# Chapter 17
# Game and Fish

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## Article 1
## State Game Commission

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## § 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.** - As to 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. As to public lands generally, see Chapter 19 NMSA 1978. As to the Off-Highway Motorcycle Act, see 66-3-1001 to 66-3-1016 NMSA 1978. As to water law generally, see Chapter 72 NMSA 1978. As to 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).

**They 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 five members, not more than three 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 five years. At the time of making the first appointments, the governor shall designate the commissioners' terms as being one, two, three, four and five years so that the term of one commissioner 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;

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.

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.

**ANNOTATIONS**

**"Effective date of this 1985 act".** - The term "effective date of this 1985 act", referred to near the end of the second paragraph, means the effective date of Laws 1985, ch. 107, which is June 14, 1985.

**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**

**Compiler's notes.** - 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.

## § 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.

**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 1988, ch. 83, § 1, effective May 18, 1988, appropriates $746,000 from the game protection fund to the department of game and fish for expenditure in the seventy-seventh fiscal year for the purpose of granting salary and related benefits to wildlife classified employees of the department of game and fish and provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the game protection fund.

Laws 1990, ch. 132, § 10, effective March 7, 1990, appropriates $1,000,000 from the game protection fund and the game and fish bond retirement fund for the purpose of constructing the Mora national fish hatchery contingent upon a cooperative agreement between the department of game and fish and the United States fish and wildlife service that provides for the hatchery to make fish available to the state in proportion to the state's contribution, for the agreement to last at least fifteen years and for termination and disposition of property and funds provisions for expenditure in the seventy-eighth through eighty-first fiscal years.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**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).

**But the 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.

## § 17-1-6. [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.** - As to 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**

**Compiler's notes.** - 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.

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

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, and the state game commission shall have authority:

A. 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;

B. to declare closed seasons in any specified locality or localities and on any species of game or fish threatened with undue depletion from any cause;

C. 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;

D. 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;

E. 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;

F. 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 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;

G. 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;

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

I. 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;

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

K. to conduct studies of programs for the management of endangered and nongame species of wildlife.

The director 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.

The 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.

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.

## ANNOTATIONS

**Cross-references.** - As to transfer of duties of state game warden to director, see 17-1-6 NMSA 1978. As to disposition of proceeds from sale of seized game or fish, see 17-2-21 to 17-2-23 NMSA 1978. As to conducting hunter training program, see 17-2-34 NMSA 1978. As to depositing license fees in game protection fund, see 17-3-7, 17-3-20 and 17-5-7 NMSA 1978. As to depositing federal funds in game protection fund, see 17-4-31 NMSA 1978. As to destroying commission's boundary markers, see 17-4-32 NMSA 1978. As to duty to administer laws regulating trappers and fur traders, see 17-5-4 NMSA 1978. As to revocation of trappers' and fur dealers' licenses, see 17-5-9 NMSA 1978. As to expenditure of funds to carry out Habitat Protection Act, see 17-6-7 NMSA 1978. As to shooting range fund and administration thereof, see 17-7-1 to 17-7-3 NMSA 1978.

**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.

**Such 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.

**But not municipal reservoirs and waters on Indian and military reservations where fishing fee is charged.** - 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.

**Although 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.

**But 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 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.

**And they 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 § 9.

## § 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.** - As to 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 complied 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 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.

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 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, 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**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

**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 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.

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 17-1-20. Sale of bonds.

Bonds issued under the Game and Fish Bond Act 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.

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

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

Proceeds from the sale of bonds issued under the Game and Fish Bond Act 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.

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 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 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 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 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**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

**"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 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.

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

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 17-1-24. Tax exemptions.

The principal and income of bonds issued under the Game and Fish Bond Act 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.

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 17-1-25. Refunding.

Any bonds issued under the Game and Fish Bond Act 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 for issuance of the original bonds.

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

**ANNOTATIONS**

**Game and Fish Bond Act.** - See 17-1-16 NMSA 1978 and notes thereto.

## § 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.** - As to penalty for violating regulations, see 17-2-10 NMSA 1978. As to promulgation of hunter training program rules and regulations, see 17-2-34 NMSA 1978. As to regulations concerning endangered species, see 17-2-41 to 17-2-43 NMSA 1978. As to shooting preserve regulations, see 17-3-36 NMSA 1978. As to regulations concerning nonpredatory fur-bearing animals, see 17-5-3 and 17-5-4 NMSA 1978. As to regulations under Habitat Protection Act, see 17-6-3 NMSA 1978. As to 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.

**It 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.

**And 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.

**And 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 §§ 7, 9.

## § 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.** - As to 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**

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

The bracketed figure "2" was inserted by the compiler, the act of congress mentioned having been approved September 2, 1937.

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**

Sec.

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17-2-2. Game to be protected.

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

17-2-4. Bullfrogs classed as protected species.

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

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

17-2-20.1. Forfeitures; property subject.

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

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

## Part 2

## Hunter Training Act

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**Part 3**

**Wildlife Conservation Act**

17-2-37. Short title.

17-2-38. Definitions.

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17-2-45. Penalty.

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

**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.** - As to 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).

**But 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).

**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 §§ 7, 9.

## § 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.** - As to endangered species, see 17-2-37 to 17-2-46 NMSA 1978. As to protection of fur-bearing animals, see 17-5-1, 17-5-2 NMSA 1978. As to 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 Perdicidae (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.** - As to 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.

## § 17-2-4. [Bullfrogs classed as protected species.]

Bullfrogs (Rana castebiana) are hereby classed as a protected species of amphibious animal, and the state game commission is hereby authorized and directed to make such rules and regulations for their protection or taking as it may deem necessary.

**History:** Laws 1937, ch. 217, § 1; 1941 Comp., § 43-204; 1953 Comp., § 53-2-4.

## § 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.** - As to 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 14-4-1 to 14-4-9 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.** - As to 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).

**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.
36A C.J.S. Fish § 28; 38 C.J.S. Game § 10.

## § 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.

**But not 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 which 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 and shall be sentenced to the payment of a fine in accordance with the following schedule:

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

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

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

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

(9) to sell, offer for sale, offer to purchase or purchase any big game animal unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars ($1,000).

B. Any person who is convicted of a violation of any regulations adopted by the state game commission which 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 Subsection A of this section, shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or imprisoned not more than six months, or both.

**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.

## ANNOTATIONS

**Cross-references.** - As to revocation of license for violation of law, see 17-2-30, 17-3-34 and 17-5-9 NMSA 1978. As to penalties for violations as to endangered species, see 17-2-45 NMSA 1978. As to fines constituting current school fund, see N.M. Const., art. XII, § 4.

**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.

## § 17-2-11. [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**

**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.

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.

**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, whipporwills [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 § 10.

## § 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 Strigiformes, 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. The provisions of this subsection shall not apply to the genera of Aquila and Haliaeetus of the family Accipitridae.

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 purposes of selling or trading, any parts of any birds protected by this section. Permits shall be granted upon application and without charge to any person 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 of game and fish.

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 which has killed such poultry or game birds. The owner of such game or poultry farm 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.

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

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

**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.

## § 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. Bullfrogs; capturing or killing without license prohibited; selling prohibited.

No person, except children under the age of twelve years, shall at any time take, capture or kill or attempt to take, capture or kill, in any manner, any bullfrog without paying for and having in his possession a valid fishing license as provided by law. It shall be unlawful for any person to barter or sell any bullfrog taken from the public waters, or the banks thereof, of this state at any time.

**History:** Laws 1937, ch. 217, § 2; 1941 Comp., § 43-218; 1953 Comp., § 53-2-18; Laws 1979, ch. 340, § 5.

## § 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**

**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.

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.

## § 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.** - As to 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 and except as otherwise provided in Paragraph (3) of this subsection, enforce the provisions of the Criminal Code and the Motor Vehicle Code [Articles 1 to 8 of Chapter 66 NMSA 1978]; and

(3) while on official duty only, enforce the provisions of Sections 30-14-1 and 30-14-1.1 NMSA 1978 pertaining to criminal trespass.

**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.

## ANNOTATIONS

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

**Criminal Code.** - See 30-1-1 NMSA 1978 and notes thereto.

**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).

**They 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.

**Other officers 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.
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 §§ 9, 17.

## § 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**

**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.

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.

**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 § 17.

## § 17-2-20.1. Forfeitures; property subject.

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

A. illegal possession or transportation of big game during closed season;

B. taking big game during closed season;

C. taking big game by the use of spotlight or artificial light; and

D. exceeding the bag limit on any big game species during open season.

Provided that no firearm or bow and arrows shall be subject to forfeiture if the violation was without the knowledge or consent of the owner.

**History:** 1978 Comp., § 17-2-20.1, enacted by Laws 1979, ch. 321, § 1.

**ANNOTATIONS**

**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 § 17; 79 C.J.S. Searches and Seizures § 21.

## § 17-2-20.2. Forfeiture; procedure.

A. Property subject to forfeiture under Section 17-2-20.1 NMSA 1978 may be seized by any conservation officer, sheriff or state police officer upon an order issued by the district court having jurisdiction or without an order if the seizure is incident to an arrest or search under a search warrant.

B. In the event of seizure pursuant to Subsection A of this section, proceedings under Subsection C of this section shall be instituted promptly and not later than twenty days after conviction.

C. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the department of which the law enforcement officer referred to in Subsection A of this section is a member, subject only to the orders and decrees of the district court which may include sale of the property at public auction.

**History:** 1978 Comp., § 17-2-20.2, enacted by Laws 1979, ch. 321, § 2.

**ANNOTATIONS**

**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 § 17; 79 C.J.S. Searches and Seizures § 21.

## § 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.** - As to general penalties, see 17-2-10 NMSA 1978. As to 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 874.
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 §§ 10 to 13.

## § 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.** - As to sale of skins, pelts or furs involved in violation, see 17-5-9 NMSA 1978.

**Compiler's notes.** - 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.

**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 | $200.00 |
| for each deer | 50.00 |
| for each antelope | 100.00 |
| for each mountain sheep | 200.00 |
| for each mountain goat | 200.00 |

for each barbary sheep.....200.00

for each black bear.....100.00

for each cougar.....300.00

for each bison.....300.00

for each ibex.....300.00

for each kudu.....300.00

for each oryx .....300.00

for each javelina.....50.00

for each beaver.....50.00

for each bird.....10.00

for each fish.....1.00

B. No verdict or judgment recovered by the state in the 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 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.

**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.

**ANNOTATIONS**

**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.

**He 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.

**But 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.

**State game laws inapplicable on reservations.** - The state may not apply its games laws to persons for acts done on the Mescalero Apache reservation, under the

principles of federal preemption and tribal self-government. Mescalero Apache Tribe v. New Mexico, 630 F.2d 724 (10th Cir. 1980), aff'd, 462 U.S. 364, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1982).

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 §§ 19, 66.
42 C.J.S. Indians §§ 75, 79.

## § 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.** - As to 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.** - As to penalty for violation of this section, see 17-2-10A 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 [health and environment department] that rabbits in the area are infected with bubonic plague. Any restriction under this section shall be terminated when the department of public health [health and

environment department] 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**

**Compiler's notes.** - By Laws 1968, ch. 37, § 3, the functions of the department of public health were transferred to the department of health and social services. However, the department of health and social services has been abolished and its health functions transferred to the health and environment department by Laws 1977, ch. 253, §§ 3 and 5.

**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.

**ANNOTATIONS**

**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).

## § 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 or are likely within the foreseeable future to become so, 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 or subspecies 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 or threatened species provided that the commission adopts such 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);

E. "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 constitute a full scientific resource program of, including but not limited to, research, census, law enforcement, propagation, habitat acquisition, improvement and maintenance, education and related activities of protection and regulated taking;

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

G. "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.

**ANNOTATIONS**

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

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

The legislature finds and declares that:

A. species and subspecies of wildlife indigenous to the state which may be found to be 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 or subspecies of wildlife which 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 or subspecies of wildlife listed on the United States lists of endangered fish and wildlife, unless such actions will assist in preserving or propagating the species or subspecies; and

C. adequate funding 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 and fish protection fund [game protection fund] for management of endangered species.

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

**ANNOTATIONS**

**Compiler's notes.** - The special fund referred to in Subsection C is properly designated as the game protection fund. See 17-1-14 NMSA 1978.

## § 17-2-40. Investigation.

The director shall conduct investigations concerning all species of wildlife indigenous to this state and named on the list required by Section 17-2-41 NMSA 1978 and those other species of wildlife indigenous to the state which are suspected of being endangered in order to develop information relating to population, distribution, habitat needs, limiting factor and other biological and ecological data to determine management measures and requirements necessary for their survival.

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

## § 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 and other interested persons and organizations, not later than one year after the effective date of the Wildlife Conservation Act, the commission shall by regulation develop a list of those species and subspecies of wildlife indigenous to the state which are determined to be 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 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.

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 or subspecies 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;

(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 such lists are adopted for this purpose by regulations of the commission; and

(3) provided, that any species or subspecies of wildlife appearing on any of the foregoing lists, 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.

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

**ANNOTATIONS**

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

**"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.

**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.

## § 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.

## § 17-2-44. Commission; land acquisition; state plan studies.

In addition to other powers and duties, the director [commission]:

A. may acquire lands, waters or interests therein for the conservation, management, restoration, propagation and protection of endangered species;

B. shall hold public hearings and include the participation of the public in the preparation and adoption of a state plan for all endangered species in order to efficiently carry out the provisions of the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978]; and

C. shall conduct studies to determine the status and requirements for survival of endangered species.

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

**ANNOTATIONS**

**Compiler's notes.** - The bracketed word "commission" was inserted by the compiler.

## § 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 §§ 9, 17.

# Article 3
# Licenses and Permits

## Part 1

## General Provisions

Sec.


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17-3-7. Blank forms; license issued only on application; false statement voids license; records; reports; accounting for fees collected.

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17-3-16. Funds; special drawings for licenses.

17-3-16.1. Bighorn sheep enhancement permit; issuance; use.

17-3-17. Fishing without license; exception.

17-3-18. Director authorized to issue fishing permit without license to certain handicapped persons.

17-3-19. Special license; minors fishing on scout property.

17-3-20. Disposition of fees collected under 17-3-19.

17-3-21. Season and bag limits applicable to minors holding special license.

17-3-22. Administration of 17-3-19 to 17-3-22.

17-3-23. Fishing on lands of New Mexico boys' school near Springer authorized for resident children without a license.

17-3-24. Supervision of fishing at boys' school.

17-3-25. Patients at Carrie Tingley crippled children's hospital; fishing on hospital lands by patients; supervision.

17-3-26. Taking minnows and nongame fish to sell as bait; license required; exception.

17-3-27. Bait license; application and bond; fee; issuance; contents.

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.

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.

17-3-30. Sending game animals, birds and fish to officers of other states.

17-3-31. Permit to capture or destroy protected game damaging crops or property; beavers.

17-3-32. Importing game animals; permits.

17-3-32.1. Exceptions from certain permits.

17-3-33. Presumption from possession of game or fish without license; showing license to officer.

17-3-34. Revocation of license, certificate or permit for violation of law; notice and hearing; judicial review.

## Part 2

## Regulated Shooting Preserve Act

17-3-35. Short title.

17-3-36. Regulated shooting preserves; fees.

17-3-37. Definition.

17-3-38. Tags.

17-3-39. Special nonresident licenses.

17-3-40. Regular licenses.

17-3-41. Commercial operation of.

17-3-42. Revocation of permits.

## Part 3

## Airborne Hunting Act

17-3-43. Short title.

17-3-44. Definitions.

17-3-45. Shooting from aircraft; causing injury by aircraft; penalty.

17-3-46. Applicability.

17-3-47. Permit.

**Part 4**

**Penalties**

17-3-48. Purchase or use of license, certificate or permit, or hunting or fishing while under suspension or revocation; penalty.

**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.** - As to what are game mammals, game birds and game fish, see 17-2-3 NMSA 1978. As to penalty for violation of fish and game laws, see 17-2-10 NMSA 1978. As to licenses for Indians and Indian reservations, see 17-2-28 NMSA 1978 and notes thereto. As to permits respecting endangered species, see 17-2-42 and 17-2-45 NMSA 1978. As to 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 § 17.

## § 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 license" 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 license" 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) "special season deer tag" entitles the holder of a valid license for deer to hunt deer when special permission is required;

(14) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(15) "retention" entitles the licensee to retain the live abandoned young of a game animal;

(16) "bison" entitles the licensee to hunt bison during the open season;

(17) "oryx" entitles the licensee to hunt oryx during the open season;

(18) "ibex" entitles the licensee to hunt ibex during the open season;

(19) "cougar license" entitles the licensee to hunt cougar during the open season;

(20) "turkey license" entitles the licensee to hunt turkey during the open season;

(21) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(22) "class A trout stamp" or validation entitles the holder of a valid resident fishing license or a resident general hunting and fishing license to fish in waters designated by the state game commission as trout waters;

(23) "class B trout stamp" or validation entitles the holder of a special five-day fishing license to fish in waters designated by the state game commission as trout waters;

(24) "class C trout stamp" or validation entitles the holder of a valid one-day fishing license or a junior-senior fishing license to fish in waters designated by the state game commission as trout waters;

(25) "class D trout stamp" or validation entitles the holder of a valid nonresident fishing license to fish in waters designated by the state game commission as trout waters; and

(26) "gazelle" entitles the licensee to hunt gazelle during the open season.

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 reached his twelfth birthday but has not reached his fourteenth 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. None of the classes of trout stamps provided for in Subsection A of this section are required of any person fishing on lands of any Indian pueblo or tribe.

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 which 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; provided, however, the class C trout stamp would apply.

H. A handicapped general hunting license may be purchased by any resident who has a severe physical impairment which 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.

**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.

## ANNOTATIONS

**Cross-references.** - As to power of state game commission to establish open and closed seasons, see 17-2-1 NMSA 1978. As to special nonresident bird licenses for regulated shooting preserves, see 17-3-39 NMSA 1978. As to hunting and fishing in licensed private parks or lakes, see 17-4-15 NMSA 1978.

**The 1989 amendment,** effective April 1, 1989, added the present second sentence of Subsection G.

**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.

**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.

**Such 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.

**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.

**And 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.

**But 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 § 15.

## § 17-3-5. Application for hunting or fishing licenses; contents; filing.

The director shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within this state. Each person, before receiving any fishing or hunting license, shall make application therefor on a blank so provided. Among other matters which may be shown by said application, shall be a statement showing the exact residence of applicant. The application shall be signed by 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 application therefor shall contain the place of residence of the person to whom any license may be issued.

**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.

**ANNOTATIONS**

**Cross-references.** - As to power of state game commission to withhold license, see 17-1-14 NMSA 1978. As to blank forms and applications for licenses, see 17-3-7 NMSA 1978.

**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. It shall be the duty of the director and he shall have the authority to 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 on an application signed by the applicants. Any false statement in any application shall render the license issued thereon 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 shall collect and retain twenty-five cents ($.25) from the purchaser of any license or permit issued for a fee of five dollars fifty cents ($5.50) or less. He shall collect and retain fifty cents ($.50) from the purchaser of any license or permit issued for a fee of more than five dollars fifty cents ($5.50) and less than twenty dollars ($20.00). He shall collect and retain one dollar ($1.00) from the purchaser of any license or permit issued for a fee of twenty dollars ($20.00) or more which shall cover issuing the license; provided, no such fee shall be collected by the department from the purchaser of a special license. Special license shall include those licenses for the following species: antelope, elk, barbary sheep, mountain sheep, bison, oryx, ibex, gazelle and javelina.

D. He shall remit to the director 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 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.

## ANNOTATIONS

**Cross-references.** - As to preparation and contents of forms and filing of applications, see 17-3-5 NMSA 1978.

**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 fee of three dollars ($3.00) for it. The director shall collect a nonrefundable fee of three dollars ($3.00) from each applicant for a special season hunting license or permit.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing .....$ 8.00

Resident, small game .....9.00

Resident, deer .....18.50

Resident, general hunting .....21.50

Resident, general hunting and fishing .....25.00

Resident, antelope .....20.00

Resident, elk .....35.00

Resident, bighorn or Barbary sheep .....35.00

Resident, bear .....10.00

Resident, turkey .....10.00

Resident, cougar .....10.00

Resident, bison .....100.00

Resident, oryx .....35.00

Resident, ibex .....25.00

Resident, gazelle .....25.00

Resident, javelina .....20.00

Resident, fur dealer .....10.00

Resident, trapper .....10.00

Resident, junior trapper .....5.00

Bobcat pelt tag

Nonresident, fishing .....18.00

Nonresident, small game .....50.00

Nonresident, deer .....145.00

Nonresident, bear .....75.00

Nonresident, cougar .....50.00

Nonresident, turkey .....50.00

Nonresident, antelope .....120.00

Nonresident, elk .....210.00

Nonresident, bighorn sheep .....370.00

Nonresident, Barbary sheep .....300.00

Nonresident, bison .....200.00

Nonresident, oryx .....500.00

Nonresident, ibex .....500.00

Nonresident, gazelle .....300.00

Nonresident, javelina .....100.00

Nonresident, fur dealer .....50.00

Nonresident, trapper .....300.00

Nonresident, nongame .....25.00

Resident junior-senior fishing .....1.25

Temporary fishing, one day .....5.00

Temporary fishing, five days .....10.00

Special season deer tag .....3.00

Resident, special season turkey .....10.00

Trout stamp or validation, class A .....5.50

Trout stamp or validation, class B .....4.50

Trout stamp or validation, class C .....3.00

Trout stamp or validation, class D .....6.50

Retention .....1.25

Resident senior general hunting .....10.50

Resident, handicapped, fishing .....1.25

Resident, handicapped, general hunting .....10.50

Nonresident, special season turkey .....75.00.

C. The state game commission shall annually report on the status of license fee revenues and with the consent of the legislature

may annually revise the fees for licenses and tags listed in Sections 17-3-13, 17-3-15 and 17-3-19 NMSA 1978. The revenues derived from the fees referred to in this subsection may be used to provide additional enforcement of the game and fish laws by using officers who have been certified by the law enforcement academy.

**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.

## ANNOTATIONS

**Cross-references.** - As to depositing money received in game protection fund, see 17-1-14, 17-3-7, 17-3-20 and 17-5-7 NMSA 1978. As to placing portion of certain license fees in game and fish bond retirement fund, see 17-1-22 NMSA 1978. As to fee for additional deer license fee, see 17-3-15 NMSA 1978. As to fee for special Boy Scout fishing license, see 17-3-19 and 17-3-20 NMSA 1978. As to license fee for taking and selling minnows and nongame fish for bait, see 17-3-27 NMSA 1978. As to 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.

**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.

## § 17-3-14. 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.

**ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 86 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## § 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.

The director may provide special envelopes and application blanks where a 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 returned to them.

**History:** 1953 Comp., § 53-3-7, enacted by Laws 1964 (1st S.S.), ch. 17, § 7.

**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.

## § 17-3-16.1. Bighorn sheep enhancement permit; issuance; use.

A. The state game commission shall direct the department of game and fish to authorize not more than one of the permits available for issuance in the license year for the taking of one bighorn ram 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 permit. The issuance of such 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.

C. All money collected from the issuance and sale of the bighorn sheep enhancement permit 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.

**ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 384 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## § 17-3-17. Fishing without license; exception.

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 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.

**History:** 1953 Comp., § 53-3-9, enacted by Laws 1964 (1st S.S.), ch. 17, § 8; 1973, ch. 268, § 3; 1979, ch. 340, § 8.

**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.

**This section applies to non-Indians on Indian lands.** 1973 Op. Att'y Gen. No. 73-18.

**Such 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 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.

**ANNOTATIONS**

**Children's Code.** - See 32-1-1 NMSA 1978 and notes thereto.

## § 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

**Compiler's notes.** - Pursuant to Laws 1972, ch. 97, § 69, amending 17-3-23 NMSA 1978, "resident children" and "boys' school" have been inserted in brackets.

## § 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; application and bond; fee; issuance; contents.]

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 of the state of New Mexico for such license. Such application shall be upon forms provided by the state game commission, and shall set forth the public streams, or waters out of which it is intended to take such minnows and nongame fish, and the place at which the same are to be sold. Said application shall be accompanied by a fee of twenty dollars [($20.00)], and a bond in the sum of one thousand dollars ($1,000) executed by a surety company authorized to do business in this state, running to the state of New Mexico, and conditioned upon the licensee and his employees abiding by the laws of the state of New Mexico and valid regulations of the state game commission. Anyone who is damaged by act of the licensee or his employees may maintain an action on the bond in his own name. Upon receipt of such application and bond it shall be the duty of the state game commission, or when it is not in session the director to pass upon such application, and to issue a license authorizing the taking and the manner of taking of such minnows and nongame fish by such applicant from such waters in the state of New Mexico, as in the opinion of such state game commission or director will not be detrimental to the public or injurious to protected fish, and such license when so issued shall specify the manner of taking and the waters from which such applicant may be and 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.

**ANNOTATIONS**

**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**

**Compiler's notes.** - 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.

## § 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.** - As to application of this section to beaver, see 17-5-2 NMSA 1978. As to permits to take fur-bearing animals doing damage, see 17-5-3 NMSA 1978.

**Compiler's notes.** - 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.

**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.** - As to 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 shall persistently, flagrantly or knowingly violate or countenance 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, such license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and an opportunity afforded 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 for further relief. Upon appeal, the district court shall set aside the decision only if 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.

**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.

**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.** - As to 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 fee for such permit shall be twenty-five dollars ($25.00) per license year. 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 thereon.

**History:** 1953 Comp., § 53-3-30, enacted by Laws 1957, ch. 194, § 2.

## § 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.

17-4-2. Eminent domain power; abandonment or relinquishment of property acquired.

17-4-3. Exchange, sale, lease, sublease and assignment of lands by commission; proceeds.

17-4-4. Sale of former state bird farm; mineral rights reserved.

17-4-5. Fish hatcheries established by United States; exemption from state laws.

17-4-6. Hunting and fishing on private property; posting; penalty.

17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.

17-4-8. Parks or waters for propagation of game or fish; license required.

17-4-9. Unlicensed parks or lakes deemed public nuisance; abatement; liberation of game or fish; each day separate offense.

17-4-10. Transportation of game or fish taken from unlicensed parks or waters prohibited.

17-4-11. Licensing of private lakes and parks; "proprietor" defined.

17-4-12. Application for license; contents; maximum area; fencing.

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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.

17-4-16. Invoice to be delivered to purchaser; form; duplicate mailed to director.

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17-4-18. Offering game or fish for sale; storage; keeping in hotel or eating place; invoice to remain attached.

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17-4-25. Diverse proprietorship; joint or separate licenses.

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17-4-28. Parks, lakes and preserves; license; fees.

17-4-29. Floating logs in fish stream; restocking; penalty.

17-4-30. Federal aid.

17-4-31. Federal funds; disbursement.

17-4-32. Destruction of boundary markers; penalty.

## § 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.

## § 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.

**And it 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.** - As to prohibition against hunting or fishing in licensed private park or lake without permission, see 17-4-15 NMSA 1978. As to posting notices against trespassing on licensed private parks or lakes, see 17-4-26 NMSA 1978. As to 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).

**And 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.

**Provided he 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 § 14.

## § 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**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 62 Am. Jur. 2d Premises Liability § 75. 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.** - As to 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.** - As to 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.** - As to power of state game commission to suspend, revoke or withhold licenses, see 17-1-14 NMSA 1978. As to including series of lakes in license, see 17-4-24 NMSA 1978. As to licenses in case of diverse proprietorship, see 17-4-25 NMSA 1978. As to transfer of license upon transfer of interest, see 17-4-27 NMSA 1978. As to duration and renewal of licenses, see 17-4-28 NMSA 1978. As to license fees, see 17-4-28 NMSA 1978.

**Compiler's notes.** - 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.

**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.** - As to licenses being for one year and renewable annually, see 17-4-28 NMSA 1978.

**Compiler's notes.** - 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.

## § 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.** - As to posting private property against hunting and fishing, see 17-4-6 NMSA 1978.

**Compiler's notes.** - 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 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

**Compiler's notes.** - 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.

## § 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.** - As to 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.** - As to menu as evidence of possession, see 17-2-18 NMSA 1978. As to 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**

**Compiler's notes.** - 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.

## § 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.** - As to including series of lakes in one license, see 17-4-24 NMSA 1978.

**Compiler's notes.** - 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.

## § 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.** - As to 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.** - As to 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.** - As to 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.** - As to lessee or grantee being deemed proprietor, see 17-4-23 NMSA 1978.

**Compiler's notes.** - 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.

## § 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 request of licensee.

B. The director shall charge and collect the following fees, for permits under Division A:

(1) for each permit to capture or exchange .....$ 1.00

(2) for each quadruped park license .....500.00

(3) for each renewal of each quadruped park license .....500.00

(4) for one lake license .....100.00

(5) for each renewal of one lake license .....100.00

(6) for each additional lake license .....25.00

(7) for each renewal of each additional lake license .....25.00

(8) for each certificate, permit or license not herein provided for .1.00

**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.

**ANNOTATIONS**

**"Division A".** - See 17-4-28 NMSA 1978 and notes thereto.

## § 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 to 777k, 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.** - As to game protection fund, see 17-1-14 NMSA 1978.

**Compiler's notes.** - As to 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.

17-5-2. Fur-bearing and nongame animals defined; property of state.

17-5-3. Seasons; special permits to take animals doing damage.

17-5-4. State game commission to administer act; rules and regulations.

17-5-5. Trapper's licenses.

17-5-6. Fur dealer licenses.

17-5-7. Disposition of license fees.

17-5-8. Officers authorized to enforce act.

17-5-9. Penalty; revocation of license; sale of pelts.

## § 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.** - As to 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.** - As to power of commission to withhold license, see 17-1-14 NMSA 1978. As to duration of license, see 17-3-1 NMSA 1978. As to amount of license fee, see 17-3-13 NMSA 1978. As to 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.** - As to power of commission to withhold license, see 17-1-14 NMSA 1978. As to duration of license, see 17-3-1 NMSA 1978. As to amount of license fee, see 17-3-13 NMSA 1978. As to 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.** - As to disposition of fees collected under fish and game laws, see 17-1-14 NMSA 1978. As to amount of license fees, see 17-3-13 NMSA 1978.

**Compiler's notes.** - 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.

## § 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.

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.

**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.** - As to power of commission to withhold license, see 17-1-14 NMSA 1978. As to seizure and destruction of illegal traps or devices, see 17-2-20 NMSA 1978.

# Article 6
# Habitat Protection


17-6-1. Short title.

17-6-2. Definitions.

17-6-3. Restrictions on motor vehicle use; recommendations; rules and regulations.

17-6-4. Notices of restrictions; posting; publication.

17-6-5. Prohibition against vehicle travel.

17-6-6. Exceptions.

17-6-7. Expenditure of funds; functions.

17-6-8. Limitation of liability on landowners.

17-6-9. Enforcement.

17-6-10. Commissioner of public lands exempt.

17-6-11. Violations; penalty.

## § 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.** - As to Off-Highway Motor Vehicle Act, see 66-3-1001 to 66-3-1016 NMSA 1978. As to 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.** - As to 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.

17-7-2. Fund created.

17-7-3. Administration.

## § 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.