen. No. 58-116.

**There are no provisions for reimbursement of license fees** in any circumstances; therefore, persons who have purchased a second license illegally are not entitled to reimbursement for the second license. 1975 Op. Att'y Gen. No. 75-38.

### **17-3-8. Loss of application blanks by license collector; accounting.**

In the event that a license collector shall lose any of the application blanks for hunting or fishing licenses issued to him by the director of the department of game and fish, he shall immediately notify the director of the loss of the blanks and he shall inform the director of the number and the serial number of each of the application blanks lost.

**History:** 1953 Comp., § 53-3-5.1, enacted by Laws 1959, ch. 144, § 1.

### **17-3-9. Application blanks lost by license collector to be void.**

Upon the receipt of a notice from the license collector that an application blank has been lost, the director of the department of game and fish shall immediately declare the blank void. The director shall notify the various conservation officers throughout the state and such other persons as he shall deem necessary that the application blanks containing the serial numbers reported by the license collector are void.

**History:** 1953 Comp., § 53-3-5.2, enacted by Laws 1959, ch. 144, § 2.

### **17-3-10. Presumption of loss [sale]**

In any case where a license collector has notified the director of the department of game and fish of the loss of an application blank for hunting or fishing licenses, it shall be presumed that the blank has been sold.

**History:** 1953 Comp., § 53-3-5.3, enacted by Laws 1959, ch. 144, § 3.

### **17-3-11. Possession of license declared void is unlawful.**

Any person in possession of a hunting or fishing license containing the serial number which was reported by the collector as the application blank which was lost and which was declared void by the director of the department of game and fish, and the license was not validly issued to him, shall be guilty of a misdemeanor.

**History:** 1953 Comp., § 53-3-5.4, enacted by Laws 1959, ch. 144, § 4.

### **17-3-12. Accounting for licenses.**

When a license vendor is unable to account for hunting and fishing licenses issued to him, the state game commission shall determine the extent of liability of the vendor and the decision of the commission shall be final.

**History:** 1953 Comp., § 53-3-5.6, enacted by Laws 1959, ch. 144, § 6.

## **ANNOTATIONS**

**Highest value for which missing licenses could have been sold may be used.** - Since by 17-3-7 NMSA 1978 it is the duty of each license collector to account properly for the licenses sold by him, in the event a vendor is not able to accurately account for any missing licenses, the director is justified in assuming that they have been sold for the highest dollar value which could have been received for their sale, and until the license collector is able to prove the contrary to the director's satisfaction, he should be held responsible for that sum. 1953-54 Op. Att'y Gen. No. 6028 (issued prior to enactment of this section).

### **17-3-13. License fees.**

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by him, numbering each class separately. Upon satisfactory proof that any license or permit has been lost before its expiration, he may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

|  |          |
|--|----------|
| Resident, fishing  | \$ 17.50 |
| Resident, small game   | 12.00    |
| Resident, deer   | 23.00    |
| Resident, general hunting  | 25.00    |
| Resident, general hunting and fishing                            | 37.50    |
| Resident, junior-senior handicapped, general hunting and fishing | 20.00    |
| Resident, antelope   | 30.00    |
| Resident, elk cow  | 37.00    |
| Resident, elk bull or either sex                                 | 60.00    |
| Resident, bighorn sheep  | 90.00    |
| Resident, Barbary sheep  | 80.00    |
| Resident, bear   | 30.00    |
| Resident, turkey   | 15.00    |
| Resident, cougar   | 30.00    |
| Resident, bison  | 100.00   |
| Resident, oryx   | 100.00   |
| Resident, ibex   | 60.00    |
| Resident, gazelle  | 25.00    |
| Resident, javelina   | 40.00    |
| Resident, fur dealer   | 10.00    |
| Resident, furbearer  | 12.00    |
| Resident, junior furbearer                                       | 5.00     |

|  |          |
|--|----------|
| Nonresident, fishing                         | 39.00    |
| Nonresident, junior fishing                  | 18.50    |
| Nonresident, small game                      | 75.00    |
| Nonresident, deer                            | 180.00   |
| Nonresident, quality deer                    | 300.00   |
| Nonresident, bear                            | 150.00   |
| Nonresident, cougar                          | 200.00   |
| Nonresident, turkey                          | 75.00    |
| Nonresident, antelope                        | 186.00   |
| Nonresident, elk cow                         | 275.00   |
| Nonresident, elk bull or either sex          | 465.00   |
| Nonresident, quality elk                     | 750.00   |
| Nonresident, bighorn sheep                   | 3,000.00 |
| Nonresident, Barbary sheep                   | 300.00   |
| Nonresident, bison                           | 1,000.00 |
| Nonresident, oryx                            | 1,500.00 |
| Nonresident, ibex                            | 1,500.00 |
| Nonresident, gazelle                         | 3,000.00 |
| Nonresident, javelina                        | 140.00   |
| Nonresident, fur dealer                      | 100.00   |
| Nonresident, furbearer                       | 300.00   |
| Nonresident, nongame                         | 50.00    |
| Resident, junior-senior handicapped, fishing | 5.00     |
| Temporary fishing, one day                   |          |



|  |        |
|--|--------|
| .....  | 8.00   |
| Temporary fishing, five days                         |        |
| .....  | 16.00  |
| Resident, junior-senior handicapped, general hunting |        |
| .....  | 15.00  |
| Temporary small game, four days                      |        |
| .....  | 35.00. |

**History:** 1953 Comp., § 53-3-6, enacted by Laws 1964 (1st S.S.), ch. 17, § 5; 1965, ch. 32, § 1; 1966, ch. 17, § 1; 1967, ch. 2, § 1; 1969, ch. 28, § 3; 1971, ch. 75, § 5; 1973, ch. 268, § 2; 1977, ch. 180, § 3; 1979, ch. 286, § 2; 1980, ch. 17, § 1; 1983, ch. 117, § 2; 1992, ch. 28, § 2; 1993, ch. 189, § 2; 1995, ch. 87, § 2; 1996, ch. 87, § 1; 1998, ch. 51, § 2.

### ANNOTATIONS

**Cross references.** - For depositing money received in game protection fund, see 17-1-14, 17-3-7, 17-3-20 and 17-5-7 NMSA 1978.

For placing portion of certain license fees in game and fish bond retirement fund, see 17-1-22 NMSA 1978.

For fee for additional deer license fee, see 17-3-15 NMSA 1978.

For fee for special Boy Scout fishing license, see 17-3-19 and 17-3-20 NMSA 1978.

For license fee for taking and selling minnows and nongame fish for bait, see 17-3-27 NMSA 1978.

For license fee for special nonresident bird licenses for regulated shooting preserves, see 17-3-39 NMSA 1978.

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 17, § 5, repealed former 53-3-6, 1953 Comp., relating to license fees and prohibiting fishing without a license, and enacted a new 17-3-13.1 NMSA 1978.

**The 1992 amendment,** effective April 1, 1992, in Subsection A, substituted "collect a just and reasonable fee for it as determined by regulation of the state game commission" for "collect a fee of three dollars (\$3.00) for it" and deleted the former last sentence, which read "The director shall collect a nonrefundable fee of three dollars (\$3.00) from each applicant for a special season hunting license or permit"; in Subsection B, increased the fees for a number of the classes, substituted "fur bearer" for "trapper" in three instances, and deleted the former classes of bobcat pelt tag, special season deer tag, trout stamp or validation, class D, and retention; deleted former Subsection C, relating to annual report on the status of license fee revenues and use of the revenues; and added present Subsection C.

**The 1993 amendment**, effective April 1, 1994, in Subsection B, lowered the fee for a nonresident fishing license from \$40.00 to \$28.00, added a fee for a nonresident junior fishing license and a trout stamp or validation, class D, and raised the fee for a temporary one-day fishing license from \$5.00 to \$8.00, the fee for a temporary five-day fishing license from \$10.00 to \$16.00, and the fee for a trout stamp or validation, class B, from \$4.50 to \$12.00.

**The 1995 amendment**, effective June 16, 1995, in Subsection B, increased the fees for a number of the classes and made a number of additions and deletions; and deleted former Subsection C, relating to annual adjustment of fees for nonresident licenses.

**The 1996 amendment**, effective April 1, 1997, in Subsection B, changed the general hunting and fishing fee from \$23.00 to \$20.00; changed the resident elk cow fee from \$45.00 to \$37.00; changed the resident elk bull or either sex fee from \$75.00 to \$60.00; changed the nonresident bison fee from \$200.00 to \$1,000.00; and changed the resident junior-senior handicapped fishing fee from \$10.50 to \$5.00.

**The 1998 amendment**, effective July 1, 1998, added a fee for a temporary small game license at the end of the section.

**Compiler's notes.** - Laws 1995, ch. 87, § 3, effective June 16, 1995, repeals Laws 1992, ch. 28, § 3, which provided for the repeal of 17-3-13 NMSA 1978, effective July 1, 1995.

**1964 act was not retroactive.** - Laws 1964 (1st S.S.), ch. 17, which enacted or amended certain statutes dealing with hunting and fishing licenses, was not retroactive in operation, since it operated prospectively from May 25, 1964. 1964 Op. Att'y Gen. No. 64-91.

**Fee structure, although discriminatory, not offensive.** - The present fee structure in this section, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Increasing fees is not impermissibly discriminatory.** - Where an act of the legislature increases hunting or fishing license fees as of a certain date, any discrimination between persons on the basis of when they purchase a license is permissible, rational and unavoidable. 1964 Op. Att'y Gen. No. 64-91.

There is no discrimination in an act which increases hunting or fishing license fees as of a certain effective date except that which may result from an individual's own action or inaction. 1964 Op. Att'y Gen. No. 64-91.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 45.

### **17-3-13.1. Disabled veteran; license fee exemption; lifetime license.**

A. The director of the department of game and fish shall issue without a fee a general hunting and fishing license and class A trout stamp to any resident who was one hundred percent disabled as a result of having served in the armed forces of the United States, upon submission by the person of proof satisfactory to the commission that he was one hundred percent disabled as a result of having served in the armed forces of the United States.

B. Any license and stamp issued pursuant to the provisions of Subsection A of this section shall be issued only once, but shall be issued for the life of the licensee, provided the licensee is a resident of New Mexico and provided the licensee notifies the director of the department of game and fish promptly of any change of residence within or outside the state.

C. Any person holding a license and stamp under the provisions of this section shall be subject to all applicable hunting and fishing regulations, provisions and penalties of Chapter 17 NMSA 1978.

**History:** Laws 1981, ch. 344, § 1.

### **17-3-13.2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 118, § 2 repeals 17-3-13.2, as enacted by Laws 1985, ch. 118, § 1, relating to the fees and use of wild turkey validations, effective July 1, 1988. For provisions of former section, see 1986 Cumulative Supplement.

### **17-3-13.3. Big game depredation damage stamp required; disposition of receipts.**

A. Each license to hunt big game shall include a big game depredation damage stamp. The department of game and fish shall, by rule, set the fee for the stamp; provided that the fee shall not exceed five dollars (\$5.00) for each resident license or ten dollars (\$10.00) for each nonresident license.

B. No license to hunt big game shall be considered to be a proper and valid license unless it indicates, by a stamp, check off or other official mark, that the fee for the big game depredation damage stamp has been paid.

C. Revenues received by the department of game and fish from the sale of big game depredation damage stamps shall be deposited to the credit of the big game depredation damage fund.

**History:** Laws 2001, ch. 213, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2001, ch. 213, § 3 makes the act effective July 1, 2001.

#### **17-3-13.4. Big game depredation damage fund; creation; expenditure.**

A. The "big game depredation damage fund" is created in the state treasury. The fund consists of appropriations made to the fund, revenues received by the department of game and fish from the sale of big game depredation damage stamps and earnings from the investment of the fund. The fund shall be administered by the department and money in the fund is appropriated to the department to carry out the provisions of Subsection B of this section. Payments from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the director of the department or his authorized representative. Balances in the fund shall not revert to any other fund.

B. The department of game and fish shall, by rule, establish a program to correct damage to federal, state or private land caused by big game and to prevent such damage in the future. Pursuant to rules adopted by the department, expenditures from the big game depredation damage fund shall be made by the department to carry out the established program; provided that money in the fund shall not be expended for any administrative costs.

**History:** Laws 2001, ch. 213, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2001, ch. 213, § 3 makes the act effective July 1, 2001.

#### **17-3-14. Director authorized to issue license when agreement to hunt antelope on deeded or leased property is made.**

In any case where the department of game and fish enters into an agreement with the owner of deeded property or the lessee of property held under a grazing lease to obtain permission for the hunting of antelope on the property, the director of the department of game and fish is authorized to issue an antelope license free of charge to the owner or lessee of the property in consideration for the permission to hunt on the property.

**History:** 1953 Comp., § 53-3-6.1, enacted by Laws 1959, ch. 143, § 1; 1961, ch. 17, § 1; 1967, ch. 3, § 1.

#### **17-3-14.1. Landowner permits for elk.**

The director of the department of game and fish shall issue landowner permits for the lawful taking of elk in accordance with regulations of the state game commission.

**History:** 1978 Comp., § 17-3-14.1, enacted by Laws 1989, ch. 86, § 1.

### **17-3-14.2. Landowner permits; management of certain big game species.**

The director of the department of game and fish may issue landowner permits for the lawful taking of elk, antelope, oryx, and deer. The permits may be issued when, in the determination of the director, they are necessary to effectively reduce conflicts between humans and wildlife and provide sport-hunting opportunities in accordance with regulations of the state game commission.

**History:** Laws 1998, ch. 12, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 1998, ch. 12, § 2 makes the act effective on July 1, 1998.

### **17-3-15. Additional deer license.**

A. It is a misdemeanor for any person to procure or use more than one license to hunt big game in one year, except as provided in this section, or to use any tag after it has been used once.

B. For the purpose of effectuating better game management and control, the state game commission may by regulation authorize the sale of not more than one additional deer license each year to any person holding a license which entitled him to hunt deer during that year. A fee of not more than five dollars (\$5.00) for residents and not more than fifty dollars (\$50.00) for nonresidents shall be collected for each additional deer license.

C. It is a misdemeanor for any person to take or attempt to take a deer with an additional deer license unless he has the additional deer license and the other license which entitled him to hunt deer for that year in his possession. Possession of an additional deer license without the other license which entitled him to hunt deer for that year is prima facie evidence of violation of this section.

**History:** 1953 Comp., § 53-3-6.3, enacted by Laws 1964 (1st S.S.), ch. 17, § 6; 1983, ch. 117, § 3.

### **17-3-16. Funds; special drawings for licenses.**

A. The director of the department of game and fish may provide special envelopes and application blanks when a special drawing is to be held to determine the persons to

receive licenses. Money required to be submitted with these applications, if enclosed in the special envelopes, need not be deposited with the state treasurer but may be held by the director until the successful applicants are determined. At that time, the fees of the successful applicants shall be deposited with the state treasurer and the fees submitted by the unsuccessful applicants shall be returned to them.

B. Beginning with the licenses issued from a special drawing for a hunt code on public lands that commences on or after April 1, 1997:

(1) twenty-two percent of the licenses shall be issued to nonresidents divided as follows:

(a) twelve percent of the licenses to be drawn by nonresidents who will be guided by a New Mexico outfitter or guide; and

(b) ten percent of the licenses to be drawn by nonresidents who are not required to be guided by a New Mexico outfitter or guide; and

(2) seventy-eight percent of the licenses shall be issued to residents of New Mexico.

C. If the number of nonresidents or residents who apply for licenses pursuant to the provisions of Paragraphs (1) and (2) of Subsection B of this section does not constitute the allocated percentages for either category of nonresidents or residents, then the additional licenses available shall be granted to the other category of nonresidents or residents.

D. If the determination of the percentages in Subsection B of this section yields a fraction of:

(1) five-tenths or greater, the number of licenses to be issued shall be rounded up to the next whole number; and

(2) less than five-tenths, the number of licenses shall be rounded down to the next whole number.

E. The fee for a nonresident license for a special drawing in a high-demand hunt covered in Subsection B of this section shall be assessed at the same rate as a license for nonresident quality elk or quality deer. As used in this subsection, "high-demand hunt" means:

(1) a hunt where the total number of nonresident applicants for a hunt code in each unit exceeds twenty-two percent of the total applicants and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or

(2) an additional hunt code designated by the department of game and fish as a quality hunt.

**History:** 1953 Comp., § 53-3-7, enacted by Laws 1964 (1st S.S.), ch. 17, § 7; 1996, ch. 89, § 1; 1997, ch. 119, § 3.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 17, § 7, repealed former 53-3-7, 1953 Comp., relating to nonresident temporary fishing licenses, and enacted a new 17-3-16 NMSA 1978. The attorney general had ruled that Laws 1949, ch. 13, amending 17-3-13 NMSA 1978, had repealed by implication former 53-3-7, 1953 Comp. See 1949-50 Op. Att'y Gen. No. 5200.

**The 1996 amendment,** effective July 1, 1996, designated the existing language as Subsection A; in Subsection A, inserted "of the department of game and fish" and substituted "when a special drawing" for "where a special drawing" in the first sentence and inserted "shall be" in the last sentence; and added Subsections B through E.

**The 1997 amendment,** effective April 9, 1997, rewrote Paragraph B(1); deleted former Paragraph B(2) providing for 3% of licenses issued to applications listing residents and nonresidents; redesignated Paragraph B(3) as B(2) and substituted "seventy-eight" for "eighty"; rewrote Subsection C; substituted "the percentages in" for "seventeen percent or three percent in Paragraphs (1) and (2)" in Subsection D; and substituted the phrase beginning with "and where" for "based on data for the two immediately preceding years; or" following "applicants" in Paragraph E(1); and inserted "of game and fish" following "department" in Paragraph E(2).

**Severability clauses.** - Laws 1997, ch. 119, § 5 provides for the severability of the act if any part or application of the act or Laws 1996, ch. 89, §§ 1 and 3 through 5 is held invalid.

**Repeals.** - Laws 1997, ch. 119, § 4 repeals 17-3-16 NMSA 1978, as enacted by Laws 1996, ch. 89, § 2, effective April 9, 1997. Laws 1996, ch. 89, § 2 provided for the repeal and reenactment of this section, and was to become effective on June 30, 1999. For provisions of that section, see 1996 Supplement.

**Compiler's notes.** - Laws 1997, ch. 119, § 6 provides that in the event the act is not enacted with the emergency clause, its provisions shall be made retroactive in operation to April 1, 1997. Although the act was enacted with the emergency clause, it was not signed by the Governor until April 9, 1997.

### **17-3-16.1. Bighorn sheep enhancement permits; issuance; use.**

A. The state game commission shall direct the department of game and fish to authorize not more than two of the permits available for issuance in the license year for the taking of two bighorn rams for the purpose of raising funds for programs and projects to benefit bighorn sheep.

B. The state game commission shall prescribe by regulation the form, design and manner of issuance of the bighorn sheep enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the bighorn sheep enhancement permits shall be credited to the game protection fund to be used exclusively for bighorn sheep preservation, restoration and management.

**History:** Laws 1989, ch. 384, § 1; 1999, ch. 81, § 1.

### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, substituted "two" for "one" in two places in Subsection A; and, in Subsection B, substituted "one" for "such" in the next-to-last sentence, added the last sentence, and made minor stylistic changes.

### **17-3-16.2. Elk enhancement permit; issuance; use.**

A. The state game commission shall direct the department of game and fish to authorize two elk enhancement permits each license year for the taking of two elk bulls to raise funds for programs and projects to better manage elk.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the two elk enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the elk enhancement permits shall be credited to the game protection fund to be used exclusively for elk restoration and management.

**History:** Laws 1999, ch. 69, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 69, § 2, makes the act effective on July 1, 1999.

### **17-3-17. Fishing without license; exceptions.**



A. It is a misdemeanor for any person, except children who have not reached their twelfth birthday, to take or attempt to take any game fish from any public stream or water in this state without having on his person a proper fishing license as provided by law. The presence of any person, except children who have not reached their twelfth birthday, along any public stream or water in this state with fishing rod, hook or line, without having on his person a proper fishing license, is prima facie evidence of the violation of this section. The director of the department of game and fish or any conservation officer may require any person along any public stream or water in this state with fishing rod, hook or line to exhibit his license.

B. The director, with the approval of the state game commission, may designate no more than two nonconsecutive Saturdays in each year as free fishing days. During the free fishing days, residents and nonresidents may exercise the privileges of holders of proper fishing licenses without having proper fishing licenses and without payment of any license fees, subject to all limitations, restrictions, conditions, laws, rules and regulations applicable to holders of proper fishing licenses.

**History:** 1953 Comp., § 53-3-9, enacted by Laws 1964 (1st S.S.), ch. 17, § 8; 1973, ch. 268, § 3; 1979, ch. 340, § 8; 1991, ch. 96, § 1.

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1964 (1st S.S.), ch. 17, § 8, repealed former 53-3-9, 1953 Comp., relating to administration of provisions for nonresident temporary fishing licenses, and enacted a new 17-3-16 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, substituted "Exceptions" for "Exception" in the catchline; redesignated the formerly undesignated provision as Subsection A and inserted "of the department of game and fish" following "director" in the final sentence thereof and added Subsection B.

**This section applies to non-Indians on Indian lands.** 1973 Op. Att'y Gen. No. 73-18.

**Application is constitutional.** - This section is constitutional if, in application, Indian lands are brought into its scope via non-Indian action. 1973 Op. Att'y Gen. No. 73-18.

**Requirement of possession of license is mandatory.** - Neither the state game commission, the state game warden (now director) nor any other person may waive the provision that persons over 14 (now 11) years of age must have fishing license in their possession when fishing since the statutory requirement is mandatory. 1947-48 Op. Att'y Gen. No. 5017.

**17-3-18. Director authorized to issue fishing permit without license to certain handicapped persons.**

The director of the department of game and fish is authorized to issue a fishing permit without a license to any group of mentally or physically handicapped persons who participate in a field trip of less than one week's duration under the supervision provided by a special institution or school for handicapped persons.

**History:** 1953 Comp., § 53-3-9.1, enacted by Laws 1977, ch. 180, § 4.

### **17-3-19. Special license; minors fishing on scout property.**

Every citizen of the United States who is a resident or nonresident of the state of New Mexico and of the ages of fourteen, fifteen, sixteen or seventeen years shall, upon the payment of one dollar fifty cents (\$1.50), be issued a special temporary license to fish for ten days during the proper open season in any waters or streams located on the property owned and operated by the Boy Scouts of America in Colfax county, New Mexico. Such temporary license shall not authorize fishing in any other waters of this state.

**History:** 1941 Comp., § 43-309a, enacted by Laws 1949, ch. 149, § 1; 1953 Comp., § 53-3-10; Laws 1983, ch. 117, § 4.

### **17-3-20. [Disposition of fees collected under 17-3-19.]**

Of the one dollar and ten cents (\$1.10) so collected for said temporary license, one dollar (\$1.00) thereof shall be paid to the state game and fish department to be credited to the game protection fund and ten cents (10¢) thereof shall be paid to the vendor of said license.

**History:** 1941 Comp., § 43-309b, enacted by Laws 1949, ch. 149, § 2; 1953 Comp., § 53-3-11.

### **17-3-21. [Season and bag limits applicable to minors holding special license.]**

All fishing under the privileges granted to the holders of such special licenses shall be in accordance with the seasons and bag limits and other regulations established by the state game commission.

**History:** 1941 Comp., § 43-309c, enacted by Laws 1949, ch. 149, § 3; 1953 Comp., § 53-3-12.

### **17-3-22. [Administration of 17-3-19 to 17-3-22.]**

The state game and fish department is hereby charged with the proper administration of this act [17-3-19 to 17-3-22 NMSA 1978].

**History:** 1941 Comp., § 43-309d, enacted by Laws 1949, ch. 149, § 4; 1953 Comp., § 53-3-13.

### **17-3-23. Fishing on lands of New Mexico boys' school near Springer authorized for resident children without a license.**

It is lawful for any child who has been committed under the Children's Code [32A-1-1 NMSA 1978] to and is resident at the New Mexico boys' school near Springer, New Mexico to fish without a license in waters located on the property of the school.

**History:** 1941 Comp., § 43-309e, enacted by Laws 1951, ch. 60, § 1; 1953 Comp., § 53-3-14; Laws 1972, ch. 97, § 69.

### **17-3-24. [Supervision of fishing at boys' school.]'**

Provided however, that such fishing by said wards [resident children] as provided by Section 1 [17-3-23 NMSA 1978] of this act, shall be done under the supervision of the officials of said New Mexico industrial school [boys' school], and in conformity with seasons and bag limits established by the state game commission.

**History:** 1941 Comp., § 43-309f, enacted by Laws 1951, ch. 60, § 2; 1953 Comp., § 53-3-15.

## **ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1972, ch. 97, § 69, amending 17-3-23 NMSA 1978, "resident children" and "boys' school" have been inserted in brackets. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-3-25. Patients at Carrie Tingley crippled children's hospital; fishing on hospital lands by patients; supervision.**

Any person between the age of fourteen and the age of majority, who is a patient in the Carrie Tingley crippled children's hospital, may fish without a license in waters located on the property of the Carrie Tingley crippled children's hospital at Truth or Consequences. Fishing shall be done only under the supervision of the officials of the Carrie Tingley crippled children's hospital, and in conformity with seasons and bag limits established by the state game commission.

**History:** 1953 Comp., § 53-3-15.1, enacted by Laws 1967, ch. 26, § 1; 1973, ch. 138, § 22.

### **17-3-26. Taking minnows and nongame fish to sell as bait; license required; exception.**

It is unlawful for any person, except children under the age of twelve years, to take from the streams or public waters of this state minnows and nongame fish for the purpose of sale to fishermen or others for bait without having first procured from the state game commission a license therefor as provided in Sections 17-3-26 through 17-3-28 NMSA 1978.

**History:** Laws 1939, ch. 27, § 1; 1941 Comp., § 43-313; 1953 Comp., § 53-3-19; Laws 1955, ch. 60, § 1; 1979, ch. 340, § 9.

## ANNOTATIONS

**License and bond are required of sellers or takers of bait fish.** - This section would seem to point to the conclusion that only those who take minnows and nongame fish from public waters are required to be licensed. However, the first sentence of 17-3-27 NMSA 1978 is phrased in the disjunctive, and the application of that statute is to those engaged in the business of selling minnows and nongame fish or to those who take the minnows and nongame fish from the streams of the state. Thus, not only those who take minnows from the streams are to be licensed and bonded, but also those who otherwise engage in the business of selling them irrespective of where they were originally secured. And if one taking minnows or other nongame fish from private waters sells them, it would appear that he is engaging in a business for which a license and bond are required. 1957-58 Op. Att'y Gen. No. 57-150.

**Including those employed on commission basis.** - Whereas this section and 17-3-27 NMSA 1978 do not apply to persons hired on salary basis for nongame fishing on behalf of a licensee, persons employed by a licensee on a "split the profit" or commission basis are required to be licensed. 1947-48 Op. Att'y Gen. No. 5119.

### **17-3-27. Bait license; bond; fee; issuance.**

Any person desiring to procure a license for the purpose of engaging in the business of selling minnows and nongame fish for bait or taking minnows and nongame fish from the streams of this state for the purpose of sale to others shall apply to the state game commission for a license. The application shall be upon forms provided by the commission and shall set forth the public streams or waters out of which the applicant intends to take the minnows and nongame fish and the place at which they are to be sold. The application shall be accompanied by a just and reasonable fee as determined by regulation of the state game commission. Upon receipt of the application, it shall be the duty of the state game commission or, when it is not in session, the director of the department of game and fish to pass upon the application and to issue a license authorizing the taking and the manner of taking of the minnows and nongame fish by the applicant from those waters in the state as in the opinion of the state game commission or director will not be detrimental to the public or injurious to protected fish. The license when so issued shall specify the manner of taking and the waters from which the applicant is permitted to take minnows and nongame fish for sale for bait.

**History:** Laws 1939, ch. 27, § 2; 1941 Comp., § 43-314; 1953 Comp., § 53-3-20; Laws 1955, ch. 55, § 1; 1992, ch. 29, § 4.

## ANNOTATIONS

**The 1992 amendment**, effective April 1, 1992, added the present section catchline; in the text, substituted the present third sentence for the former third and fourth sentences, relating to a fee of \$20 and a bond of \$1,000, in the present fourth sentence, deleted "and bond" following "the application" and inserted "of the department of game and fish"; and made stylistic changes.

**This license fee is a regulatory measure** rather than a revenue gathering device. 1965 Op. Att'y Gen. No. 65-18.

**County or municipal licenses are not precluded.** - The licensing of bait sellers, under this section, is not a preemption of the field so as to preclude licensing by the county or a municipality of the same business enterprise. 1959-60 Op. Att'y Gen. No. 59-32.

### **17-3-28. [Exceptions from 17-3-26, 17-3-27; taking bait for own use; persons under 15; unlawful to place nongame fish in certain waters.]**

Nothing in this act [17-3-26 to 17-3-28 NMSA 1978] shall be construed to prevent licensed fishermen from taking minnows and other nongame fish for his [their] own use for bait; or to any minor under fifteen (15) years of age taking minnows not for resale; provided, however, that it shall be unlawful for licensed fishermen or any other person using nongame fish for bait to place any of such nongame fish which are not used for bait in any waters stocked or reserved for game fish by the state game commission of the state of New Mexico.

**History:** Laws 1939, ch. 27, § 3; 1941 Comp., § 43-315; 1953 Comp., § 53-3-21.

### **17-3-29. Permit to take game, birds or fish as specimens or for scientific or propagating purposes; eligibility; issuance; contents; nonassignable; sale for food purposes prohibited.**

The state director may issue permits to any person to take, capture, kill, transport within or out of the state any game, birds or fish mentioned in this chapter at any time when satisfied that such person desires the same exclusively as specimens or for scientific or propagating purposes. Such permit shall be in writing and shall state the kind and number to be taken and the manner of taking, the name of the person to whom issued, the name of the place to which the same is to be transported and the name of the persons shipping such game, birds or fish, and shall be signed by him. Such permit shall not be transferable nor shall it be lawful to sell or barter any of the animals, birds or fish taken or exported under such permit for food purposes, and the holder of such

permit shall be liable to the penalties provided in this chapter if he violates any of its provisions.

**History:** Laws 1912, ch. 85, § 42; Code 1915, § 2465; C.S. 1929, § 57-250; 1941 Comp., § 43-317; 1953 Comp., § 53-3-23; Laws 1957, ch. 134, § 1.

## ANNOTATIONS

**Compiler's notes.** - The words "this chapter" were substituted by the 1915 Code compilers for the words "this act" and may refer to Chapter 47, 1915 Code (composed of Laws 1912, ch. 85). For the disposition of Chapter 47, 1915 Code, in NMSA 1978, see the note to 17-2-11 NMSA 1978. However, the words "this chapter" were also used in Laws 1957, ch. 134, § 1, amending this section, and may therefore refer to Chapter 53, 1953 Comp., the presently effective provisions of which are compiled in this chapter of NMSA 1978, together with subsequently enacted provisions.

**State permit not required by federal authorities to kill deer in national park for study.** - The secretary of interior and his subordinates have authority to kill deer within the boundaries of a national park for an ecology study to determine deer range conditions within that park without obtaining state permits. *New Mexico State Game Comm'n v. Udall*, 410 F.2d 1197 (10th Cir.), cert. denied, 396 U.S. 961, 90 S. Ct. 429, 24 L. Ed. 2d 426 (1969).

**This section relates to propagation for own use.** - Any person breeding game for sale is required to have a permit under 17-4-8 NMSA 1978. A person desiring to propagate birds only for his own use without barter, sale or exchange may secure a permit under the provisions of this section. 1955-56 Op. Att'y Gen. No. 6176.

### **17-3-30. [Sending game animals, birds and fish to officers of other states.]**

The state warden [director of the department of game and fish] may, upon application from the game and fish warden or corresponding officer of any other state, procure and transmit to such officer alive specimens of the game animals, birds and fish of this state to be used for scientific or propagating purposes.

**History:** Laws 1912, ch. 85, § 43; Code 1915, § 2466; C.S. 1929, § 57-251; 1941 Comp., § 43-318; 1953 Comp., § 53-3-24.

## ANNOTATIONS

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state warden, "director of the department of game and fish" was inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-3-31. [Permit to capture or destroy protected game damaging crops or property; beavers.]**

The state game and fish warden [director of the department of game and fish] may grant permits to owners or lessees of land and for the capture or destruction on their lands of any protected game doing damage to their cultivated crops or property; provided, that on said permit or permits so issued as aforesaid, the state game and fish warden shall fix the numerical limit of any protected game so to be captured or destroyed and shall also therein fix the time limit within which any such protected game shall be so captured.

The state game and fish warden shall also grant permits, preferably to owners or lessees of land, for the capture of such beaver as interfere with the operation of any lawful canal, ditch or dam, or cause or threaten the destruction of private property and for the capture of beaver to be transferred from one stream to another; provided, however, that all skins of beaver taken under the provisions of this section shall be turned in to the state game and fish warden, to be by him sold and one-half of the proceeds therefor to be by said state game and fish warden conveyed into the game protection fund and the other one-half of the proceeds to be by said state game and fish warden turned over to the holder of said permit.

**History:** Code 1915, ch. 47, § 84, added by Laws 1919, ch. 133, § 9; C.S. 1929, § 57-326; 1941 Comp., § 43-319; 1953 Comp., § 53-3-25.

#### **ANNOTATIONS**

**Cross references.** - For application of this section to beaver, see 17-5-2 NMSA 1978.

For permits to take fur-bearing animals doing damage, see 17-5-3 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state game warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**A blanket permit may be granted** to landowners and lessees of nonurban lands to allow them to kill cottontail rabbits on their own land where the rabbits are damaging cultivated crops or property. 1935-36 Op. Att'y Gen. No. 120.

**Permit may issue although property damaged is privately owned.** - The state game warden (director of the department of game and fish) may issue permits to kill elk or any other protected animal when they do damage to farms, even though privately owned. 1919-20 Op. Att'y Gen. No. 82.

### **17-3-32. Importing game animals; permits.**

In order to protect game animals, birds and fish against importation of undesirable species and introduction of infectious or contagious diseases, it is a misdemeanor to import any live animals, birds or fish into this state, except domesticated animals or domesticated fowl or fish from government hatcheries, without first obtaining a permit from the department of game and fish.

**History:** Laws 1927, ch. 37, § 1; C.S. 1929, § 57-501; 1941 Comp., § 43-320; 1953 Comp., § 53-3-26; Laws 1963, ch. 213, § 4.

## ANNOTATIONS

**Fertile eggs come within the classification of live birds.** 1955-56 Op. Att'y Gen. No. 6154.

**Burden is on importer to prove game birds were domesticated.** - This section requires the person importing any live animals, birds or fish into this state to obtain a permit from the director. It exempts domesticated animals or domesticated fowl, and the burden of proving that any such birds, if within the birds declared to be game birds, were domesticated would fall upon the person desiring to import them without a permit. 1955-56 Op. Att'y Gen. No. 6154.

### **17-3-32.1. Exceptions from certain permits.**

The provisions of Sections 17-2-14 and 17-3-32 NMSA 1978 shall not apply to any raptor belonging to and used by a nonresident under a valid falconer's license or permit from another state, providing that the importation into and possession within New Mexico is only for purposes of transit or to hunt mammals or birds during legal falconry or nongame seasons; except that any nonresident who uses a raptor to hunt any mammal or bird in New Mexico shall otherwise abide by regulations established with reference to hunting by nonresident falconers in the state.

**History:** Laws 1979, ch. 109, § 1.

### **17-3-33. Presumption from possession of game or fish without license; showing license to officer.**

The possession of game or fish at any time unaccompanied by a proper and valid license, game tag, certificate or permit or invoice, as provided in Chapter 17 NMSA 1978, shall be prima facie evidence that such game or fish was unlawfully taken and is unlawfully held in possession, and it shall be the duty of every person having possession or control of game or fish to produce the proper license, game tag, certificate, permit or invoice when one is required by Chapter 17 NMSA 1978 on demand of any officer, and to permit the same to be copied by such officer. Violation of any provision of this section is a misdemeanor and is punishable as provided by Section 17-2-10 NMSA 1978.



**History:** Laws 1912, ch. 85, § 14; Code 1915, § 2437; C.S. 1929, § 57-222; 1941 Comp., § 43-321; 1953 Comp., § 53-3-27; 1979, ch. 340, § 10.

## ANNOTATIONS

**Cross references.** - For invoice upon sale from licensed lake or park, see 17-4-16 to 17-4-20 NMSA 1978.

### **17-3-34. Revocation of license, certificate or permit for violation of law; notice and hearing; judicial review.**

A. If the holder of any license, certificate or permit persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978 or of any regulations referred to in Section 17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and after the accused is afforded an opportunity to appear and show cause against the charges.

B. At the hearing, the state game commission shall cause a record of the hearing to be made and shall allow the person charged to examine witnesses testifying at the hearing. Any person whose license, certificate or permit has been revoked by the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1912, ch. 85, § 35; Code 1915, § 2458; C.S. 1929, § 57-244; 1941 Comp., § 43-322; 1953 Comp., § 53-3-28; Laws 1977, ch. 290, § 4; 1998, ch. 55, § 26; 1999, ch. 265, § 27.

## ANNOTATIONS

**Cross references.** - For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1998 amendment,** effective September 1, 1998, in Subsection A, deleted "shall" following "permit", substituted "violates" for "violate" and "countenances" for "countenance", inserted "after the accused is afforded" and deleted "afforded" following "opportunity"; and rewrote Subsection B.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

**Compiler's notes.** - For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

## **PART 2**

# **REGULATED SHOOTING PRESERVE ACT**

### **17-3-35. Short title.**

This act [17-3-35 to 17-3-42 NMSA 1978] may be cited as the Regulated Shooting Preserve Act.

**History:** 1953 Comp., § 53-3-29, enacted by Laws 1957, ch. 194, § 1.

#### **ANNOTATIONS**

**Cross references.** - For licensed private parks or lakes, see 17-4-8 to 17-4-28 NMSA 1978.

### **17-3-36. Regulated shooting preserves; fees.**

The state game commission may issue licenses authorizing the establishment and operation of regulated propagated game bird shooting preserves on private lands when in the judgment of the commission such areas will not conflict with any reasonable prior interest. The commission shall govern and prescribe by regulation the following:

- A. the minimum and maximum size of the areas, including the type of fences and signs;
- B. the method of hunting;
- C. the open and closed seasons, which need not conform to the regular hunting seasons;
- D. the releasing, possession and use of legally propagated pen-raised game birds on the preserves; and
- E. the fee for the licenses, which shall be just and reasonable.

**History:** 1953 Comp., § 53-3-30, enacted by Laws 1957, ch. 194, § 2; 1992, ch. 29, § 5.

#### **ANNOTATIONS**

**The 1992 amendment**, effective April 1, 1992, deleted the former second sentence, which read "The fee for such permit shall be twenty-five dollars (\$25.00) per license year"; in Subsection D, substituted "game birds on the preserves" for "game birds thereon"; and added Subsection E and made related stylistic changes.

### **17-3-37. Definition.**

"Game bird," as used in the Regulated Shooting Preserve Act [17-3-35 to 17-3-42 NMSA 1978], means pheasant, quail, chukar and mallards.

**History:** 1953 Comp., § 53-3-31, enacted by Laws 1957, ch. 194, § 3; 1961, ch. 33, § 1; 1967, ch. 5, § 1.

### **17-3-38. Tags.**

All game birds taken from preserves shall be tagged, with tags to be furnished by the commission at a reasonable fee, before being transported.

**History:** 1953 Comp., § 53-3-32, enacted by Laws 1957, ch. 194, § 4.

### **17-3-39. Special nonresident licenses.**

The commission may issue special nonresident bird licenses to nonresidents to hunt on regulated shooting preserves with the owner's consent for legally propagated game birds upon the payment of a license fee of five dollars and twenty-five cents (\$5.25). The license must be carried on the person at all times when hunting on private shooting preserves.

Five dollars (\$5.00) of the special nonresident bird license fee is to be paid to the state game and fish department. Twenty-five cents (\$.25) of the fee is to be retained by the issuing agent.

**History:** 1953 Comp., § 53-3-33, enacted by Laws 1957, ch. 194, § 5.

### **17-3-40. Regular licenses.**

Residents or nonresidents may hunt on private shooting preserves when possessed of the appropriate bird or general hunting license. All hunting on such shooting preserves covered in this act [17-3-35 to 17-3-42 NMSA 1978] shall be done only with the consent of the owner of such private preserve.

**History:** 1953 Comp., § 53-3-34, enacted by Laws 1957, ch. 194, § 6.

### **17-3-41. Commercial operation of.**

Operators of private shooting preserves may charge fees for hunting on the preserves.

**History:** 1953 Comp., § 53-3-35, enacted by Laws 1957, ch. 194, § 7.

### **17-3-42. Revocation of permits.**

Any permit issued under the Private [Regulated] Shooting Preserve Act [17-3-35 to 17-3-42 NMSA 1978] may be revoked for a violation of any provision or any regulation made by the commission relating to the act.

**History:** 1953 Comp., § 53-3-36, enacted by Laws 1957, ch. 194, § 8.

## **PART 3**

# **AIRBORNE HUNTING ACT**

### **17-3-43. Short title.**

Sections 17-3-43 through 17-3-47 NMSA 1978 may be cited as the "Airborne Hunting Act."

**History:** 1953 Comp., § 53-3-37, enacted by Laws 1973, ch. 13, § 1.

### **17-3-44. Definitions.**

As used in the Airborne Hunting Act [17-3-43 to 17-3-47 NMSA 1978]:

- A. "aircraft" means any contrivance used for flight in the air; and
- B. "menacing" means threatening, harassing or having the intent to injure, capture or kill.

**History:** 1953 Comp., § 53-3-38, enacted by Laws 1973, ch. 13, § 2.

### **17-3-45. Shooting from aircraft; causing injury by aircraft; penalty.**

It is a misdemeanor punishable by imprisonment in excess of six months but less than one year or a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for any person while airborne in an aircraft to:

- A. shoot or attempt to shoot for the purpose of injuring, capturing or killing any bird, fish or other animal;
- B. fly or attempt to fly the aircraft in any manner intentionally menacing to any bird, fish or other nondomestic animal which causes the bird, fish or other nondomestic animal to move from its chosen place of rest or change its direction of travel; or
- C. knowingly participate in using an aircraft for any purpose referred to in Subsection A or B.

**History:** 1953 Comp., § 53-3-39, enacted by Laws 1973, ch. 13, § 3.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game § 47.

### **17-3-46. Applicability.**

The Airborne Hunting Act [17-3-43 to 17-3-47 NMSA 1978] shall not apply to any person who is employed as an authorized agent of the state or federal government or is operating under a permit of the state granted by the director of the department of game and fish.

**History:** 1953 Comp., § 53-3-40, enacted by Laws 1973, ch. 13, § 4.

### **17-3-47. Permit.**

The director of the department of game and fish may grant a permit to any person to carry out acts which are prohibited by the Airborne Hunting Act [17-3-43 to 17-3-47 NMSA 1978]. Permits shall be granted only to protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops. Each person operating under a permit shall report to the director of the department of game and fish each calendar quarter, the number of birds, fishes and other animals so injured, captured or killed.

**History:** 1953 Comp., § 53-3-41, enacted by Laws 1973, ch. 13, § 5.

## **PART 4 PENALTIES**

### **17-3-48. Purchase or use of license, certificate or permit, or hunting or fishing while under suspension or revocation; penalty.**

Any person who purchases a hunting or fishing license, or hunts or fishes during the period in which his hunting or fishing license, permit or certificate has been revoked or suspended in accordance with Section 17-2-10 or 17-3-34 NMSA 1978 is guilty of a misdemeanor and shall be punished as provided by Section 17-2-10 NMSA 1978.

**History:** 1978 Comp., § 17-3-48, enacted by Laws 1979, ch. 340, § 11.

## **ARTICLE 4 PROPAGATION OF FISH AND GAME**

### **17-4-1. [Power of state game commission to acquire land.]**

The state game commission of the state of New Mexico is hereby authorized and empowered to acquire by purchase, gift, bequest or lease; and to hold, develop and improve lands for fish hatcheries, game farms, game refuges, bird refuges, resting and nesting grounds, field stations, dams, lakes, ditches, flumes, waterways, pipelines, canals, rights-of-way, trails, roads and for all purposes incidental to the propagation, preservation, protection and management of the game, birds, fish and wildlife of the state of New Mexico.

**History:** Laws 1939, ch. 223, § 1; 1941 Comp., § 43-401; Laws 1947, ch. 48, § 1; 1953 Comp., § 53-4-1.

## ANNOTATIONS

**Commission may pay rentals and charge fees to defray them.** - This section is a broad grant of power to the state game commission. First, it includes the express power to acquire lands (including lakes) by lease for fish and game purposes. Such necessarily includes the power to pay rentals (within fiscal limits) to continue the lease, and keeping in mind the nature of the statute, it may be fairly implied that the state game commission would have authority to impose fees or other charges to help defray the expenses necessitated by the lease and operations thereunder, particularly where the fees charged and collected are directly related to the rentals paid the lessor. 1957-58 Op. Att'y Gen. No. 58-80.

**County ordinance cannot limit authority of state game commission.** - County land use ordinances attempting to restrict traditional federal and state regulatory authority are preempted by this section which allows the state game commission to acquire land for fish hatcheries, game farms, game refuges, and other relevant purposes and, thus, such county ordinances are of no consequence. 1994 Op. Att'y Gen. No. 94-01.

### **17-4-2. Eminent domain power; abandonment or relinquishment of property acquired.**

Any property or rights-of-way required for use by the state game commission may be acquired as for a public purpose and as a matter of public necessity under the power of eminent domain, by and with the written approval of the board of county commissioners of the county in which the property or rights-of-way sought are located, in an action instituted and prosecuted in the name of the state, according to the procedure for condemnation provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. Provided nevertheless, that any property right acquired under the provisions of this section, if and when the use for which it was acquired has been abandoned for three years or otherwise relinquished, shall revert to the grantor from whom it was derived.

**History:** Laws 1939, ch. 223, § 2; 1941 Comp., § 43-402; Laws 1947, ch. 48, § 2; 1953 Comp., § 53-4-2; Laws 1981, ch. 125, § 47.

### **17-4-3. [Exchange, sale, lease, sublease and assignment of lands by commission; proceeds.]**

The state game commission, except as herein limited, is authorized to exchange, sell, lease, sublease or assign any interest in any lands and leases heretofore or hereafter acquired including but not limited to the sale or lease of timber, oil, gas, minerals or any other severable product of or interest in real estate, when, in the judgment of said commission, such transaction will be in the interest of the state game commission and said lands, leases, products or severable parts thereof, are, in the opinion of such commission, no longer necessary for the purposes for which such lands were acquired or where such lease or sublease will not materially interfere with or conflict with the use of such lands for the purpose for which they were acquired. The proceeds of any such sale, exchange, lease or assignment shall be converted into the game protection fund and disbursed as the other moneys in said fund are disbursed.

**History:** Laws 1939, ch. 223, § 3; 1941 Comp., § 43-403; 1953 Comp., § 53-4-3; Laws 1955, ch. 86, § 1.

#### **ANNOTATIONS**

**Whether to lease is left to commission's sole discretion.** - Whether or not a lease should be executed is a question to be determined by the judgment and discretion of the game commission. 1957-58 Op. Att'y Gen. No. 57-149.

**Commission may itself conduct sale of lands.** - Under this section the state game commission is itself authorized to sell its lands, or interests therein, unfettered by the provisions of the general statute governing the sale of property by state agencies or local public bodies. 1957-58 Op. Att'y Gen. No. 58-76.

If the commission chooses to itself sell the lands, it could, if it wanted, advertise the proposed sale, or otherwise notify prospective purchasers. But such is a matter to be determined by the commission in its sound discretion. 1957-58 Op. Att'y Gen. No. 58-76.

### **17-4-4. [Sale of former state bird farm; mineral rights reserved.]**

The sale of the surface and water rights, but not the mineral rights, notwithstanding any other provision of the law, to the highest bidder after advertised for public bid of approximately eighty-seven acres of land and improvements, known as the former state bird farm, located at the northern boundary of the city of Carlsbad in Eddy county, New Mexico is approved. The advertisement for public bid shall be made after the effective date of this act.

**History:** 1953 Comp., § 53-4-3.1, enacted by Laws 1973, ch. 260, § 1.

### **17-4-5. [Fish hatcheries established by United States; exemption from state laws.]**

In case the United States shall establish one or more fish hatching and fish cultural stations in the state of New Mexico, the United States commissioner of fisheries and his duly authorized agents are hereby accorded the right to conduct fish hatching and fish culture and all operations connected therewith, in any manner and at any time that may be by them considered necessary and proper, any fisheries laws of this state to the contrary notwithstanding.

**History:** Laws 1927, ch. 59, § 1; C.S. 1929, § 57-601; 1941 Comp., § 43-404; 1953 Comp., § 53-4-4.

### **17-4-6. Hunting and fishing on private property; posting; penalty.**

A. Whenever the owner or lessee desires to protect or propagate game birds, animals or fish within his enclosure or pasture, he shall publish notices in English and Spanish warning all persons not to hunt or fish within the enclosure or pasture. The notices shall be posted in at least six conspicuous places on the premises and published for three consecutive weeks in a newspaper of general circulation in the county where the premises are situated. In the event a public road enters or crosses the enclosure or pasture, an additional notice shall be posted conspicuously within three hundred yards of the point where each public road enters the posted property.

B. After the publication and posting, it is a misdemeanor for any person to enter the premises for the purpose of hunting or fishing, or to kill or injure any bird, animal or fish within the enclosure or pasture without permission of the owner or lessee.

**History:** Laws 1912, ch. 85, § 10; Code 1915, § 2433; C.S. 1929, § 57-215; 1941 Comp., § 43-405; 1953 Comp., § 53-4-5; Laws 1963, ch. 213, § 5; 1965, ch. 172, § 1.

### **ANNOTATIONS**

**Cross references.** - For prohibition against hunting or fishing in licensed private park or lake without permission, see 17-4-15 NMSA 1978.

For posting notices against trespassing on licensed private parks or lakes, see 17-4-26 NMSA 1978.

For publication of notices generally, see 14-11-1 to 14-11-13 NMSA 1978.

**A tract of land which is not enclosed by fences may not be posted** under the terms of this section so as to subject persons who enter for the purpose of hunting and fishing to the penalties therein provided. 1957-58 Op. Att'y Gen. No. 57-237.



**Both publication and posting are required.** - Only by publishing a notice in English and Spanish, and by the posting of handbills in English and Spanish in six conspicuous places on the premises does the owner put into effect on his property a penal statute which protects him against trespassers. State v. Barnett, 56 N.M. 495, 245 P.2d 833 (1952).

**English notice only is insufficient.** - Where the publication and posting were in English only, this section imposing criminal sanctions, did not become operative. State v. Barnett, 56 N.M. 495, 245 P.2d 833 (1952).

**The lessee of state lands for grazing purposes may post it** against hunting, but cannot charge for hunting privileges. 1933-34 Op. Att'y Gen. No. 160.

**Posting by lessee permitted provided leasee does not conflict with action by commissioner of public lands.** - Assuming full and strict compliance with this section, as interpreted, a lessee of state land could not in all cases post under the statute. This section, insofar as this problem is concerned, must be read in light of the peculiar nature of the land involved. It must be borne in mind that under the Enabling Act, the constitution and statutes based thereon, the complete dominion and control over state lands is vested in the commissioner of public lands. In short, the lessee of state lands, even if he acts strictly in accordance with this section, could not do so in a manner in conflict with a duly taken action of the commissioner. 1957-58 Op. Att'y Gen. No. 58-194.

**Posting does not prevent hunting or fishing by owner or permittees.** - If posting is duly accomplished, the landowner does not thereby deprive himself of hunting and fishing privileges on these lands. The owner, or those permitted by him to do so, could still hunt or fish so long as done in accordance with the game and fish laws and lawful game fish regulations. 1957-58 Op. Att'y Gen. No. 58-194.

**An appeal** does not lie to supreme court from an order overruling a motion to quash an information brought against defendants for violation of this section in the absence of express statutory authority therefor. State v. Barnett, 56 N.M. 1, 238 P.2d 694 (1951).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Title to fish and game taken by trespasser, 23 A.L.R. 1402.

Injunction against repeated or continuing trespasses by fishing, 32 A.L.R. 463, 60 A.L.R.2d 310.

Reservation in grant of land of right to hunt and fish, with like right to the grantee, as limiting the right of the grantee to actual owners of the land, 32 A.L.R. 1533.

Rights, title and remedies of hunter in respect of game which he is pursuing or has killed or wounded, 49 A.L.R. 1498.

Inland lakes as public fisheries, 57 A.L.R.2d 569.

36A C.J.S. Fish § 34; 38 C.J.S. Game § 59.

### **17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.**

A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use his lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing or any other recreational use does not thereby:

(1) extend any assurance that the premises are safe for each purpose; or

(2) assume any duty of care to keep such lands safe for entry or use; or

(3) assume responsibility or liability for any injury or damage to, or caused by, such person or group;

(4) assume any greater responsibility, duty of care or liability to such person or group, than if such permission had not been granted and such person or group were trespassers.

B. This section shall not limit the liability of any landowner, lessee or person in control of lands which may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee or use the land for recreation in exchange for a consideration, other than a consideration paid to said landowner by the state, the federal government or any other governmental agency.

**History:** 1953 Comp., § 53-4-5.1, enacted by Laws 1967, ch. 6, § 1.

### **ANNOTATIONS**

**Organized team sports not a protected activity.** - Protections of the statute apply only when landowners allow free public access for a limited range of outdoor activities, and organized team sports do not fall within that range of activities. *Lucero v. Richardson & Richardson, Inc.* 2002-NMCA-013, 131 N.M. 522, 39 P.3d 739, cert. denied, N.M. , 42 P.3d 842 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 62 Am. Jur. 2d Premises Liability § 156 et seq.

65 C.J.S. Negligence § 10.

### **17-4-8. [Parks or waters for propagation of game or fish; license required.]**

No person shall have or maintain any park, enclosure, lake or body of water for the purpose of keeping or propagating therein any game or game fish for sale, nor shall any living game or game fish from such park, enclosure, lake or body of water be sold or offered for sale, unless the owner, proprietor or lessee thereof shall first procure a license as hereinafter provided.

**History:** Laws 1912, ch. 85, § 59; Code 1915, § 2482; C.S. 1929, § 57-301; 1941 Comp., § 43-406; 1953 Comp., § 53-4-6.

#### **ANNOTATIONS**

**Cross references.** - For regulated shooting preserves, see 17-3-35 to 17-3-42 NMSA 1978.

**Section applies to breeding game for sale.** - Any person breeding game for sale is required to have a permit under this section. A person desiring to propagate birds only for his own use without barter, sale or exchange may secure a permit under the provisions of 17-3-29 NMSA 1978. 1955-56 Op. Att'y Gen. No. 6176.

**Fishing license and season requirements held applicable.** - Anyone authorized to fish on the Story irrigation project must first have a valid and subsisting license, and under no circumstances would such person be permitted to fish during the closed season. 1923-24 Op. Att'y Gen. No. 52.

### **17-4-9. [Unlicensed parks or lakes deemed public nuisance; abatement; liberation of game or fish; each day separate offense.]**

Any park, enclosure, lake or body of water maintained in violation of this chapter shall be deemed a continuing public nuisance and may be abated as provided by law for the abatement of public nuisances and the game or game fish therein liberated, or any obstruction to the free ingress or egress of fish removed, and each day the same is maintained in violation hereof, shall be a separate offense.

**History:** Laws 1912, ch. 85, § 60; Code 1915, § 2483; C.S. 1929, § 57-302; 1941 Comp., § 43-407; 1953 Comp., § 53-4-7.

#### **ANNOTATIONS**

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." Chapter 47, 1915 Code, comprised the whole of Laws 1912, ch. 85. For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

### **17-4-10. [Transportation of game or fish taken from unlicensed parks or waters prohibited.]**

No person shall transport or sell, keep or expose or offer for transportation or sale any game or game fish, taken from any park, enclosure, lake or body of water, public or private, unless the same be licensed as provided in this chapter, and then only as provided in this division, and this section shall apply to game and fish held by private ownership as well as to game and fish the ownership of which may be acquired under this chapter.

**History:** Laws 1912, ch. 85, § 61; Code 1915, § 2484; C.S. 1929, § 57-303; 1941 Comp., § 43-408; 1953 Comp., § 53-4-8.

#### **ANNOTATIONS**

**Compiler's notes.** - The words "this division" refer to Laws 1912, ch. 85, §§ 59 to 80, which comprised Division A of that law, and are compiled as 17-4-8 to 17-4-29 NMSA 1978.

For meaning of words "this chapter," see compiler's note to 17-2-11 NMSA 1978.

**Fee may be charged for breeder's license.** - The state game commission and the state game warden (now director) may charge a fee for a game breeder's license. 1953-54 Op. Att'y Gen. No. 5874.

### **17-4-11. [Licensing of private lakes and parks; "proprietor" defined.]**

The provisions of this article in relation to private parks and lakes, the licensing thereof for the keeping and propagation of game and game fish therein, and permitting the same thereof, shall apply to every park or lake or such part thereof, as is on land held by private ownership, and to every lake, the water of which, or the right to use of such water, in whole or in part, has been or may hereafter be acquired under the laws of this state or of the United States, for irrigation purposes, and the owner of such land or water right shall be deemed the proprietor of such park or lake, and of the game or fish therein to the extent of his ownership of such land or water right.

**History:** Laws 1912, ch. 85, § 62; Code 1915, § 2485; C.S. 1929, § 57-304; 1941 Comp., § 43-409; 1953 Comp., § 53-4-9.

#### **ANNOTATIONS**

**Cross references.** - For lessee or grantee being deemed proprietor, see 17-4-23 NMSA 1978.

**Compiler's notes.** - The compilers of the 1915 Code substituted the words "this article" for the words "this division." "This division" would refer to "Division A" of Laws 1912, ch. 85. See compiler's notes to 17-4-10 NMSA 1978. "This article" would mean Article 2, Chapter 47, 1915 Code, compiled as 17-2-27, 17-4-8 to 17-4-29 NMSA 1978.

## **17-4-12. [Application for license; contents; maximum area; fencing.]**

Any person having already established or desiring to establish or maintain a park or lake for the purpose of keeping or propagating and selling the game or game fish therein or to be placed therein, shall apply in writing to the warden [director of the department of game and fish] stating the name, location, extent and proprietorship of the same, and kind and as near as may be, the number of game or game fish kept or desired to be kept therein, the term for which the license is desired and inclosing the fee therefor, and if upon examination by the warden it shall appear that the application is in good faith, and in other respects proper and reasonable, he shall grant to such applicant a license therefor; provided that the maximum area that may be included within any park shall not exceed three thousand two hundred acres, and that every park shall be enclosed by a game proof fence which shall conform to specifications required by the state game commission.

**History:** Laws 1912, ch. 85, § 63; Code 1915, § 2486; C.S. 1929, § 57-305; Laws 1937, ch. 107, § 1; 1941 Comp., § 43-410; 1953 Comp., § 53-4-10.

### **ANNOTATIONS**

**Cross references.** - For power of state game commission to suspend, revoke or withhold licenses, see 17-1-14 NMSA 1978.

For including series of lakes in license, see 17-4-24 NMSA 1978.

For licenses in case of diverse proprietorship, see 17-4-25 NMSA 1978.

For transfer of license upon transfer of interest, see 17-4-27 NMSA 1978.

For duration and renewal of licenses and license fees, see 17-4-28 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the game warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Licensing or otherwise regulating business of breeding and dealing in game or undomesticated animals, constitutionality of, 62 A.L.R. 473.

## **17-4-13. [Form of license.]**

Such license shall be substantially in the following form:

STATE OF NEW MEXICO.

Department of Game and Fish.

Licensed Parks and Lakes.

No. .... Class A. Santa  
Fe ... 19 ...

This certifies that ..... proprietor of a (public or private) (park or lake) called ..... and situated on ..... Sec. .... Twp. .... Range ... in ..... county, New Mexico, is hereby authorized to keep and propagate therein and dispose of as provided by law the following (game quadrupeds, birds or fish), viz.: ..... together with such additions thereto (with the natural increase of all) as may be hereafter lawfully acquired. This license expires ..... years after date.

.....Warden  
[Director].

**History:** Laws 1912, ch. 85, § 64; Code 1915, § 2487; C.S. 1929, § 57-306; 1941 Comp., § 43-411; 1953 Comp., § 53-4-11.

**ANNOTATIONS**

**Cross references.** - For licenses being for one year and renewable annually, see 17-4-28 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the warden, "Director" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**17-4-14. [Reduction in flow of water detrimental to fish in stream prohibited.]**

No person owning or controlling any reservoir, lake or body of water into which public waters flow and which furnishes the water supply in whole or in part to any stream containing game fish shall divert or lessen such water in flow or supply to an extent detrimental to the fish in such stream, reservoir, lake or body of water.

**History:** Laws 1912, ch. 85, § 65; Code 1915, § 2488; C.S. 1929, § 57-307; 1941 Comp., § 43-412; 1953 Comp., § 53-4-12.

## ANNOTATIONS

**Bodies of water covered.** - All reservoirs, lakes and other bodies of water into which public waters flow are covered by this section. 1947-48 Op. Att'y Gen. No. 5111.

**United States held not liable for injuries from dredging canals.** - Where the United States, acting through the bureau of reclamation, dredged and removed from the canals and ditches the silt and deposits which had accumulated therein over the years, and as a natural consequence of these dredging operations, the water in appellee's ponds seeped back into the irrigation canals and the ponds were emptied, the trial court, citing this section, concluded that the act of the defendant in draining the plaintiff's property of all water, destroying plaintiff's fish and frogs, and leaving the plaintiff's land an arid desert land, constituted negligence per se. However, the court of appeals held that liability under the federal Tort Claims Act is not carte blanche, that the United States is liable as an individual only in the manner and to the extent to which it has consented, and that the facts fell clearly within the area of the exempted "discretionary function." *United States v. Gregory*, 300 F.2d 11 (10th Cir. 1962).

### **17-4-15. [Game and fish in licensed private parks or lakes property of licensee; hunting or fishing in any licensed park or lake without consent prohibited; reduction of game or fish in private preserve; permit.]**

Except as in this division otherwise provided, all game and fish, with the natural increase thereof, held or confined in any private preserve, park or lake, licensed under the provisions of this act shall, during the existence of the license or any renewal thereof, be deemed the property of the licensee of the same to the extent that he may lawfully retain, pursue, capture, kill, use, sell or dispose of the game or fish therein in any quantity, in any manner and at any time of the year, and the pursuit, capture, wounding or killing of any game or fish in any licensed preserve, park or lake, public or private, without the consent of the proprietor, shall be unlawful; provided, that the aggregate number of game animals or fish in any licensed private preserve, park or lake, which contained game or fish belonging to the state at the time or date of the issuing of such license, shall not be lessened by the killing, use, sale or disposition thereof, it being the purpose of this provision to restrict such killing, use, sale and disposition to a number not exceeding in the aggregate the natural increase. If by reason of controlling necessity or for the purpose of stocking or replenishing some other park or lake, any proprietor of a licensed preserve, park or lake may desire to lessen the aggregate number above provided for, the state game and fish warden [director of the department of game and fish] may, on being satisfied of the property [propriety] thereof, grant a permit therefor.

**History:** Laws 1912, ch. 85, § 66; Code 1915, § 2489; Laws 1915, ch. 101, § 18; C.S. 1929, § 57-308; 1941 Comp., § 43-413; 1953 Comp., § 53-4-13.

## ANNOTATIONS

**Cross references.** - For posting private property against hunting and fishing, see 17-4-6 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state game warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** - The words "this division" refer to "Division A" of Laws 1912, ch. 85. See compiler's notes to 17-4-10 NMSA 1978.

The words "this act" first appeared in the 1915 amendment and Laws 1915, ch. 101, the presently effective provisions of which are compiled as 17-2-13, 17-2-19, 17-4-15 and 17-4-26 NMSA 1978.

**The owner of land may prohibit fishing** in streams thereon, as an act of trespass. 1917-18 Op. Att'y Gen. No. 173.

**Game must be imprisoned before being sold.** - Before game can be sold by a licensee for "parks, lakes or preserves," the game must be reduced to actual possession by imprisonment in an enclosure through which or over which game cannot make its way. 1912-13 Op. Att'y Gen. No. 220.

### **17-4-16. [Invoice to be delivered to purchaser; form; duplicate mailed to director.]**

When the proprietor of any licensed park or lake of class A shall sell or dispose of any game or game fish as herein provided, he shall, at the same time deliver to the purchaser or donee or attach thereto an invoice signed by such proprietor or his agent, stating the number of the license and name of such park, or lake, the date of disposition, the kind, and as near as practicable the number and weight of such game or fish, the name and address of the purchaser, consignee or donee. Such invoice shall authorize transportation within this state, possession and use for thirty days after its date, and shall be substantially in the following form:



STATE OF NEW MEXICO.

Department of Game and Fish.

Private Parks and Lakes - Invoice.

Name of park or lake ..... Class A. No. of license .....  
Date ..... 19 ... Kind and number of game and fish .....  
Weight of same ..... lbs. Name of consignee ..... Address of  
consignee .....

This authorizes transportation within this state, possession  
and sale for thirty days after date if attached to article.

.....  
Proprietor.

By

.....  
Agent.

Such proprietor or his agent shall at the same time mail, postpaid, a duplicate of such  
invoice to the warden [director of the department of game and fish] at Santa Fe.

**History:** Laws 1912, ch. 85, § 67; Code 1915, § 2490; C.S. 1929, § 57-309; 1941  
Comp., § 43-415; 1953 Comp., § 53-4-15.

**ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the  
warden, "director of the department of game and fish" has been inserted in brackets.  
See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and  
is not a part of the law.

**17-4-17. [Invoice to be attached during shipment.]**

When any such game or fish for which an invoice is required, is to be shipped by rail,  
express or other carrier, public or private, the invoice shall be securely attached thereto  
or to the package containing the same in plain sight, and the same may then be lawfully  
carried and delivered within this state to the consignee named in such invoice.

**History:** Laws 1912, ch. 85, § 68; Code 1915, § 2491; C.S. 1929, § 57-310; 1941  
Comp., § 43-416; 1953 Comp., § 53-4-16.

**17-4-18. [Offering game or fish for sale; storage; keeping in hotel or  
eating place; invoice to remain attached.]**

If such game or game fish is held, exposed or offered for sale or sold by the consignee  
or kept in any storage, hotel, restaurant, cafe or boardinghouse, such invoice shall be

kept attached thereto as aforesaid until the same shall have been prepared for consumption.

**History:** Laws 1912, ch. 85, § 69; Code 1915, § 2492; C.S. 1929, § 57-311; 1941 Comp., § 43-417; 1953 Comp., § 53-4-17.

#### **ANNOTATIONS**

**Cross references.** - For menu as evidence of possession of game or fish, see 17-2-18 NMSA 1978.

#### **17-4-19. [Copy of invoice to be furnished purchaser upon resale.]**

In case of a sale or disposition of such game or game fish or any part thereof the vendor shall at the same time make a copy of such invoice and endorse thereon the date of sale, the number and kind of game or fish so disposed of and the name of the purchaser, and sign and deliver the same to the purchaser or donee, who shall keep it attached as aforesaid until the game or fish is prepared for consumption, and the same shall have the same force and effect as the original invoice.

**History:** Laws 1912, ch. 85, § 70; Code 1915, § 2493; C.S. 1929, § 57-312; 1941 Comp., § 43-418; 1953 Comp., § 53-4-18.

#### **17-4-20. [Misstatements render invoice void; violation of law; possession of game or fish without invoice unlawful.]**

Any willful misstatement in or any omission of a substantial requirement from any invoice or copy thereof, shall render the same void and be deemed a violation of this chapter, and the possession of any game or game fish without such invoice or a copy thereof attached thereto when so as above required shall be unlawful.

**History:** Laws 1912, ch. 85, § 71; Code 1915, § 2494; C.S. 1929, § 57-313; 1941 Comp., § 43-419; 1953 Comp., § 53-4-19.

#### **ANNOTATIONS**

**Cross references.** - For menu as evidence of possession, see 17-2-18 NMSA 1978.

For possession without invoice being prima facie evidence of unlawful taking or possession, see 17-3-33 NMSA 1978.

**Compiler's notes.** - For meaning of words "this chapter", see note to 17-2-11 NMSA 1978.

## **17-4-21. [Proprietors of licensed private parks and lakes to furnish reports to director.]**

The proprietor of every private park and lake licensed under the preceding sections shall, whenever required by the warden [director of the department of game and fish], make and send to the warden [director of the department of game and fish] at Santa Fe a report showing as near as practicable the kind, number, age and sex of the game, and the kind and number or weight of the game fish, added and disposed of during the year preceding and on hand at the date of the report.

**History:** Laws 1912, ch. 85, § 72; Code 1915, § 2495; C.S. 1929, § 57-314; 1941 Comp., § 43-420; 1953 Comp., § 53-4-20.

### **ANNOTATIONS**

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

## **17-4-22. [Channels connecting private lakes under one license; use of screens.]**

The rights acquired by the proprietor of a private lake licensed hereunder, and the prohibitions hereof, shall extend to and include all channels connecting a series or group of lakes under one license, and the warden [director of the department of game and fish] may authorize the use of such screens or other appliances as may be necessary to prevent the fish in a licensed lake of class A from escaping, and it shall be the duty of the proprietor to adopt and use such screens or other appliances as the warden [director of the department of game and fish] may direct to prevent the fish in public waters from entering such lake.

**History:** Laws 1912, ch. 85, § 73; Code 1915, § 2496; C.S. 1929, § 57-315; 1941 Comp., § 43-421; 1953 Comp., § 53-4-21.

### **ANNOTATIONS**

**Cross references.** - For including series of lakes in one license, see 17-4-24 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-4-23. [Lease or grant of private park or lake; lessee or grantee deemed proprietor.]**

When the owner of a private park or lake has granted or leased to another the right to keep and propagate game or fish therein, the grantee or lessee shall be deemed the proprietor and entitled to the license.

**History:** Laws 1912, ch. 85, § 74; Code 1915, § 2497; C.S. 1929, § 57-316; 1941 Comp., § 43-422; 1953 Comp., § 53-4-22.

#### **ANNOTATIONS**

**Cross references.** - For transfer of license being required upon transfer of interest, see 17-4-27 NMSA 1978.

### **17-4-24. [Series of lakes may be included in one license.]**

A series or group of lakes under one proprietorship or lease and situated in a reasonable proximity to each other may be included in one license, either as a private lake or licensed preserve.

**History:** Laws 1912, ch. 85, § 75; Code 1915, § 2498; C.S. 1929, § 57-317; 1941 Comp., § 43-423; 1953 Comp., § 53-4-23.

#### **ANNOTATIONS**

**Cross references.** - For connecting channels being included, see 17-4-22 NMSA 1978.

### **17-4-25. [Diverse proprietorship; joint or separate licenses.]**

In case of diverse proprietorship the license may be joint if the proprietors so elect, otherwise a separate license shall be required for each interest and the rights thereunder shall be coextensive with or in proportion to such interest.

**History:** Laws 1912, ch. 85, § 76; Code 1915, § 2499; C.S. 1929, § 57-318; 1941 Comp., § 43-424; 1953 Comp., § 53-4-24.

### **17-4-26. [Notices against trespassing to be posted.]**

There shall be kept posted conspicuously at every gate where a road or trail enters or crosses each licensed park or preserve, and at conspicuous places along the border of each licensed lake, plain notices not less than one foot square, stating that the same is private property, and warning persons against trespassing thereon.

**History:** Laws 1912, ch. 85, § 77; Code 1915, § 2500; Laws 1915, ch. 101, § 19; C.S. 1929, § 57-319; 1941 Comp., § 43-425; 1953 Comp., § 53-4-25.

### ANNOTATIONS

**Cross references.** - For posting notice of intention to protect game on private property, see 17-4-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Entry on private lands in pursuit of wounded game as criminal trespass, 41 A.L.R.4th 805.

### **17-4-27. [Transfer of license required upon transfer of interest.]**

In case of a transfer of proprietorship or interest in any park, lake or preserve, the transferee, shall, within thirty days thereafter procure from the warden [director of the department of game and fish] a transfer of the license endorsed on the back thereof.

**History:** Laws 1912, ch. 85, § 78; Code 1915, § 2501; C.S. 1929, § 57-320; 1941 Comp., § 43-426; 1953 Comp., § 53-4-26.

### ANNOTATIONS

**Cross references.** - For lessee or grantee being deemed proprietor, see 17-4-23 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-4-28. Parks, lakes and preserves; license; fees.**

A. Licenses for private parks, lakes and preserves may be for one year, and any license shall be renewed annually at the request of the licensee.

B. The director of the department of game and fish shall charge and collect just and reasonable fees for the following permits under Sections 17-4-8 through 17-4-28 NMSA 1978, as determined by regulation of the state game commission:

- (1) permit to capture or exchange;
- (2) quadruped park license;
- (3) each renewal of each quadruped park license;
- (4) one lake license;

- (5) each renewal of one lake license;
- (6) each additional lake license;
- (7) each renewal of each additional lake license; and
- (8) each certificate, permit or license not provided for in this section.

**History:** Laws 1912, ch. 85, § 79; Code 1915, § 2502; C.S. 1929, § 57-321; 1941 Comp., § 43-427; 1953 Comp., § 53-4-27; Laws 1973, ch. 141, § 1; 1992, ch. 29, § 6.

### **ANNOTATIONS**

**The 1992 amendment**, effective April 1, 1992, rewrote the introductory language in Subsection B, deleted references to specific dollar amounts in Paragraphs (1) to (8); and made stylistic changes.

#### **17-4-29. Floating logs in fish stream; restocking; penalty.**

All persons floating logs, timber, lumber, ties or poles in any stream containing game fish shall, for each mile of the streams used, annually deposit one thousand trout fry or fingerlings at times and places designated by the department of game and fish. Any person failing to comply with the provisions of this section is guilty of a misdemeanor.

**History:** Laws 1912, ch. 85, § 80; Code 1915, § 2503; C.S. 1929, § 57-322; 1941 Comp., § 43-428; 1953 Comp., § 53-4-28; Laws 1963, ch. 213, § 6.

#### **17-4-30. [Federal aid.]**

The state of New Mexico hereby assents to the provisions of the act of congress of the United States of America entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the state game commission is hereby authorized and directed to perform all such acts as may be necessary to the conduct and establishment of cooperative fish restoration and management projects, as defined by said act of congress and in compliance with said act, and rules and regulations promulgated by the secretary of agriculture [secretary of the interior] thereunder.

**History:** 1941 Comp., § 43-429, enacted by Laws 1951, ch. 66, § 1; 1953 Comp., § 53-4-29.

### **ANNOTATIONS**

**Compiler's notes.** - For the act of congress referred to, see 16 U.S.C. § 777 et seq., under which regulations are promulgated by the secretary of the interior, not the secretary of agriculture.

### **17-4-31. [Federal funds; disbursement.]**

The state game commission is authorized to receive any moneys to which the state of New Mexico may become entitled under the aforesaid act of congress, such moneys, when received, to be deposited with the treasurer of the state of New Mexico to the credit of the state game protection fund, expended for the purpose designated and withdrawn as other moneys are withdrawn from the state game protection fund.

**History:** 1941 Comp., § 43-430, enacted by Laws 1951, ch. 66, § 2; 1953 Comp., § 53-4-30.

## **ANNOTATIONS**

**Cross references.** - For game protection fund, see 17-1-14 NMSA 1978.

**Compiler's notes.** - For meaning of "aforesaid act of congress," see compiler's note to 17-4-30 NMSA 1978.

### **17-4-32. Destruction of boundary markers [; penalty]**

Every person who shall willfully, maliciously and without cause, break down, injure, remove or destroy any sign, marker or poster erected for the purpose of designating the boundaries of any tract of land, refuge, sanctuary for wildlife, or for the purpose of designating the boundaries of a hunting area set forth by the state game commission, or under the direction of the director of the department of game and fish, shall, upon conviction thereof, be guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-4-31, enacted by Laws 1965, ch. 73, § 1.

## **ARTICLE 5 TRAPPERS AND FUR DEALERS**

### **17-5-1. Declaration of policy.**

It is the purpose of Sections 17-5-1 through 17-5-9 NMSA 1978 and the policy of New Mexico to provide an adequate and flexible system for the protection of fur-bearing animals to the end that valuable fur resources shall not be wasted or depleted.

**History:** Laws 1939, ch. 178, § 1; 1941 Comp., § 43-501; 1953 Comp., § 53-5-1; Laws 1980, ch. 15, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 35 Am. Jur. 2d Fish and Game §§ 6, 16, 29, 38.

### **17-5-2. Fur-bearing and nongame animals defined; property of state.**

The following quadrupeds are hereby defined as fur-bearing animals, to wit: muskrat, mink, weasel, beaver, otter, nutria, masked or blackfooted ferret, ringtail cat, raccoon, pine marten, coatimundi, badgers, bobcat and all species of foxes. These animals and their pelts are hereby declared to be the property of the state until they shall have been lawfully taken, killed or captured as provided by Sections 17-5-1 through 17-5-9 NMSA 1978, except as to beaver and beaver pelts, the taking of which shall be subjected to the application of Section 17-3-31 NMSA 1978.

**History:** Laws 1939, ch. 178, § 2; 1941 Comp., § 43-502; 1953 Comp., § 53-5-2; Laws 1955, ch. 57, § 1; 1980, ch. 15, § 2; 1981, ch. 342, § 1.

## ANNOTATIONS

**Compiler's notes.** - Laws 1955, ch. 57, § 4, declares that the part of this section that includes beaver among the nonpredatory fur-bearing animals shall be effective only upon enactment of a New Mexico statute excluding beaver from the list of game animals. Laws 1955, ch. 58, § 1, deleted beaver from the list of game animals. For present list of game mammals, birds and fish, see 17-2-3 NMSA 1978.

### **17-5-3. Seasons; special permits to take animals doing damage.**

Fur-bearing animals as defined in Section 17-5-2 NMSA 1978 shall be taken only during the seasons declared by regulation of the state game commission promulgated as provided in Section 17-5-4 NMSA 1978. The director may, however, issue permits at any time for the taking of fur-bearing animals doing damage to game, private property, poultry or livestock.

**History:** Laws 1939, ch. 178, § 3; 1941 Comp., § 43-503; 1953 Comp., § 53-5-3; Laws 1955, ch. 57, § 2; 1980, ch. 15, § 3.

## ANNOTATIONS

**Cross references.** - For permit to destroy protected game doing damage, see 17-3-31 NMSA 1978.

### **17-5-4. State game commission to administer act; rules and regulations.**



The state game commission is authorized and directed to administer the provisions of Sections 17-5-1 through 17-5-9 NMSA 1978, and to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of those sections. In making such rules and regulations and providing when and by what means fur-bearing animals may be hunted, taken, captured, possessed or killed, the state game commission shall give due regard to the zones of temperatures and to the distribution, abundance, economic value and breeding habits of such animals. Provided, nothing in Sections 17-5-1 through 17-5-9 NMSA 1978 shall interfere with the authority granted to the president of New Mexico state university under Sections 77-15-1 through 77-15-5 NMSA 1978, or shall prevent livestock producers without a permit from the taking of bobcats that are doing damage to livestock.

**History:** Laws 1939, ch. 178, § 4; 1941 Comp., § 43-504; 1953 Comp., § 53-5-4; Laws 1980, ch. 15, § 4.

### **17-5-5. Trapper's licenses.**

A. No resident who has reached his twelfth birthday shall capture, trap or possess any fur-bearing animal or attempt to do so without first procuring a resident trapper's license; or, in the case of a resident who has reached his twelfth birthday but not his eighteenth birthday, a resident junior trapper's license.

B. No nonresident shall capture, trap or possess any fur-bearing animal or skunk or coyote or attempt to do so without first procuring a nonresident trapper's license.

C. No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper's licenses may purchase a New Mexico nonresident trapper's license.

D. Trappers shall release all fur-bearing animals trapped during closed seasons, and resident trappers who release all fur-bearing animals during open seasons need not procure a trapper's license.

E. Trappers on official business, paid from state and federal funds and under supervision of the department of game and fish, the New Mexico department of agriculture or the United States fish and wildlife service need not purchase a trapper's license.

F. Trapping of animals, both fur-bearing animals and nongame, by a resident in order to protect his livestock or domesticated animals or fowl shall not be subject to rules and regulations on trapping made pursuant to Section 17-5-4 NMSA 1978 or to licensing requirements provided in this section.

G. The state game commission may by regulation require holders of trapper's licenses to use bobcat pelt tags and may specify the conditions for use of the tags.

**History:** Laws 1939, ch. 178, § 5; 1941 Comp., § 43-505; 1953 Comp., § 53-5-5; Laws 1955, ch. 57, § 3; 1964 (1st S.S.), ch. 17, § 9; 1980, ch. 15, § 5; 1981, ch. 342, § 2; 1983, ch. 117, § 5.

## ANNOTATIONS

**Cross references.** - For power of commission to withhold license, see 17-1-14 NMSA 1978.

For duration of license, see 17-3-1 NMSA 1978.

For amount of license fee, see 17-3-13 NMSA 1978.

For revocation of license, see 17-5-9 NMSA 1978.

### **17-5-6. Fur dealer licenses.**

A. Except for trappers selling their own catches, any person, firm or corporation engaged in the business of buying or selling unprocessed skins or pelts of any fur-bearing animal is a "fur dealer." It is a misdemeanor to engage in business as a fur dealer or solicit such business without first procuring a fur dealer license, except that resident fur dealers who buy and sell less than fifty skins or pelts of fur-bearing animals each year need not purchase a fur dealer license.

B. Every fur dealer shall file with the department of game and fish, not later than the tenth of each month, a sworn statement showing the number and kind of skins and pelts of fur-bearing animals purchased and sold during the preceding month.

C. The provisions of this section apply to fur dealers who buy and sell the skins or pelts of predatory animals as well as to those who buy and sell the skins or pelts of protected nonpredatory fur-bearing animals.

**History:** Laws 1939, ch. 178, § 6; 1941 Comp., § 43-506; 1953 Comp., § 53-5-6; Laws 1964 (1st S.S.), ch. 17, § 10.

## ANNOTATIONS

**Cross references.** - For power of commission to withhold license, see 17-1-14 NMSA 1978.

For duration of license, see 17-3-1 NMSA 1978.

For amount of license fee, see 17-3-13 NMSA 1978.

For revocation of license, see 17-5-9 NMSA 1978.

**Effective date provision is invalid.** - Laws 1964 (1st S.S.), ch. 17, § 12, making the act effective on April 1, 1964, was a nullity under N.M. Const., art. IV, § 23. Since the act did not pass as an emergency measure, the legislature was proscribed by the constitution from providing that the act would go into effect sooner than 90 days after adjournment on February 25, 1964. 1964 Op. Att'y Gen. No. 64-91.

**Permit required whether animals bred or trapped.** - All persons, whether dealing in pelts resulting from the commercial enterprise of fur-bearing animal breeding or whether dealing in pelts resulting from the trapping of wild fur-bearing animals, are required by law to secure the permit provided for before engaging in such business. 1953-54 Op. Att'y Gen. No. 6043.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 31.

### **17-5-7. [Disposition of license fees.]**

All fees for trappers' licenses and fur dealers' licenses shall be collected by the state game warden [director of the department of game and fish] and turned over to the state treasurer to be credited to the game protection fund; provided, that license vendors shall retain ten cents (10¢) for each license sold as compensation for his [their] services, but no regular employee of the state game department shall be entitled to such fee.

**History:** Laws 1939, ch. 178, § 7; 1941 Comp., § 43-507; 1953 Comp., § 53-5-7.

## **ANNOTATIONS**

**Cross references.** - For disposition of fees collected under fish and game laws, see 17-1-14 NMSA 1978.

For amount of license fees, see 17-3-13 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of the state game warden, "director of the department of game and fish" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

### **17-5-8. [Officers authorized to enforce act.]**

All peace officers, port of entry employees [employees of the motor transportation divisions of the taxation and revenue department] and deputy game wardens [conservation officers] are hereby authorized and required to cooperate fully with the state game commission in the enforcement of this act [17-5-1 to 17-5-9 NMSA 1978]. It shall be the duty of all such persons to make searches, seizures and arrests as in the case of other misdemeanors.

**History:** Laws 1939, ch. 178, § 9; 1941 Comp., § 43-509; 1953 Comp., § 53-5-9.

## ANNOTATIONS

**Compiler's notes.** - The law establishing ports of entry was repealed by Laws 1939, ch. 73, § 24, and the equipment and funds of ports of entry were transferred to the board of supervisors of the New Mexico state police by § 8 of said act. Laws 1939, ch. 73, also created a new division of the New Mexico state police named "the division of field administration," the duties of such division being similar to those formerly performed by the ports of entry. The division of field administration of the state police was changed to the division of courtesy and information of the state of New Mexico by Laws 1941, ch. 147, § 24, which act was then superseded by Laws 1943, ch. 125, which created a department of courtesy and information and transferred property used at ports of entry to the new department. However, by Laws 1967, ch. 97, § 41, such property was transferred to the motor transportation department, which has now been abolished by Laws 1977, ch. 250, § 4, and the motor transportation division of the taxation and revenue department has been established and operates the former ports of entry. See 9-11-4, 65-5-1 to 65-5-3 NMSA 1978.

**Bracketed material.** - Pursuant to Laws 1955, ch. 59, § 2, transferring the duties of deputy game wardens, "conservation officers" has been inserted in brackets. See 17-1-6 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Jury trial in case of seizure or destruction of appliances, 17 A.L.R. 574, 50 A.L.R. 97.

### **17-5-9. Penalty; revocation of license; sale of pelts.**

Any person who violates or aids, abets or assists in the violation of any provision of Sections 17-5-1 through 17-5-9 NMSA 1978 or any person who makes any false statement as to the residence of any applicant for a trapper's license or fur dealer's license or any nonresident who fraudulently procures a resident license is guilty of a misdemeanor. In addition, the department of game and fish may revoke, for the year in which the violation occurred, the trapper's or fur dealer's license of any person convicted. All skins, pelts or furs involved in the violation remain the property of the state and shall be sold for the benefit of the game protection fund.

**History:** Laws 1939, ch. 178, § 10; 1941 Comp., § 43-510; 1953 Comp., § 53-5-10; Laws 1963, ch. 213, § 7.

## ANNOTATIONS

**Cross references.** - For power of commission to withhold license, see 17-1-14 NMSA 1978.

For seizure and destruction of illegal traps or devices, see 17-2-20 NMSA 1978.

## **ARTICLE 6 HABITAT PROTECTION**

### **17-6-1. Short title.**

This act [17-6-1 to 17-6-11 NMSA 1978] may be cited as the "Habitat Protection Act."

**History:** 1953 Comp., § 53-6-1, enacted by Laws 1973, ch. 242, § 1.

### **17-6-2. Definitions.**

As used in the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978]:

- A. "commission" means the state game commission;
- B. "cross-country" means travel over the countryside other than by road;
- C. "vehicle" means any motor-powered mechanical device used for conveyance; and
- D. "road" means any maintained or unmaintained right-of-way that has been utilized by the public and includes roads, streets, highways and state scenic, recreation or historical trails.

**History:** 1953 Comp., § 53-6-2, enacted by Laws 1973, ch. 242, § 2.

### **17-6-3. Restrictions on motor vehicle use; recommendations; rules and regulations.**

- A. When the commission determines that the operation of vehicles within a certain area is or may be damaging to wildlife reproduction, wildlife management or the wildlife habitat of the area, the department, with the concurrence of the private landowner or the land management agency involved, after proper notice, shall hold public meetings in the area affected, on the necessity and desirability of closing such lands to the operation of any vehicles for a stated definite period. Upon finding, after public meetings, that the use of vehicles on such lands is or may be damaging to wildlife reproduction or habitat and that it is necessary and desirable to close such lands to vehicles in order to avoid such damage, the commission shall make and publish an order closing such lands to vehicle operation except on established roads that are marked by appropriate signs.
- B. The commission may also recommend to the appropriate land management agency or the legislature that particular areas of land be set aside or made available for recreational vehicles.

C. The commission may also enter into agreements with or recommend to public land management agencies that certain areas be closed to camping during particular open hunting seasons or that camping be permitted only in designated areas during such open hunting seasons.

D. The commission may enter into agreements with private landowners and land management agencies controlling areas that the commission has made recommendations on pursuant to Subsection B of this section. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of vehicles in such area and the duties of the commission and such private landowner or land management agency relating to the enforcement of the terms of such agreement. Agreements with private landowners may also include provisions for sharing costs of performing any of the functions as set forth in Section 17-6-7 NMSA 1978.

E. The commission shall adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules and regulations necessary to carry out the provisions of the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978], including regulations setting out procedures for hearings and notice.

**History:** 1953 Comp., § 53-6-3, enacted by Laws 1973, ch. 242, § 3; 1975, ch. 66, § 1.

## **ANNOTATIONS**

**Cross references.** - For Off-Highway Motor Vehicle Act, see 66-3-1001 to 66-3-1016 NMSA 1978.

For snowmobiles, see 66-9-1 to 66-9-13 NMSA 1978.

### **17-6-4. Notices of restrictions; posting; publication.**

A. For all areas closed to vehicles pursuant to Section 17-6-3 NMSA 1978, the commission shall cause notices of the restrictions, prohibitions or permitted uses of such areas to be posted prior to their effective date on the main traveled roads entering such areas and at such other locations as the commission deems appropriate.

B. In addition to the public meetings required by Section 17-6-3 NMSA 1978 and posted notices required by Subsection A of this section, the commission shall publish a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, in a newspaper of general circulation in the area of the state affected, for three consecutive weeks prior to the effective date of such restrictions, prohibitions or permitted uses. Copies of the notices of restrictions, prohibitions or permitted uses together with a description or appropriate map of the area affected by the notices shall be made available to the public by the commission.

**History:** 1953 Comp., § 53-6-4, enacted by Laws 1973, ch. 242, § 4.

## ANNOTATIONS

**Cross references.** - For destroying boundary markers, see 17-4-32 NMSA 1978.

### **17-6-5. Prohibition against vehicle travel.**

It is unlawful for any person to drive a vehicle cross-country on lands where such cross-country driving is prohibited by rule or regulation. Conservation officers may issue citations to and may arrest any person violating the provisions of this section.

**History:** 1953 Comp., § 53-6-5, enacted by Laws 1973, ch. 242, § 5; 1975, ch. 86, § 2.

### **17-6-6. Exceptions.**

The restrictions, prohibitions or permitted uses established pursuant to the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978] do not apply to:

- A. public employees acting in the scope of their employment;
- B. valid licensees, permittees, lessees or their assignees or designees, of state agencies or public land management agencies, when traveling in the areas or for the specific purposes for which such licenses, permits, leases, assignments or designations were issued or granted; and
- C. emergency situations such as fire or other disasters, or where necessary to protect life or property.

**History:** 1953 Comp., § 53-6-6, enacted by Laws 1973, ch. 242, § 6.

### **17-6-7. Expenditure of funds; functions.**

The commission may expend such funds as become available from the game protection fund, state or federal grants or other sources to carry out the provisions of the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978] including, but not limited to:

- A. investigations and surveys of actual or possible wildlife habitat damage by vehicles and the study of areas to be recommended for recreational vehicle use;
- B. posting notices of restrictions, prohibitions and permitted use of vehicles;
- C. providing maps and other necessary information to the public;
- D. an informational and educational program on wildlife habitat preservation and restoration; or
- E. the enforcement of the provisions of the Habitat Protection Act.

**History:** 1953 Comp., § 53-6-7, enacted by Laws 1973, ch. 242, § 7.

### **17-6-8. Limitation of liability on landowners.**

No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the commission for use under the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978] shall be liable to any user of the land for injuries suffered on said right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor.

**History:** 1953 Comp., § 53-6-8, enacted by Laws 1973, ch. 242, § 8.

### **17-6-9. Enforcement.**

All peace officers of the state, counties and municipalities and other duly authorized state authorities shall enforce the provisions of the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978].

**History:** 1953 Comp., § 53-6-9, enacted by Laws 1973, ch. 242, § 9.

### **17-6-10. Commissioner of public lands exempt.**

Nothing contained in the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978] shall alter, change, restrict or diminish the rights, powers and duties of the commissioner of public lands in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes.

**History:** 1953 Comp., § 53-6-10, enacted by Laws 1973, ch. 242, § 10.

### **17-6-11. Violations; penalty.**

Any person who violates any provision of the Habitat Protection Act [17-6-1 to 17-6-11 NMSA 1978] or any rule or regulation adopted pursuant thereto is guilty of a misdemeanor.

**History:** 1953 Comp., § 53-6-11, enacted by Laws 1973, ch. 242, § 11.

## **ARTICLE 7 SHOOTING RANGE FUND**

### **17-7-1. Short title.**

This act [17-7-1 to 17-7-3 NMSA 1978] may be cited as the "Shooting Range Fund Act."



**History:** 1953 Comp., § 53-7-1, enacted by Laws 1976 (S.S.), ch. 43, § 1.

### **17-7-2. Fund created.**

There is created in the state treasury a special fund to be known as the "shooting range fund". All money appropriated to this fund or accruing to it as a result of gift, deposit or from other sources, except interest earned on the fund which shall be credited to the general fund, shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Shooting Range Fund Act [17-7-1 to 17-7-3 NMSA 1978]. Appropriated money in the fund shall not revert to the general fund. Money in the fund shall be used for construction or improvement of public shooting ranges pursuant to the Shooting Range Fund Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the department of game and fish.

**History:** 1953 Comp., § 53-7-2, enacted by Laws 1976 (S.S.), ch. 43, § 2; 1977, ch. 247, § 163; 1989, ch. 324, § 11.

### **ANNOTATIONS**

**The 1989 amendment**, effective April 7, 1989, deleted "investments" following "deposit" in the second sentence.

**General rule is that interest is accretion or increment to principal** fund earning it, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

**Interest earned credited to shooting range fund, not state fund.** - Any interest earned on the investment of money in the shooting range fund must be credited to that fund, not the state general fund. 1980 Op. Att'y Gen. No. 80-17.

### **17-7-3. Administration.**

A. The state game commission shall administer the provisions of the Shooting Range Fund Act [17-7-1 to 17-7-3 NMSA 1978] and shall, pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978], adopt such rules and regulations as deemed necessary to carry out the provisions of the Shooting Range Fund Act.

B. Rules and regulations shall include:

(1) a method for the determination of a county or municipality eligibility for grants from the shooting range fund;

(2) procedures for applications, approvals and rejections of grant proposals;

(3) a requirement that a county or municipality contribute at least twenty-five percent of the cost necessary to complete a shooting range grant proposal;

(4) a requirement that one-half of the local contribution required by Paragraph (3) of this subsection is to be money;

(5) a requirement that a shooting range project shall be undertaken in accordance with specifications determined by the department of game and fish. Such specifications may provide for pistol, rifle, shotgun and archery facilities; and

(6) provisions for the operation and maintenance of shooting range facilities.

C. Grants from the shooting range fund shall be awarded by the state game commission only for new public shooting range construction or for improvements to existing public shooting ranges. No funds shall be approved for maintenance of shooting ranges nor for shooting range renovation prior to 1980. No grant from the money appropriated to the shooting range fund shall exceed:

(1) twenty-five percent of the cost of any one project; nor

(2) more than ten percent of the amount appropriated to the shooting range fund by the Shooting Range Fund Act.

D. The state game commission may expend not more than five percent of the appropriated money in the shooting range fund each fiscal year for administrative purposes to carry out the provisions of the Shooting Range Fund Act.

**History:** 1953 Comp., § 53-7-3, enacted by Laws 1976 (S.S.), ch. 43, § 3.

## **ARTICLE 8**

### **SPORT SHOOTING RANGE**

#### **17-8-1. Short title.**

This act [17-8-1 to 17-8-6 NMSA 1978] may be cited as the "Sport Shooting Range Act".

**History:** Laws 2002, ch. 72, § 1.

#### **ANNOTATIONS**

**Cross references.** - For municipal zoning regulations, see 3-21-1 to 3-21-26 NMSA 1978.

For abatement of a public nuisance, see 30-8-8 NMSA 1978.

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.

#### **17-8-2. Purpose of act.**

The purpose of the Sport Shooting Range Act [17-8-1 to 17-8-6 NMSA 1978] is to protect the normal operation and use of sport shooting ranges by establishing when a person who owns, operates or uses a sport shooting range is liable for civil penalties.

**History:** Laws 2002, ch. 72, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.

#### **17-8-3. Definition.**

As used in the Sport Shooting Range Act [17-8-1 to 17-8-6 NMSA 1978], a "sport shooting range" is an area designed and operated for the use of rifles, shotguns or pistols as a means of silhouette, skeet, trap, black powder or other sport shooting or firearms training.

**History:** Laws 2002, ch. 72, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.

#### **17-8-4. Immunity from nuisance actions based on noise or noise pollution.**

A. The use or operation of a sport shooting range shall not be enjoined as a nuisance on the basis of noise or noise pollution:

(1) if the sport shooting range is in compliance with noise control statutes, rules or ordinances that apply to the range and its operation at the time that the initial operation of the range commenced;

(2) due to changes made to noise control statutes, rules or ordinances that apply to the sport shooting range and its operation, if the changes take effect after the initial operation of the range commenced; or

(3) if noise control statutes, rules or ordinances were not in effect at the time that the original operation of the sport shooting range commenced.

B. The use or operation of a sport shooting range may not be enjoined as a nuisance on the basis of noise or noise pollution by a person who acquires an interest in real property adversely affected by the normal operation and use of a sport shooting range that commenced operation prior to the time the person acquired the interest in real property.

**History:** Laws 2002, ch. 72, § 4.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.

#### **17-8-5. Local government authority.**

The provisions of the Sport Shooting Range Act [17-8-1 to 17-8-6 NMSA 1978] shall not prohibit a local government from regulating the location and construction of sport shooting ranges after July 1, 2002.

**History:** Laws 2002, ch. 72, § 5.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.

#### **17-8-6. Exemptions.**

The provisions of the Sport Shooting Range Act [17-8-1 to 17-8-6 NMSA 1978] do not apply:

- A. to recovery for an act or omission relating to recklessness, negligence, wanton misconduct or willful misconduct in the operation or use of a sport shooting range;
- B. to a nuisance action on the basis of trespass involving the operation or use of a sport shooting range;
- C. to the operation or use of a sport shooting range that substantially and adversely affects public health or public safety; or
- D. if there has been a substantial change in the primary use of a sport shooting range.

**History:** Laws 2002, ch. 72, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 2002, ch. 72, § 7 makes the act effective on July 1, 2002.