

# SUNSET ADVISORY COMMISSION

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STAFF REPORT WITH COMMISSION DECISIONS



Texas Parks and  
Wildlife Department

2020–2021

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87<sup>TH</sup> LEGISLATURE

# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood*

# **TEXAS PARKS AND WILDLIFE DEPARTMENT**

SUNSET STAFF REPORT WITH COMMISSION DECISIONS  
2020–2021  
87<sup>TH</sup> LEGISLATURE

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](https://www.sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](https://www.sunset.texas.gov).

### **Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **CURRENT VERSION: Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Parks and Wildlife Department (TPWD), as well as modifications and new recommendations raised at the public hearing.

TPWD has the important responsibility of managing, conserving, and providing access to Texas' lands and natural resources. Because of the importance of these functions, the commission found the state continues to benefit from the agency's existence and recommends continuing the agency for 12 years. Keeping the agency's critical functions in mind, the commission's other recommendations aim to better position the agency for success in an ever-changing environment. Thousands of individuals and small business owners obtain licenses from TPWD to make their livelihoods in occupations like commercial fishing, retail and wholesale fish dealing, alligator farming, and deer breeding. These licensees and the state rely on fair and effective regulation from TPWD, and the commission identified opportunities to ensure the agency provides adequate due process and treats licensees consistently and fairly across its regulatory programs.

The commission also found the agency's strategic planning processes have become muddled over time, impeding the agency's ability to best plan its operations and identify and address its future needs. The commission recommends requiring the agency to refine the scope and measure the effectiveness of its Land and Water Resources Conservation and Recreation Plan. The agency should also include more concrete objectives and outcome-based performance measures in its strategic plan. Finally, the commission determined the agency's internal auditing program faces challenges, which the agency should address through a stronger risk assessment process and more formalized input from the Texas Parks and Wildlife Commission.

## ISSUE 1

The State Has a Continuing Need for the Texas Parks and Wildlife Department.

**Recommendation 1.1, Adopted** — Continue the Texas Parks and Wildlife Department for 12 years.

**Recommendation 1.2, Adopted** — Apply the standard across-the-board requirements regarding commission member training and maintaining a system for receiving and acting on complaints.

**Recommendation 1.3, Adopted** — Update TPWD's statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 1.4, Adopted** — Direct TPWD to actively monitor its efforts to increase workforce diversity and report success measures to the Texas Parks and Wildlife Commission. (Management action – nonstatutory)

## ISSUE 2

### Some Elements of TPWD's Licensing and Enforcement Functions Are Inconsistent and Lack Transparency.

**Recommendation 2.1, Adopted as Modified** — Authorize the Texas Parks and Wildlife Commission to provide an opportunity to access an informal review panel process for nonrecreational license and permit types at its discretion. Under this recommendation, any review panel process should occur after the agency sends notice of its intent to revoke or suspend a license. (Management action – nonstatutory)

**Recommendation 2.2, Adopted** — Require TPWD to establish a risk-based approach to inspections.

**Recommendation 2.3, Adopted** — Direct the agency to adopt policies for using its full range of existing enforcement authority, including revocation and suspension in appropriate cases. (Management action – nonstatutory)

**Recommendation 2.4, Adopted** — Direct TPWD to clearly and actively communicate enforcement processes and outcomes to licensees. (Management action – nonstatutory)

**Recommendation 2.5, Adopted as Modified** — Direct TPWD to standardize administration of its regulatory programs to the extent feasible and appropriate. (Management action – nonstatutory)

**Recommendation 2.6, Adopted** — Direct TPWD to review and update all reporting deadlines and timeframes for licenses. (Management action – nonstatutory)

## ISSUE 3

### TPWD Needs to Improve Strategic Management Processes to Ensure It Can Best Meet the Future Needs of Texans.

**Recommendation 3.1, Adopted** — Require TPWD to measure the effectiveness of the Land and Water Plan and refine its scope.

**Recommendation 3.2, Adopted** — Direct the Texas Parks and Wildlife Commission to establish a conservation and recreation planning subcommittee. (Management action – nonstatutory)

**Recommendation 3.3, Adopted** — Direct TPWD to improve and use the Natural Agenda as the agency's sole, agencywide strategic plan. (Management action – nonstatutory)

**Recommendation 3.4, Adopted** — Direct TPWD to institute processes to better ensure consistent, actionable policies and practices across the agency's divisions. (Management action – nonstatutory)

## ISSUE 4

### TPWD's Internal Auditing Program Does Not Identify or Address All the Agency's Risks, Limiting Its Effectiveness.

**Recommendation 4.1, Adopted** — Direct the Texas Parks and Wildlife Commission to formally establish an internal audit subcommittee. (Management action – nonstatutory)



**Recommendation 4.2, Adopted** — Direct TPWD to fully identify and prioritize the risks of all of the agency's activities in its risk assessment process. (Management action – nonstatutory)

**Recommendation 4.3, Adopted** — Direct TPWD to develop a more complete and diversified internal audit plan. (Management action – nonstatutory)

**Recommendation 4.4, Adopted** — Direct TPWD to use its newly developed quarterly audit status report to provide more information about the status and implementation of audit recommendations. (Management action – nonstatutory)

## ADOPTED NEW RECOMMENDATIONS

### Online Public Input

Direct the agency to ensure there is an opportunity for the public to submit written comments online for every Texas Parks and Wildlife Commission action item that requires a vote. (Management action – nonstatutory)

### Advisory Committee Transparency

Direct the agency to improve transparency of its advisory committees by providing easy access to the names of the advisory committees, the members and who they represent, and the committees' meeting dates and minutes. (Management action – nonstatutory)

## Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would have some upfront costs but should also result in efficiencies for the agency. Most of the recommendations in the report are intended to ensure TPWD makes the most efficient use of its resources, such as streamlining its regulatory programs, but the exact fiscal impact cannot be estimated without knowing how TPWD would implement them.



# SUMMARY OF SUNSET STAFF REPORT

The Texas Parks and Wildlife Department (TPWD) has the important responsibility of managing, conserving, and providing access to Texas' lands and natural resources. To do so, the agency carries out two distinct but related functions in state government. As the state's game and fish agency, TPWD is responsible for the protection and stewardship of some of the state's most valuable and most threatened resources. The agency also operates and maintains public lands, making them available for outdoor recreational opportunities for Texans and visitors to the state. The importance of these functions to the state warrants the continuation of TPWD. However, each of these functions presents modern challenges for the agency. TPWD, like fish and wildlife agencies nationwide, is experiencing a decline in hunters, anglers, and boaters — along with a commensurate decline in license fee revenue. Meanwhile, as Texas' population has swelled and the state has experienced unprecedented growth, the need to conserve land and water resources and provide access to outdoor recreational opportunities is both higher in demand and harder to secure. Adding to this challenge, the COVID-19 pandemic has also affected the agency's operations and budget. With the state's parks largely closed or limiting operations for most of the popular spring season, revenue for basic operations has declined and future revenue remains unpredictable for the rest of the biennium.

Keeping all this in mind, Sunset staff focused its review on identifying ways to better position the agency for success in an ever-changing environment. Sunset found the agency's strongly decentralized structure, with 13 divisions responsible for different agency functions, sometimes presents challenges with consistent understanding of policies across the agency, indicating the need for processes to ensure agencywide comprehension. Likewise, the agency's strategic planning processes have become muddled over time, impeding the agency's ability to best plan its operations and identify and address its future needs. The strategic plan could benefit from more concrete objectives and outcome-based performance measures to better guide the agency's operations. Likewise, the Land and Water Resources Conservation and Recreation Plan needs to return to its intended statutory purpose, identifying and addressing the state's resources and needs. The agency's internal auditing program also faces challenges, which the agency should address through a stronger risk assessment process and more formalized input from the Texas Parks and Wildlife Commission.

While TPWD is well known as the agency that issues recreational hunting and fishing licenses, the Sunset review noted the agency also issues about 80 different licenses and permits that regulate a vast range of activities to protect the state's natural resources from potential harms like overharvesting and invasive species. Currently, thousands of individuals and small business owners obtain licenses from TPWD to make their livelihoods in occupations like commercial fishing, retail and wholesale fish dealing, alligator farming, and deer breeding.

Sunset staff focused on identifying ways to better position the agency for success in an ever-changing environment.

These licensees and the state rely on fair and effective regulation from TPWD, but the review identified opportunities to ensure the agency provides adequate due process and treats licensees consistently and fairly across its regulatory programs.

Hunting, fishing, and outdoor recreation are integral to the lives and livelihoods of Texans, and have been for centuries. The agency's strong ties to longstanding traditional and familiar ways of operating must adapt to a dynamic and changing world. TPWD is up to the task, but a few changes could improve its operations and better prepare the agency to meet its shifting challenges. The following material summarizes Sunset staff recommendations on the Texas Parks and Wildlife Department.

## **Sunset Staff Issues and Recommendations**

### **ISSUE 1**

#### **The State Has a Continuing Need for the Texas Parks and Wildlife Department.**

TPWD's mission to manage and conserve natural and cultural resources and provide outdoor recreation opportunities continues to be important to Texas. Activities like hunting and fishing, if unregulated, have the potential to threaten the state's wildlife, and TPWD provides the necessary regulation and conservation measures to protect these resources. By acquiring and managing parks and other public lands, TPWD also ensures the growing population of Texans and tourists have access to the state's diverse lands and unique natural features for recreation.

#### **Key Recommendations**

- Continue the Texas Parks and Wildlife Department for 12 years, until 2033.
- Apply the standard across-the-board requirements regarding commission member training and maintaining a system for receiving and acting on complaints.

### **ISSUE 2**

#### **Some Elements of TPWD's Licensing and Enforcement Functions Are Inconsistent and Lack Transparency.**

In addition to the agency's millions of recreational hunting and fishing licenses, TPWD also issues thousands of nonrecreational licenses covering a wide range of activities that have the potential to impact Texas' natural resources. These licenses regulate activities many Texans depend on for their livelihoods. The agency must ensure it oversees and enforces these licenses fairly and efficiently, in line with best practices for occupational licenses. TPWD uses separate criminal and administrative enforcement processes, but does not sufficiently align them, creating difficulties for both agency employees and licensees in achieving fair, strong, and consistent enforcement. Additionally, the agency oversees these licenses through five different divisions with no standardized business processes, creating inefficiencies for agency staff and frustration for licensees.

### Key Recommendations

- Require TPWD to provide an opportunity to access an informal review process for nonrecreational license and permit types.
- Require TPWD to establish a risk-based approach to inspections.
- Direct the agency to adopt policies for using its full range of existing enforcement authority, including revocation and suspension in appropriate cases.
- Direct TPWD to clearly and actively communicate enforcement processes and outcomes to licensees.

## ISSUE 3

### TPWD Needs to Improve Strategic Management Processes to Ensure It Can Best Meet the Future Needs of Texans.

TPWD coordinates its functions and guides its operations through two primary strategic planning documents: the *Land and Water Resources Conservation and Recreation Plan* and the *Natural Agenda*. The Land and Water Plan has strayed from its original, statutory purpose. The *Natural Agenda* is the state-required strategic plan, which should be enhanced to better guide the agency's operations and measure its performance. Also, TPWD's decentralized structure, with 13 divisions that each operate with significant autonomy, provides some obstacles in the agency's ability to accomplish its mission consistently and effectively.

### Key Recommendations

- Require TPWD to refine the scope and measure the effectiveness of the Land and Water Plan, and direct the Texas Parks and Wildlife Commission to establish a conservation and recreation planning subcommittee.
- Direct TPWD to improve and use the *Natural Agenda* as the agency's sole, agencywide strategic plan.
- Direct TPWD to institute processes to better ensure consistent, actionable policies and practices across the agency's divisions.

## ISSUE 4

### TPWD's Internal Auditing Program Does Not Identify or Address All the Agency's Risks, Limiting Its Effectiveness.

The agency's risk assessment process does not produce a complete and accurate picture of TPWD's risks. As a result, the agency's internal auditing program disproportionately focuses on lower risk areas and activities, while higher risk areas potentially go unidentified and unaddressed. TPWD's risk assessment and internal audit processes also provide little opportunity for the commission to give early input and guidance, or to exercise thorough oversight because the commission receives limited information on the implementation status of audit recommendations.

**Key Recommendations**

- Direct the Texas Parks and Wildlife Commission to formally establish an internal audit subcommittee.
- Direct TPWD to fully identify and prioritize the risks of all of the agency's activities in its risk assessment process, and to develop a more complete and diversified internal audit plan.
- Direct TPWD to use its newly developed quarterly audit status report to provide more information about the status and implementation of audit recommendations.

**Fiscal Impact Summary**

Overall, the recommendations in this report would have some upfront costs but should also result in efficiencies for the agency. Most of the recommendations in the report are intended to ensure TPWD makes the most efficient use of its resources, such as streamlining its regulatory programs, but the exact fiscal impact cannot be estimated without knowing how TPWD would implement them.



# AGENCY AT A GLANCE

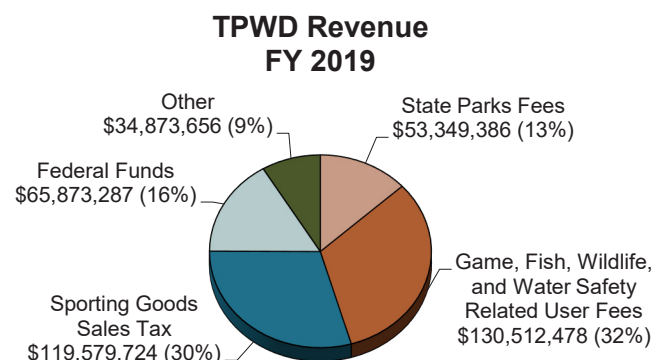
While Texas has regulated hunting and fishing, protected wildlife, and managed parks for over 100 years, the Texas Parks and Wildlife Department (TPWD) came into existence from a merger of the State Parks Board and the Texas Game and Fish Commission in 1963. TPWD's mission is to manage and conserve the natural and cultural resources of Texas, and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations.

To accomplish this mission, TPWD conducts a broad variety of activities, including:

- Operating and managing a system of public lands including state parks, fish hatcheries, and wildlife management areas.
- Managing and regulating fishing, hunting, and boating activities.
- Enforcing game and wildlife laws.
- Managing the sustainability of wildlife, fish, and other aquatic species.
- Registering and titling boats.
- Monitoring, conserving, and enhancing the quality of public and private lands, waters, and other aquatic habitats.
- Conducting education and outreach events and programs.

## Key Facts

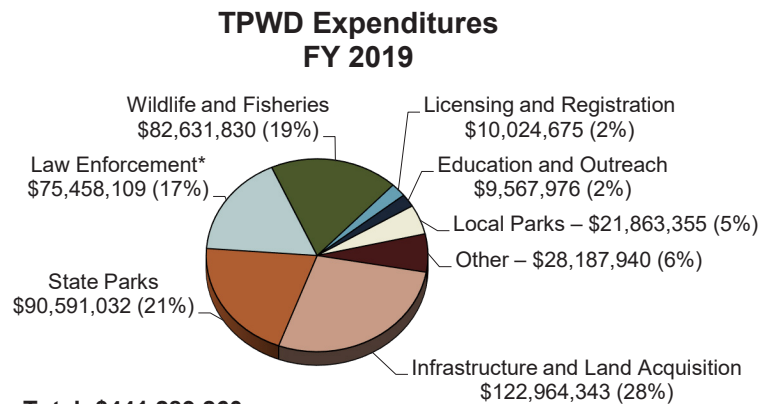
- **Governance.** The governor appoints TPWD's nine-member commission to staggered six-year terms with the advice and consent of the Senate. All commission members represent the public, and statute directs the governor to attempt to include people with expertise in areas such as outdoor recreation, conservation, and historic preservation. The commission meets five times a year with one meeting outside the Austin area.
- **Funding.** TPWD receives revenue from a variety of sources including user fees for licenses and permits, state park entry fees, federal funds, and a portion of the state Sporting Goods Sales Tax. The agency's overall revenue for 2019 was \$404,188,531, as shown in the chart, *TPWD Revenue*. Most of the revenue, 75 percent, comes from user fees and the Sporting Goods Sales Tax. Many of these funding streams, along with portions of the remaining 25 percent of revenue, come with significant restrictions. For example, funds received from the migratory game bird endorsement on a hunting license can only be used for



**Total: \$404,188,531\***

\* Revenue totals do not include certain funds appropriated to TPWD but held by the Comptroller of Public Accounts or other state agencies such as unclaimed refunds of motorboat fuel tax.

programs benefiting migratory game birds and their habitats. In 2019, the agency had expenditures of \$441,289,260 as shown in the *TPWD Expenditures* chart. Appendix A describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19.



\* This total reflects amounts expended for game wardens. Law enforcement expenditures relating to state parks police are included under the State Parks category.

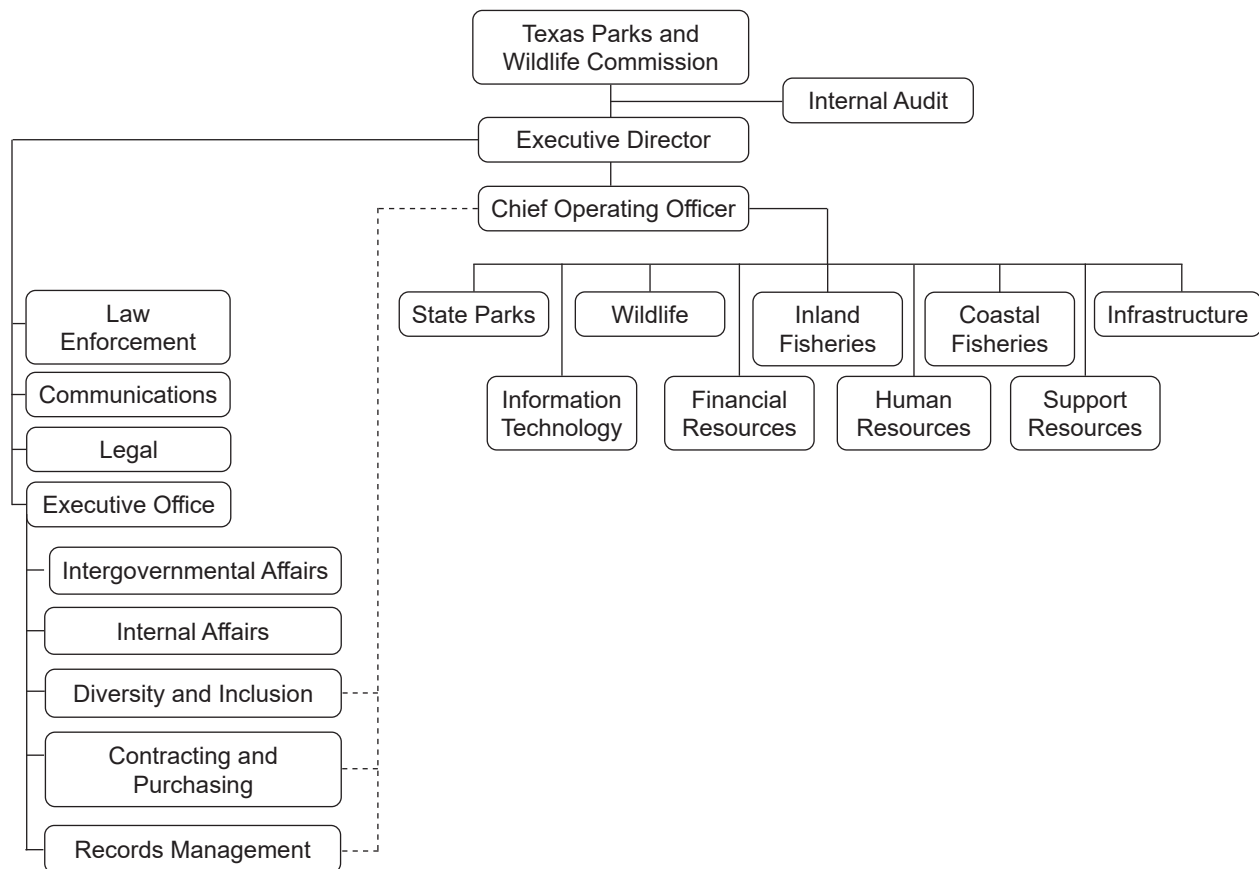
In 2019, Texas voters approved a constitutional amendment that fully dedicates the sales tax revenue for certain sporting goods items to TPWD and the Texas Historical Commission. The funding will be used to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites. This change was expected to provide a significant amount of funding to TPWD for state parks-related expenditures in the upcoming biennium, but the amount of additional funding TPWD will receive cannot be estimated at this time due to the significant, but still unknown, revenue impacts of the COVID-19 pandemic.

- **Staffing.** In fiscal year 2019, TPWD employed 3,001 staff, below its budgeted cap of 3,237. About 27 percent of employees work at the headquarters in Austin and the rest are located at 199 regional offices, state parks, wildlife management areas, fish hatcheries, and other facilities across the state. Appendix B compares the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years.

TPWD accomplishes its mission and conducts its activities by organizing its staff in 13 divisions, as shown in the *TPWD Organizational Chart* on the following page. While most of the divisions report to the chief operating officer, four divisions — law enforcement, communications, legal, and the executive office — report directly to the executive director.

- **State parks.** The State Parks Division is the largest division in TPWD with over one third of the agency's staff. These employees operate 88 state parks across Texas, covering more than 630,000 acres with almost nine million visitors in fiscal year 2019. This division also administers parks- and recreation-related grant programs for local governments and nonprofits to develop additional outdoor recreation facilities and access. TPWD awarded 112 recreational grants totaling approximately \$28.6 million in fiscal year 2019.
- **Law enforcement.** TPWD has 551 game wardens who are supported by about 123 noncommissioned staff at 29 offices across Texas. Game wardens are commissioned peace officers with statewide law enforcement authority, but their main duty is enforcing wildlife, fish, and water safety laws and regulations. Game wardens made more than 1.2 million hunting and fishing contacts in fiscal year 2019. TPWD also has a separate state parks police force with approximately 90 commissioned peace officers who primarily provide law enforcement in state parks.
- **Wildlife.** The agency ensures the long-term sustainability of Texas' wildlife resources by regulating hunting, advising private landowners on wildlife management best practices, coordinating public hunts, and conducting wildlife surveys and research. The agency's 50 wildlife management areas provide opportunities for research, education, and public use on 748,660 acres across diverse ecological

### TPWD Organizational Chart



regions. TPWD staff conducted 1,559 wildlife population surveys in fiscal year 2019. The agency also monitors the health of the state's fish and wildlife resources. Since 2011, TPWD's disease prevention efforts have been dominated by chronic wasting disease, a transmissible neurological disease that affects animals in the deer family, including white-tailed deer, mule deer, and elk. In fiscal year 2019, TPWD staff, hunters, landowners, and permittees submitted 22,958 samples for chronic wasting disease tests.

- **Fisheries.** The agency manages fish and other aquatic species, and protects aquatic habitats throughout the state and in coastal waters up to nine miles from the shore. TPWD regulates both commercial and recreational fishing; assesses fish populations and monitors their health; operates eight fish hatcheries and numerous fish stocking programs in public waters; provides access to recreation through paddling trails; and restores native aquatic habitats.

TPWD stocked more than 35 million fish in coastal and inland waters in fiscal year 2019. The agency also monitors and treats aquatic invasive species; works to implement Natural Resource Damage Assessment settlements like the many Deepwater Horizon oil spill restoration projects; and works with local, state, and federal agencies to help ensure Texas' waterways have the water quality and quantity needed to support fish, plants, and wildlife resources.

- **Boat licensing, titling, and registration.** TPWD licenses boat dealers, distributors, manufacturers, and party boat operators. The agency also partners with county tax assessor-collector offices to issue boat titles and registrations and collect sales tax on boats; 80 counties currently choose to participate

in this partnership. In fiscal year 2019, TPWD registered 308,341 boats and issued 107,389 boat titles and 560 marine industry licenses. That same year, the agency collected more than \$65 million in boat sales tax, 95 percent of which transferred to general revenue. The agency also provides online, telephone, and walk-in customer service for boat licensing and titling.

- **Licensing and permitting.** TPWD issues a wide variety of other licenses and permits, ranging from recreational fishing to deer breeding to taking sand or gravel from public riverbeds. Most of these licenses are issued through an extensive distributor network including almost 2,000 retailers like Wal-Mart and Academy. In addition to recreational hunting and fishing licenses, TPWD issues licenses and permits dealing with specific, uncommon, or sensitive animal and plant species that often require additional review or inspection from a TPWD biologist for approval and compliance. In fiscal year 2019, TPWD issued and oversaw more than three million permits and licenses of about 180 different types.
- **Infrastructure and capital construction.** The agency's extensive inventory of structures, facilities, and properties across the state makes infrastructure planning, construction, and maintenance a priority among the agency's activities. Along with maintenance, renovation, and construction of facilities at the state's 88 parks, TPWD is also in the planning and design phase for one additional park and two new state natural areas. In fiscal year 2019, TPWD's capital construction portfolio comprised 118 projects with a budget of approximately \$257 million.
- **Land conservation.** TPWD works to preserve the state's natural resources and expand outdoor recreation opportunities through two main land conservation strategies. First, the agency acquires land from willing sellers and donors, primarily for the expansion of existing state parks and wildlife management areas. Second, the agency obtains conservation easements to protect viewsheds and watersheds to help maintain the value of state parks and wildlife management areas. Along with these efforts, TPWD also administers a pass-through grant program, the Texas Farm and Ranch Lands Conservation Program, that assists land trusts to preserve working farms and ranches throughout the state. Since 2016, TPWD has issued 13 grants totaling \$3.15 million covering 24,000 acres of land.
- **Communications and outreach.** The agency encourages participation in outdoor recreation and natural resource conservation using a wide range of media products, communication tools, website management, digital and print publications, customer data analysis and marketing, education efforts, and outreach programs. For example, TPWD conducts boater and hunter education and youth hunting programs, publishes the *Texas Parks and Wildlife* magazine, produces a public broadcast television show, publishes a podcast, and has an extensive social media presence including site-specific social media for many of its state parks. Individual state parks also provide enrichment to visitors at their sites through their park interpreters who educate visitors about local plant and animal life, ecology, and history. Other sites and facilities like fish hatcheries and wildlife management areas also provide tours and interpretive exhibits.

# ISSUE 1

## The State Has a Continuing Need for the Texas Parks and Wildlife Department.

### Background

The Legislature created the Texas Parks and Wildlife Department (TPWD) in 1963 from a merger of the State Parks Board and the Texas Game and Fish Commission, in an effort to provide better management of the state's natural resources. The agency's mission is to manage and conserve the natural and cultural resources of Texas, and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations. To accomplish this mission, TPWD conducts a broad variety of activities that range from managing and operating almost 1.4 million acres of public lands to stocking fish in public waters to registering boats.

### Findings

#### **The agency's activities to protect Texas' natural resources and provide outdoor recreation opportunities continue to be needed.**

TPWD serves as the state's natural resources agency and ensures responsible stewardship of the state's wildlife. Under state law, all wildlife resources in Texas are public property and belong to the state.<sup>1</sup> Activities like hunting and fishing, if unregulated, have the potential to threaten these animals, birds, fish, and other aquatic species. TPWD provides necessary regulation and conservation measures to protect these resources and ensure future generations can continue to enjoy them.

The agency protects wildlife resources through regulation of hunting and fishing, wildlife population management, law enforcement, and management of exotic and invasive species. The agency operates 50 wildlife management areas, totaling 748,660 acres across diverse ecological regions. These large tracts of land allow the agency to conserve and restore wildlife habitats, conduct research and offer educational programs, provide technical assistance to private landowners, and conduct public hunts. TPWD also operates eight fish hatcheries that stock millions of juvenile fish in public waters to boost populations of species with the highest fishing pressure, providing increased opportunities for anglers to catch these species.

Hunting and fishing are significant economic drivers for the state.

Hunting and fishing have a rich cultural and social history in Texas. Currently, Texas ranks second nationwide in number of hunters and anglers, fourth in spending by hunters and anglers, and third in hunting and fishing-related jobs.<sup>2</sup> As such, hunting and fishing are significant economic drivers for the state. For example, in fiscal year 2019, TPWD generated over \$100 million from the sale of over 3.2 million hunting and fishing licenses, permits, tags, and fees. In addition to licensing revenue, hunting and fishing activities also generate \$4.1 billion in annual retail sales, support over 65,000 jobs, and contribute \$415 million in state and local taxes.<sup>3</sup>



In fiscal year 2019, state park fees generated more than \$53 million in revenue for the state.

The agency operates 88 state parks across Texas, covering more than 630,000 acres, providing access to outdoor recreation activities to all Texans, such as biking, camping, hiking, paddle sports, swimming, and wildlife viewing.<sup>4</sup> In fiscal year 2019, state park fees generated \$53,349,386 in revenue for the state, with a 40 percent increase in visitors over the past seven years. By obtaining and managing parks and public lands, TPWD ensures the growing population of Texans and tourists have access to the state's diverse lands and unique natural features for recreation.

The agency helps conserve the state's habitats and ecosystems, which support the state's native wildlife, through focused conservation efforts like obtaining conservation easements and using prescribed burning. Additionally, the agency accesses millions of dollars in federal funding for wildlife conservation and restoration, parks and public lands, and pass-through grants to local entities. Having a dedicated state agency performing these functions boosts the state's ability to manage and conserve natural resources through various federal programs and federal matches to state spending.

### **No substantial benefit would result from transferring TPWD's functions to other state agencies.**

Having a single agency regulate both the state's parks and fish and wildlife resources works well, and Texas would not see significant improvements or efficiencies by consolidating any of TPWD's functions with other agencies. Every state regulates fish, game, and wildlife, and every state operates state parks; however, states perform these functions through many different organizational structures. About half the states accomplish the mission of TPWD through two or more separate agencies. Of the remaining states, many include regulation of both parks and wildlife in larger umbrella agencies covering other functions, like environmental regulation, energy resources, agriculture, tourism, and historical sites. TPWD functions appropriately in its current configuration, and Sunset staff found the state achieves better coordination and efficiencies by regulating state parks and fish and wildlife resources together in one agency.

TPWD works closely with the Texas Animal Health Commission to manage chronic wasting disease.

Some of TPWD's key functions require active collaboration and partnerships with other agencies that have distinct roles in addressing a variety of wildlife and other animal issues facing Texas. For example, the agency regularly works with the Texas Animal Health Commission, which manages disease control among livestock, including exotic livestock like elk and nilgai. Management of chronic wasting disease, which affects some animals in the deer family like white-tailed deer, mule deer, and elk, requires continued and close coordination between the two agencies. Currently, this coordination works well, and the state would see no significant benefit from combining or reorganizing these two distinct state government functions.



**Despite commendable efforts, TPWD has been unable to meet benchmarks for workforce diversity, and is not tracking the results of its diversity and inclusion program.**

The Sunset Act requires the Sunset Commission and its staff to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunities (EEOs).<sup>5</sup> Sunset staff routinely evaluates agency performance regarding these requirements in the course of a review, but only reports deficiencies significant enough to merit attention.

TPWD has not met civilian workforce percentages in almost every job category in the last 10 years for African Americans, Hispanics, and women. In 2011, TPWD began making efforts to address this issue by hiring a consultant to help improve the agency's workforce diversity. Since then, the agency has created a dedicated Diversity and Inclusion Office, held diversity work groups and trainings, convened an employee advisory committee on diversity and inclusion, expanded partnerships with diverse colleges and universities, and created the *Diversity and Inclusion Strategic Plan*. The agency's chief diversity and inclusion officer also sits on national workgroups and committees dedicated to increasing diversity in natural resources careers, as this challenge faces conservation agencies nationwide.

Conservation agencies nationwide face challenges with diversity and inclusion.

After nearly a decade of this work, the most recent data shows these efforts have not resulted in a workforce that reflects the diversity of the state. TPWD's *Diversity and Inclusion Strategic Plan* includes defined measures for success, but some measures are not clearly quantifiable, and the agency is not currently measuring progress toward the plan's goals. From 2015 to 2018, the agency had a diversity and inclusion dashboard that measured demographic data, but lacked key pieces of information needed to track some of the plan's success measures, like staff participation in developmental activities and number of diverse interns becoming full-time employees. The agency has set division-level diversity targets and recently resumed sharing some demographic information with division directors in a dashboard, but without clearly tracking the outcomes of the plan's efforts, the agency cannot fully evaluate what is and is not working and make changes as needed. Appendix B shows TPWD's EEO performance in each job category for fiscal years 2017–19.

**TPWD's statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless a strong reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

TPWD's statute  
does not  
contain newer  
requirements  
for commission  
member training.

- **Commission member training.** TPWD's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.
- **Complaint information.** TPWD's statute requires the agency to maintain partial information on complaints. Maintaining a system for acting on complaints and keeping proper documentation helps protect the public by ensuring the agency addresses problems in a timely fashion. However, statute contains language that is narrower than the standard language, allowing the commission to limit the types of complaints TPWD must maintain information about and limiting the complaints the agency must respond to and act upon.

### **TPWD's statute does not use appropriate language when referring to persons with disabilities.**

Statute requires Sunset to consider and recommend, as appropriate, statutory revisions in accordance with the person-first respectful language outlined in general law.<sup>6</sup> The stated intent of the law is to try to affect society's attitudes toward people with disabilities by changing the way the language refers to them. Sunset only changes language that occurs in chapters of law that are opened by the Sunset Commission's recommendations. The governing statutes for TPWD contain terms not consistent with the person-first respectful language initiative. The agency's Sunset bill should revise the statute to use person-first respectful language when appropriate.

### **TPWD has three reporting requirements that continue to be needed.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished. The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.

State law requires TPWD to produce three reports for the Legislature, listed in the table on the following page, *TPWD Reporting Requirements*. Each of these reporting requirements continues to serve a useful purpose. The *Land and Water Resources Conservation and Recreation Plan* serves as the agency's long-term strategic visionary document, as discussed in Issue 3. Additionally, as an agency with significant infrastructure and extensive construction and maintenance responsibilities, the *Management Plan and Priorities List* continues

to ensure the Legislature and specific oversight committees are aware of the agency's progress on these activities. Finally, TPWD must issue the *Report on the Preservation and Development of Historical Sites* periodically, and last issued it in 2004. Since TPWD continues to maintain several historical sites and works with the Texas Historical Commission on others, this requirement helps ensure responsible collaboration and stewardship of important historical and cultural resources.

### TPWD Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Land and Water Resources Conservation and Recreation Plan	Section 11.104, Texas Parks and Wildlife Code	This report analyzes the state's conservation and recreation needs and establishes goals and objectives for the agency to accomplish its mission.	TPWD website	Continue
2. Management Plan and Priorities List	Section 11.253, Texas Parks and Wildlife Code	This report addresses TPWD's maintenance responsibilities, including a list of facilities most in need of renovation, repair, expansion, or other maintenance.	Governor, Lieutenant Governor, Speaker of the House, and legislative committees overseeing matters regulated by TPWD	Continue
3. Report on the Preservation and Development of Historical Sites	Section 13.0052, Texas Parks and Wildlife Code	This report includes plans to preserve and develop historical sites under TPWD's jurisdiction.	TPWD website	Continue

## Sunset Staff Recommendations

### *Change in Statute*

#### **1.1 Continue the Texas Parks and Wildlife Department for 12 years.**

This recommendation would continue the agency until 2033.

#### **1.2 Apply the standard across-the-board requirements regarding commission member training and maintaining a system for receiving and acting on complaints.**

This recommendation would require the agency to develop a training manual that each commission member attests to receiving annually, and require existing commission member training to include information about the scope of and limitations on the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy and boards and commissions have rulemaking authority necessary to implement legislative policy.

This recommendation would also require TPWD to maintain a system for receiving and acting on complaints and to make information available regarding its complaint procedures. TPWD would also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints. This recommendation would repeal statutory provisions allowing TPWD to only respond to and resolve certain complaints.

### 1.3 Update TPWD's statute to reflect the requirements of the person-first respectful language initiative.

This recommendation would direct the Texas Legislative Council to revise TPWD's governing statutes to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code as needed.

### **Management Action**

### 1.4 Direct TPWD to actively monitor its efforts to increase workforce diversity and report success measures to the Texas Parks and Wildlife Commission.

This recommendation would direct TPWD to strengthen the Diversity and Inclusion Office's existing work by tracking the success measures outlined in the *Diversity and Inclusion Strategic Plan*. TPWD's Diversity and Inclusion Office should monitor the status of implementation of activities and tasks; annually evaluate the agency's workforce diversity statistics; and direct modification to the plan as necessary. The agency should report the success measures to the Texas Parks and Wildlife Commission annually at a public meeting. This recommendation would help ensure TPWD's diversity and inclusion activities result in tangible improvement to its workforce diversity in all job categories and divisions throughout the agency.

## **Fiscal Implication**

These recommendations would not result in a fiscal impact to the state. Based on fiscal year 2019 appropriations, continuing TPWD would require \$344.5 million annually.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1.011, Texas Parks and Wildlife Code.

<sup>2</sup> "Texas," Congressional Sportsmen's Foundation, accessed February 27, 2020, <http://congressionalsportsmen.org/state/tx>.

<sup>3</sup> Texas Parks and Wildlife Department, "Gov. Abbot Proclaims Sep. 29 National Hunting and Fishing Day in Texas," news release, September 25, 2019, <https://tpwd.texas.gov/newsmedia/releases/?req=20190925a>.

<sup>4</sup> Texas Parks and Wildlife Department, *Texas State Parks Official Guide*, accessed February 27, 2020, [https://tpwd.texas.gov/publications/pwdpubs/media/pwd\\_bk\\_p4000\\_0000aa.pdf](https://tpwd.texas.gov/publications/pwdpubs/media/pwd_bk_p4000_0000aa.pdf), 3–4.

<sup>5</sup> Section 325.011(9), Texas Government Code.

<sup>6</sup> Section 325.0123, Texas Government Code.

## ISSUE 2

# Some Elements of TPWD's Licensing and Enforcement Functions Are Inconsistent and Lack Transparency.

### Background

The Texas Parks and Wildlife Department (TPWD) operates an extensive regulatory framework consisting of 182 different types of licenses and permits. This regulation varies broadly, encompassing not only the nearly 2 million recreational hunting and fishing licenses but also specialized licenses and permits, like the permit to breed birds of prey, which four individuals currently hold. The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices.

While the purpose of regulation is usually to protect the public from potential harm, TPWD's licenses and permits instead focus on protecting the state's natural resources from potential threats like overharvesting and introduction of invasive species. Because the range of activities TPWD regulates is broad, this issue is narrowly focused to address only those licenses and permits with nonrecreational and business implications, such as commercial shrimping and party boat operation.

While most of TPWD's regulatory programs are not true occupational licenses in the legal sense, thousands of Texans earn their livelihood through activities regulated by the agency. Also, state law and TPWD rules do not draw any clear regulatory distinctions between the agency's licenses and permits, which serve the same functional purpose, so they are referenced together as "licenses" throughout this issue. Determining which of the agency's regulatory programs meet the narrowed focus of this issue was an inexact and subjective exercise, but resulted in 80 different licenses and permits to which Sunset's licensing expertise most clearly applies. The list of licenses and permits addressed in this issue is laid out in more detail in Appendix C. In fiscal year 2019, the agency issued 24,748 of the relevant licenses and permits, and denied 18 across six license and permit types.

Unlike many state licensing agencies, TPWD conducts most of its regulatory enforcement through game wardens who operate out of the agency's Law Enforcement Division. Game wardens are commissioned peace officers with statewide jurisdiction who primarily enforce criminal laws in the Texas Parks and Wildlife Code, including criminal violations related to these 80 regulatory programs. In addition to their criminal law enforcement duties, game wardens also perform important administrative oversight functions by inspecting, overseeing, and ensuring compliance with the laws and rules that govern these licenses. In addition to the criminal citations issued by game wardens, the agency also exercises administrative enforcement authority through its natural resources divisions that issue licenses. Regulatory employees in these divisions generally rely on license nonrenewal or denial as an enforcement tool, but the agency has other administrative enforcement authority, such as revocation and suspension of licenses and civil penalties.<sup>1</sup>



## Findings

### TPWD does not sufficiently align its criminal and administrative enforcement processes, weakening its regulatory functions.

TPWD's Law Enforcement Division interacts with regulatory divisions informally with no required communication of critical information.

- **Lack of formalized internal coordination and information sharing.** The licensing and enforcement functions of a regulatory agency should not only be coordinated across programs and divisions, but should also have clear policies and procedures to ensure the agency effectively and fairly regulates licensees while protecting state resources and the public. With regard to TPWD's regulatory duties, the agency's divisional structure impedes effectiveness. Currently, the Law Enforcement Division interacts with other regulatory divisions on a regular but informal basis, with no required communication of critical information. For example, a game warden issuing a criminal citation or a warning for a violation of permit rules is not required to share this information with the division that issues and oversees the license. Issues of noncompliance, even those not rising to a criminal conviction, can merit administrative consequences. However, the division issuing the license often only discovers a criminal noncompliance issue when conducting a compliance check for a license renewal. Because renewals typically happen on a yearly basis, this compliance check can occur months after a violation.

TPWD's rules do not provide clear guidance for matching disciplinary action to the severity of an offense.

- **Unclear enforcement guidelines.** Agencies should establish clear guidelines for the use of sanctions to help ensure disciplinary actions relate appropriately to the nature and seriousness of the offense. Currently, TPWD uses only one administrative sanction — license nonrenewal. While TPWD rules generally state the reasons staff can deny or refuse to renew a license, they rarely reference or provide clear guidance for using the agency's other enforcement tools such as suspension and revocation. TPWD asserts this practice saves time. Since most TPWD licenses are only valid for one year, using sanctions like suspension and revocation could delay enforcement until after the license has expired. However, while nonrenewal could allow the agency to act more quickly, it does not trigger the Administrative Procedure Act, which would provide licensees the opportunity for an objective review of the agency's decisions by the State Office of Administrative Hearings. Additionally, in cases where licensees choose not to appeal the agency's decision, suspension and revocation would take effect immediately, providing a more expeditious process than nonrenewal.

TPWD rules also generally do not contain clear guidance for matching the agency's disciplinary action to the severity of an offense. A few rules mention the possibility of nonrenewal, stating the agency may deny a license after a violation, but most do not contain further information on mitigating and aggravating factors that may affect the agency's ultimate decisions.<sup>2</sup> One exception to this is the rule governing shell dredging permits. This rule explicitly defines minor and major violations, and provides clear guidelines directly relating the number and type of violation to the length of the penalty.<sup>3</sup> This specificity provides permittees and agency staff a clear



understanding and expectation of how violations will translate into penalties. Most of TPWD's other regulatory programs lack this guidance, increasing the potential for staff to issue inconsistent and possibly unfair penalties.

- **Insufficient communication with licensees.** Regulatory agencies with administrative, civil, and criminal enforcement authority should ensure they communicate enforcement policies clearly to licensees, particularly upon issuing a criminal citation. This communication is important both for the benefit of the licensee, and to enhance the regulatory program's deterrent effect on violations. The Sunset review found TPWD's current enforcement policies are unclear to licensees, who often fail to understand the difference between criminal penalties and administrative enforcement actions. If a licensee commits a criminal violation, receives a citation, is convicted, and pays the fine, the criminal enforcement action is complete, but administrative enforcement has not yet begun. Even if the licensee has fully paid a fine, TPWD may still, and often does by default, deny the licensee's renewal application as a separate administrative enforcement action based on the criminal violation.

TPWD's enforcement policies are unclear to licensees.

Many of TPWD's licensees do not understand that a criminal citation and fine is not the only penalty they may receive for a violation. In fact, 89 percent of licensees surveyed by Sunset staff were unaware certain citations and violations may disqualify them from renewing their license. In a recent example, an individual whose exotic species permit was not renewed appealed this decision to an informal review panel consisting of TPWD staff. The licensee, believing the citation was the full extent of enforcement action and payment had resolved the issue, presented evidence to the review panel demonstrating they paid the fine and their license renewal should not have been denied. While agency rules and documents provided to the licensees mention the possibility of nonrenewal upon criminal conviction, they do not clearly lay out the circumstances in which the agency will likely pursue nonrenewal. After considering the seriousness of the offense and the licensee's generally compliant history, the review panel in the case described above ultimately decided to uphold the permit denial for a period of two years.

Additionally, although TPWD could notify a licensee that administrative enforcement action may be taken in addition to a criminal penalty, the agency's practices essentially require licensees to actively seek a renewal application before discovering this. Instead of simply receiving notification that the agency intends to revoke or deny their license, a licensee must submit a renewal application and pay the application fee, only to have their license denied due to a previous criminal violation.

TPWD does not clearly notify licensees they may face administrative enforcement action in addition to a criminal penalty.

The agency's insufficient communication with licensees also does not effectively deter noncompliance, nor does it incentivize licensees to come back into compliance. Because TPWD does not clearly inform licensees they may face nonrenewal of their license, the agency fails to provide a potentially strong incentive to come back into compliance. Some licensees,

TPWD does not provide an informal review process for 43 of its 80 nonrecreational license types.

lacking this incentive before renewing, may see the fines, which in 2019 were typically less than \$250 per violation, as simply the cost of doing business. This perception, along with the lack of clear communication, reduces TPWD's ability to limit bad behavior and bad actors effectively.

- **Inconsistent access to informal review panels.** All licensees regulated by an agency should have the ability to request an informal review of an agency decision that affects their license. Currently, only a handful of TPWD's regulatory programs, including deer breeding and some types of commercial fishing, have a statutory process for informal agency review.<sup>4</sup> TPWD provides these informal review panels upon request for some licensees who are not guaranteed a statutory review, but does not provide any review process for 43 of the 80 license types discussed in this issue, as shown in Appendix C. Informal review and settlement processes are a common and useful practice for licensing agencies. For example, agencies often offer informal reviews as a first step before contested case proceedings. If the agency and licensee are able to come to an agreement on disciplinary action, these reviews save both parties the time and expense of an administrative hearing or lawsuit. In the absence of these recourses, TPWD licensees' only option to appeal a nonrenewal of their license is filing an appeal in a Travis County district court.<sup>5</sup>

**TPWD does not formally prioritize inspections based on the risk posed to the state, or track them to maximize use of agency resources.**

TPWD was unable to produce complete inspection data for its regulatory programs.

An agency should have statutory authority, rules, and clear procedures for conducting inspections, including focusing resources on the highest risk areas. Several of TPWD's nonrecreational licenses regulate facilities, vehicles, or sites with specific physical requirements. For example, exotic species aquaculture facilities must maintain at least three permanent screens meeting detailed specifications to prevent potentially harmful species from escaping. Currently, TPWD has no clear guidelines for how game wardens should schedule and conduct inspections of these licenses. The table on the following page, *Inspections Conducted by Permit Type*, demonstrates the disparity in inspections conducted for different types of licenses. For example, while TPWD inspected no Exotic Species – Zoological permittees, the number of inspections of Exotic Species – Water Spinach permits surpassed the total number of permits issued in fiscal year 2019. While the agency may have clear and legitimate reasons for inspecting certain types of permits more frequently, it does not document them.

The agency also collects limited data on its inspections and their results. TPWD was unable to produce complete inspection data for the agency's regulatory programs, or even the total number of inspections conducted in the last fiscal year. Generally, game wardens do not track or record inspections of permitted facilities or sites separately from their other law enforcement contacts. One recent exception occurred in the deer breeding program, when game wardens began recording inspections in a single, centrally available database in February 2020.

**Inspections Conducted by Permit Type – FY 2019**

<b>Permit Type</b>	<b>FY 2019 Inspections Conducted*</b>	<b>FY 2019 Number of Permits</b>	<b>Percentage of Permittees Inspected</b>
Trap, Transport, and Transplant	48	29	166%
Exotic Species – Water Spinach	62	50	124%
Apprentice Falconry	23	28	82%
Marl, Sand, Gravel, Shell, or Mudshell	2	3	67%
Deer Breeder	477	949	50%
Exotic Species – Aquaculture (shrimp and fish)	42	84	50%
Raptor Propagation	2	4	50%
Alligator Farmer	5	13	38%
Wildlife Rehabilitation	27	96	28%
Exotic Species Research	7	25	28%
Deer Management Permit	45	175	26%
Zoological	2	18	11%
Educational Display	1	49	2%
Exotic Species – Zoological	0	11	0%
Fur-Bearing Propagation	0	5	0%
<b>Total</b>	<b>743</b>	<b>1,539</b>	<b>48%</b>

\* Represents the minimum number of inspections TPWD knows it conducted but may not include every inspection completed.

Before this, the agency could not comprehensively study statewide inspection frequency and results for this important program. Without comprehensive inspection data, the agency is unable to develop and implement a risk-based inspection schedule, leading to arbitrary prioritization of inspections based on personal decisions and convenience and potentially missing critical problems. In addition, TPWD does not maintain detailed data about the specific rules and regulations violated for certain licenses. Since several of the agency's criminal conviction codes relate to broad types of violations, the agency cannot easily determine the extent and nature of noncompliance problems within an industry to help prioritize its inspections or address the noncompliance with targeted education.

**TPWD's lack of standardized regulatory procedures is inefficient and duplicative.**

An agency should standardize, to the extent possible, the business procedures for multiple licensing programs operated across different divisions. Standardization promotes efficiency and fairness by reducing the number of business processes needed to arrive at the same outcome. At TPWD, five different divisions issue, track, and renew licenses across at least nine different databases with no

Five different divisions issue, track, and renew licenses across at least nine different databases.

Even within a division, different regulatory employees sometimes create their own unique business processes.

standardized business procedures. Even within a division, different regulatory employees sometimes create their own unique business processes. For example, lacking any other guidance, an employee had to create new procedures to follow when denying a permit. Another decided to finally document procedures to process and oversee another permit, which had been in effect for 20 years but never written into a formal policy. Without standardized procedures and training, employees spend valuable time and resources documenting and sometimes developing business procedures. Further, since regulatory employees develop these procedures independently and no one compares the procedures across divisions, they may be inconsistent across the agency and therefore potentially unfair to licensees.

Lack of standard processes and procedures also affects licensure applicants. For example, according to Sunset's survey of licensees, 73 percent of licensees with two or more licenses reported submitting duplicative information across multiple applications, which different regulatory employees at the agency then receive, verify, and process separately. Licensees with two or more licenses also reported significant discrepancies between the application, reporting, and renewal procedures for different licenses administered by different divisions, and difficulty with the amount and quality of information available for the different license types. Quantifying the full impact of this inefficiency is impossible since the agency cannot easily track how many of its licensees hold multiple licenses. Also, regulatory employees are required to conduct a separate compliance check for criminal citations for each license application received. While the data for a licensee's background check is located in a Law Enforcement Division database, employees obtain this data in different ways, which can cause unnecessary delays in application processing times. For example, some employees check the database directly, while others request Law Enforcement Division staff to perform the background check.

### **Lack of electronic submission of forms and fee payments.**

Some licenses can only be obtained by applying in-person at a TPWD law enforcement office.

An agency should be able to accept license applications and fees online to maximize administrative efficiencies. With a few exceptions, TPWD's nonrecreational licenses do not allow for online application submission and fee payment processing. Most application forms and supplemental information must be mailed, emailed, or faxed to TPWD, while payments with checks or money orders must be mailed to the agency or hand-delivered. Some licenses — commercial fishing, for example — are only available through in-person applications at a local law enforcement office, which do not have the ability to process credit card payments. Although TPWD employees assert this in-person visit is important to verify certain documents, this verification could be accomplished online. Both agency staff and surveyed licensees reported that in-person renewal requirements often result in long lines and significant wait times for customers.

Online applications and fee processing reduces burdens for applicants without compromising TPWD's ability to determine their eligibility, and once implemented, would eventually be a simpler, more efficient process for

regulatory employees. TPWD is developing a new online licensing system, but has encountered significant roadblocks, mainly the cost of such a comprehensive system. Because of cost and complexity, the agency's long-term online permitting plan is not comprehensive, omitting several licenses such as all licenses overseen by the Coastal Fisheries Division. Currently, the project only plans to move four licenses onto the new platform over the next few years.

### **Uncoordinated reporting deadlines create regulatory gaps and inconvenience for both licensees and agency staff.**

Agencies that require licensees to submit periodic or episodic reports should create reasonable reporting deadlines to ensure efficient workflow for agency staff, and ease of submission for the licensees. Some of TPWD's reporting deadlines cause confusion, interruption in licensing, and inconvenience for licensees. For example, agency rules, not statute, specify wildlife rehabilitator permits expire 15 days before the deadline for permit holders to submit their renewal applications and annual reports, leaving a two-week regulatory gap.<sup>6</sup> Additionally, the reporting deadline for the nongame dealer permit occurs in the middle of reptile hatching season, when some of these permit holders are at their busiest and accurate recordkeeping is difficult.

## **Sunset Staff Recommendations**

### ***Change in Statute***

#### **2.1 Require TPWD to provide an opportunity to access an informal review process for nonrecreational license and permit types.**

This recommendation would require the agency to provide an option for an informal review for the license types addressed in this issue that do not have an existing statutory review process. License holders would have a right to request an informal agency review, similar to the current review panels the agency conducts, after TPWD suspends, or revokes or refuses to renew a license. In the case of suspension or revocation, this informal review would provide the agency and licensee an opportunity to discuss the violation and penalty and come to an informal disposition of the case. Such a review would potentially avoid the time and expense of a hearing at the State Office of Administrative Hearings. This change will help ensure the agency provides adequate due process and treats licensees consistently and fairly.

#### **2.2 Require TPWD to establish a risk-based approach to inspections.**

This recommendation would require the agency to adopt policies to formally guide the prioritization of inspections based on risk to the state's natural resources. In establishing these policies, the agency would determine which of its licenses merit physical onsite inspections. The agency would develop an assessment tool to determine how frequently and intensively agency staff must conduct inspections based on key risk factors such as past or repeat violations, failed inspections, and other indications of increased risk. Establishing a risk-based approach for inspections would ensure the most efficient allocation of resources toward the highest risks to the state. This recommendation would also require game wardens, or other staff designated by TPWD to conduct inspections, to document all inspections and the results of those inspections, and make this documentation available to all regulatory employees.



## **Management Action**

### **2.3 Direct the agency to adopt policies for using its full range of existing enforcement authority, including revocation and suspension in appropriate cases.**

This recommendation would direct the agency to develop and adopt policies to provide clear guidance on how and when it uses its existing enforcement authority. The agency should review its full range of administrative and civil enforcement actions and determine when to apply them. The policies would clearly define severity of violations, list aggravating and mitigating factors, direct staff on when to apply each factor, articulate situations in which each factor may merit more or less weight, and detail the degree to which each factor would increase or decrease the enforcement action taken by the agency. These enforcement policies should be clearly communicated and accessible to licensees and ensure the agency applies penalties more consistently and fairly.

### **2.4 Direct TPWD to clearly and actively communicate enforcement processes and outcomes to licensees.**

This recommendation would direct TPWD to establish policies ensuring the agency communicates both general guidance to licensed populations and specific information to affected licensees regarding its enforcement processes. In developing these policies, the agency should work with stakeholders to determine areas where licensees may lack a clear understanding of TPWD's enforcement processes like the difference between administrative and criminal enforcement and potential consequences of a criminal conviction. The agency should develop and disseminate clear information about its different enforcement tools, and how and when the agency uses them, including informing licensees they may be at risk of nonrenewal as the result of a criminal conviction. The agency should provide this information as early as possible and, when practicable, in advance of the renewal application deadline.

### **2.5 Direct TPWD to standardize administration of its regulatory programs to the extent possible.**

This recommendation would direct the agency to analyze and create standardized business processes for its regulatory programs. Although TPWD is a decentralized agency, regulatory programs need standardization to ensure consistent, fair, and transparent treatment of license holders. TPWD's licenses cover a broad range of activities and often have very different requirements and needs; however, some similar administrative processes apply broadly across the programs.

As part of this recommendation, TPWD should analyze its overlapping and duplicative application materials and attempt to streamline application processes for all nonrecreational licenses. While TPWD is creating an online permitting system for four of its licenses, it should use this opportunity to evaluate and identify opportunities to streamline common application requirements for all nonrecreational licenses across the agency. TPWD should consider alternatives to reduce the burden on both regulatory employees and licensees, such as creating a common application, moving applications online, and accepting credit card and online payment where feasible. At a minimum, the agency should standardize the following licensing and administrative processes:

- Application intake, renewal, and case management procedures
- Processes for maintaining licensee data and information, including the ability to more easily know when a licensee holds more than one type of license with the agency
- Compliance checks for criminal citations



- Availability and ease of access to regulatory information, forms, and agency contact information
- Training of regulatory employees to ensure they conduct processes and use systems consistently, and to ensure licensees receive similar customer service and responsiveness across programs
- Regular, consistent, and prompt information sharing between Law Enforcement Division staff and regulatory employees regarding licensee noncompliance

The agency should develop and implement standardized policies and procedures for regulatory programs no later than September 1, 2022.

## **2.6 Direct TPWD to review and update all reporting deadlines and timeframes for licenses.**

This recommendation would direct the agency to conduct an administrative review of all reporting deadlines and renewal timeframes for licenses, including collecting feedback from license holders about them. The agency should adjust or realign these timelines in cases where an adjustment would reduce burdens or improve processes. The agency should also seek to align deadlines and timeframes with any particular seasonal variation in the regulated activity, to ease burdens on license holders and improve accuracy and meaningfulness of reporting. The agency should review and amend these deadlines and timeframes by September 1, 2021.

## **Fiscal Implication**

These recommendations would have some upfront costs, but would also result in efficiencies and reduced workload for the agency. The exact fiscal impact cannot be estimated without knowing how TPWD would implement the recommendations. For example, the agency could choose to streamline its regulatory programs and applications through a new system provided by a vendor or by expanding capacity of existing systems, which could have widely variable costs and also different long term impacts on maintenance and regulatory employee workload. Eliminating manual data entry and postal mail processing, along with reduced duplication in staffing to administer the licenses, would also result in efficiencies and cost savings once implemented.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 12.501 and 12.507, Texas Parks and Wildlife Code.

<sup>2</sup> 31 T.A.C. Sections 57.136(g), 57.398, and 65.376. Similar provisions exist in other sections of 31 T.A.C. Part 2.

<sup>3</sup> 31 T.A.C. Section 69.207.

<sup>4</sup> Sections 12.601 to 12.607, Texas Parks and Wildlife Code.

<sup>5</sup> Ibid. at Section 12.506.

<sup>6</sup> 31 T.A.C. Sections 69.48 and 69.52.



## ISSUE 3

# TPWD Needs to Improve Strategic Management Processes to Ensure It Can Best Meet the Future Needs of Texans.

### Background

The mission of the Texas Parks and Wildlife Department (TPWD) is to manage and conserve the natural and cultural resources of Texas, and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations. The agency has a very decentralized organizational structure with 13 divisions that perform related but distinct functions to carry out this mission. Some of these divisions provide standard administrative functions, while others conduct mission-specific activities. In size, these divisions range from Legal with 10 staff to State Parks with 1,374. The agency coordinates its functions and guides its operations through two primary strategic planning documents.

- **Land and Water Resources Conservation and Recreation Plan.** TPWD developed this plan as a result of the 2000 Sunset Review that found TPWD did not have a comprehensive plan to meet Texas' conservation and recreation needs, resulting in ineffective decision making at the agency. Statute requires TPWD to develop the Land and Water Plan to guide TPWD's conservation and recreation efforts and activities, as detailed in the accompanying textbox.<sup>1</sup> The first Land and Water Plan, written in 2002, explicitly fulfilled this purpose and all of the statutory requirements, including the required resources inventory and identification of state conservation and recreation needs. The 2002 plan also ranked all the state's ecoregions in order of conservation priority, and identified which state parks and wildlife management areas TPWD should expand and which ones the agency could transfer or sell. Statute requires the agency to update the inventory once every 10 years but does not specify a timeframe or process for updating the plan itself. The agency last updated the plan in 2015.
- **Natural Agenda.** The *Natural Agenda* is TPWD's state-required strategic plan that formally outlines the agency's vision and goals, as well as the objectives, strategies, and performance measures that will best enable the implementation of those goals.<sup>2</sup> Strategic planning is a statutorily directed process to ensure effective long-range planning and to maximize the efficient use of state resources in service to an agency's core mission.

#### Land and Water Plan Statutory Requirements

- Inventory all land and water with historical, natural, recreational, and wildlife resources offering public access.
- Create a permanent database of the resources inventoried and update it every 10 years.
- Analyze conservation and recreation needs of the state.
- Identify threatened land and water resources.
- Establish the relative importance for state conservation purposes.
- Prepare a land and water resources conservation and recreation plan including criteria for determining how to meet the identified conservation and recreation needs of the state.
- Revise the plan as necessary to reflect changes in the inventory.

## Findings

One of TPWD's strategic planning documents has strayed from its original purpose.

While the Legislature requires TPWD to produce the two major strategic planning documents discussed above, the agency has strayed from the original purpose of one and could improve and more effectively use the other. TPWD's challenges with strategic planning are not new, as Sunset has addressed the topic twice before, in 2000 and 2009. TPWD's strategic planning processes could be improved so these plans provide a more comprehensive and cohesive framework to guide the agency's operations and make better use of agency resources, which is especially important today given the challenges facing both the agency and the state due to the COVID-19 pandemic.

### **The Land and Water Plan remains important, but no longer meets its original, statutory purpose to be a conservation and recreation plan for the state.**

The Land and Water Plan lacks action items with measurable goals.

- Lack of metrics.** The Land and Water Plan no longer includes metrics to measure progress toward its goals and objectives. The 2015 plan removed the plan's specific action items with measurable goals, like increasing the number of youth participating in youth hunts and the number of acres added to state parks. The agency developed separate action items for 2015 with the intention of updating them yearly, but stopped tracking and reporting them after 2015. Although statute does not require metrics, TPWD has recognized the importance of being able to measure the plan's success; the 2015 plan states the agency will develop measures to gauge the plan's success and make the measures public.<sup>3</sup> Yet, as of June 2020, TPWD has not developed these measures. Lack of clear metrics in the Land and Water Plan also makes effective oversight by the Texas Parks and Wildlife Commission difficult. While the commission receives regular briefings during its public meetings on the Land and Water Plan, they are often general briefings about the agency's activities, without clear ties to the plan itself. For example, the most recent briefing on the agency's progress in implementing the plan included the introduction of the new human resources director and information about the internal affairs complaints process, with no references to the objectives or goals in the plan. While general agency updates are an important part of commission meetings, labeling these briefings specifically as updates on the progress of the Land and Water Plan gives a misleading impression about their content and the agency's actual progress on specific items in the plan.
- Misplaced inclusion of agency operations.** A portion of the current Land and Water Plan focuses on agency operations, not conservation and recreation. In 2005, TPWD expanded the Land and Water Plan to include a goal related to general agency operations such as human resources, business management, and finance.<sup>4</sup> The Land and Water Plan was never intended to be an agency strategic plan nor to provide sufficient guidance for agency operations, resource allocation, and decision making. However, in the current plan, 25 percent of goals and almost a third of the objectives and strategies are focused on agency operations rather than conservation

and recreation. While agency operations are important, they are not the statutory purpose of the plan and more appropriately belong in the agency's strategic plan, the *Natural Agenda*.

- **Insufficient use of land and water resources inventory.** Statute requires the Land and Water Plan to include an inventory of all land and water associated with historical, natural, recreational, and wildlife resources offering public access. However, the plan does not appear to take the most recent resources inventory into account. Between the two resources inventories — conducted in 2002 and 2012 — the state's conservation and recreation resources experienced considerable changes, including TPWD acquiring over 24,000 acres of land; the arrival of chronic wasting disease in Texas deer and zebra mussels in Texas waters; and two major wildfires that devastated a wildlife management area and a state park, two major hurricanes, and the Deepwater Horizon disaster.<sup>5</sup> Although statute directs the Land and Water Plan to be an inventory-driven document, it does not account for the dramatic changes identified in the resources inventory. While some of the challenges and opportunities indicated by the new inventory continue to fall under the plan's broad objectives, updates in the plan after 2012 should have directly reflected such dramatic changes in the inventory.
- **Threatened state resources not identified.** The 2002 Land and Water Plan identified specific threats to both conservation and recreation land and water resources, the effects of those threats, and TPWD's priorities in addressing those threats. However, the 2015 Land and Water Plan only briefly mentions general threats to land and water resources, does not explain the effects of those threats, and does not prioritize agency efforts in addressing those threats. For example, while the 2002 plan identified the conservation status, specific threats, rare plants and animals, and priorities for the Blackland Prairies region, the 2015 plan does not list any specific regions of the state and contains only broad language relating to threatened resources like "TPWD will protect and assist in the recovery of threatened, endangered and high-priority species."
- **Future needs not identified.** The plan does not identify the future recreation or conservation needs of the state, or the criteria for determining those needs, as required by statute. The plan briefly mentions the state's increasing population and diversity, land fragmentation, and urbanization, which are identified as challenges for recreation and conservation needs, but the plan does not explain the potential effects of these challenges, where they might occur, or what needs they will likely create.<sup>6</sup>

The plan no longer takes into account the statutorily required land and resources inventory.

The plan does not identify the future recreation or conservation needs of the state.

### **The agency's official strategic plan, the *Natural Agenda*, should be enhanced to better guide agency operations and decision making.**

While TPWD complies with state requirements and instructions in developing its strategic plan, the *Natural Agenda*, it should include more specific, quantifiable, steps necessary to achieve the agency's goals within certain timeframes.<sup>7</sup>

Having more effective outcome measures would help TPWD better evaluate its performance and make necessary changes.

Objectives in the *Natural Agenda* include statements such as “TPWD will protect and interpret the department’s cultural resources” that are difficult to quantify, which makes it harder for the agency to measure its progress toward achieving the objective or identify the resources it needs to do so. The *Natural Agenda*’s objectives also do not have timeframes for completing steps or achieving a long-term goal.

Including more effective outcome performance measures would provide TPWD a crucial tool to help evaluate agency performance and make necessary changes. Outcome measures assess the effectiveness of an agency’s efforts, rather than just its outputs, including how the state and the public benefit from those efforts.<sup>8</sup> This type of performance measurement allows agency leadership to evaluate which activities to continue, modify, or terminate. The *Natural Agenda* includes specified outcome measures required for budgeting purposes that focus on information needed for the legislative appropriations process, but TPWD could create and track its own additional outcome measures to help the agency better oversee and manage its programs’ effectiveness. Currently, several of the agency’s objectives have no outcome measures, leaving TPWD without clear, measurable, and verifiable information about what they are achieving. The *State Parks Capacity* textbox provides an example of how more specificity in the *Natural Agenda* could better guide agency operations, resource allocation, and decision making.

### State Parks Capacity

Both the Land and Water Plan and the Natural Agenda have identified the need to expand the capacity of the state parks system. In fact, from February 2019 to April 2020 state parks reached maximum capacity over 1,100 times, resulting in visitors being turned away. However, neither plan includes specific priorities, goals, or objectives to address this need. As of April 2020, the agency had only determined “soft” capacity, reflecting impacts on resources and visitors’ experiences, for one of its 88 parks. With populations and numbers of park visitors generally increasing, and with the practical limitations on acquiring more land to create new parks, capacity information is more important than ever to ensure the existing parks can better serve the state’s needs. Without these basic data points and defined concrete actions, there is little to formally guide TPWD’s actions or consistently measure its progress toward meeting this identified need.

### TPWD’s decentralized structure creates challenges for efficient, agencywide planning and management.

Strategic planning is important to any organization but acquires a special significance for TPWD, where 13 divisions of varying size and responsibility each perform their own duties with significant autonomy. While decentralization and delegation of authority are understandable in an agency of TPWD’s size and diversity of activities, the divisions often end up working in siloes, which sometimes impacts the efficiency of agency operations.

- **Disparate strategic planning processes.** The Land and Water Plan and *Natural Agenda* largely mirror each other and share significant swathes



of their content, goals, objectives, and priorities. However, the reports are prepared and updated by two separate groups within different divisions of the agency. The Financial Resources Division's Planning, Analysis, and Reporting Branch updates the *Natural Agenda* biennially according to state requirements and instructions. The Land and Water Plan is coordinated and updated through the Policy and Special Projects Branch within the Support Resources Division. While these plans serve different purposes and the agency uses them differently, staff commonly hold the view that the two documents are both strategic plans for the agency. This creates the potential for confusion or conflict since it blurs the distinction between the plans, their purposes, and their use. If both divisions create an agencywide strategic plan, no single authority is clearly responsible for determining and modifying TPWD's agencywide goals and priorities through their planning process. While executive management has clear authority over each strategic planning group, placing strategic planning functions in two separate divisions creates the potential for inconsistent goal-setting and prioritization for the agency.

Having strategic planning functions in two separate divisions creates the potential for inconsistent goal-setting and prioritization.

Additionally, some divisions and branches within divisions maintain supplemental strategic plans throughout the agency without clear connection and accountability to the *Natural Agenda*. For example, the Law Enforcement Division produces its own strategic plan that lists its own 23 core missions, five goals, and 30 strategies. The plan is not explicitly tied to the goals and objectives of the *Natural Agenda*. Effective government requires planning, but engaging in multiple disparate and potentially conflicting strategic planning processes does not ensure efficacy.

- **Inconsistent understanding of agency policies and procedures.** The autonomous nature of the different divisions creates opportunities for inconsistent dissemination and understanding of information throughout the agency. TPWD has dozens of policies covering many of its functions and activities. However, agency staff and managers do not always seem to follow or even be aware of the policies. Throughout the review, Sunset staff received conflicting information from TPWD staff about some of the agency's activities and processes. While executive staff were ultimately able to provide definitive answers, the confusion often indicated midlevel management did not have a clear understanding of some of the agency's policies and procedures.

For example, when discussing the budget process, staff from different divisions gave different answers about who had final decision-making authority on certain budget decisions and did not always seem to fully understand their roles in the process, making it unclear where the final decision or responsibility lay. Likewise, managers in one division gave conflicting information about whether an employee would go to the Human Resources Division or to someone within their own division to request leave under the Family Medical Leave Act. While these misunderstandings are likely to ultimately work themselves out, they indicate a lack of clear and common understanding of some of the agency's policies and procedures

TPWD has dozens of policies, but some staff and managers do not always seem to be aware of or follow them.



Several divisions  
conduct  
independent  
outreach and  
education  
activities with  
minimal oversight  
to ensure  
consistency.

within the agency. While having policies and procedures is critical for an agency, further efforts to ensure managers understand and administer the policies consistently are important.

- **Lacking oversight for education and outreach efforts.** Statute directs TPWD to ensure all of the agency's outreach and education efforts are consistent with the department's mission and goals, do not duplicate other efforts by the department, are cost effective, and can be effectively measured.<sup>9</sup> However, the agency has no clear method to ensure it meets these requirements. While the Communications Division is responsible for TPWD's education and outreach efforts and as such, develops various policies that apply agencywide, other divisions independently conduct many outreach and education activities with minimal input or oversight.<sup>10</sup> TPWD communications staff stated they have little control or visibility over other divisions' education and outreach programs and instead focus on agencywide initiatives. Staff from the other divisions echoed this sentiment, stating their division or location was responsible for its own outreach, while the Communications Division was only responsible for big projects.

## Sunset Staff Recommendations

### *Change in Statute*

#### **3.1 Require TPWD to measure the effectiveness of the Land and Water Plan and refine its scope.**

This recommendation would require TPWD to include effectiveness measures for goals and objectives in the Land and Water Plan and biennially evaluate whether the agency is making progress toward achieving the goals and objectives. To the extent possible, the effectiveness measurements should be quantifiable. The evaluation should include a review of the measurements and clearly show areas where the agency has and has not met its goals. TPWD should identify reasons for unmet goals and implement solutions to improve progress. Having and regularly evaluating measurable goals would ensure the Land and Water Plan serves its intended purpose and the agency is making progress on the conservation and recreation goals of the state.

As a management recommendation, TPWD should revise its Land and Water Plan and planning process to ensure it follows and meets the statutory objectives and does not duplicate the agency's full strategic plan. While the two plans should align, they should clearly serve different purposes. Additionally, the Land and Water Plan should not include agencywide objectives and goals that tie more directly to the strategic plan.

### *Management Action*

#### **3.2 Direct the Texas Parks and Wildlife Commission to establish a conservation and recreation planning subcommittee.**

This recommendation would direct the commission to establish a subcommittee with defined responsibilities in overseeing, updating, and assessing the Land and Water Plan. This subcommittee would provide needed guidance and oversight to the TPWD land and water planning process and ensure the plan focuses on meeting statutory requirements. This subcommittee would also provide the commission with a mechanism for assessing the effectiveness of agency operation in achieving the plan's goals.

### **3.3 Direct TPWD to improve and use the *Natural Agenda* as the agency's sole, agencywide strategic plan.**

Although the *Natural Agenda* must continue to meet state-imposed requirements and instructions for agency strategic plans, TPWD should take advantage of the significant flexibility afforded to add information and tailor the strategic plan to ensure the agency is strategically assessing its existing activities and needs, and has actionable, attainable goals it is making progress toward. This recommendation would allow TPWD to hone agency operations, resources, and decision making through a single, complete strategic planning process. The Texas Parks and Wildlife Commission would be actively involved in this process, which should include a thorough assessment of agency capabilities and needs, external factors affecting the agency's mission and operations, identification of future needs, and stakeholder input. The resulting plan would clearly link agency goals, objectives, and strategies, and include outcome measures to help the commission and the agency better evaluate whether its programs are achieving desired results, or need to be modified or eliminated.

### **3.4 Direct TPWD to institute processes to better ensure consistent, actionable policies and practices across the agency's divisions.**

This recommendation would direct TPWD to examine its current policies and strategic plans, and institute a planning and operations process that would address the following:

- Directing TPWD to ensure information in agencywide policies is clearly and consistently communicated to employees, especially management staff.
- Documenting and clearly identifying who holds final decision-making authority in cross-divisional processes and activities, including ensuring clear oversight and lines of authority for outreach and education activities.
- Directing TPWD to institute a policy on internal planning specifying what type of issues require a planning effort, which divisions and functions are required to participate, what the planning process is, and which person or division has the responsibility for the planning process.

## **Fiscal Implication**

These recommendations would not have a substantial fiscal impact to the state. Overall, the recommendations are designed to ensure TPWD makes the most efficient and effective use of resources, especially in a budget-constrained future environment, while continuing to meet the needs of Texans. Any efficiencies identified by the agency as a result of the recommendations could be reallocated to support other agency needs.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 11.103 and 11.104, Texas Parks and Wildlife Code.

<sup>2</sup> Texas Parks and Wildlife Department (TPWD), *Natural Agenda Fiscal Year 2019 to 2023* (Austin: Texas Parks and Wildlife Department, 2018), 3.

<sup>3</sup> *Ibid.*, 16.

<sup>4</sup> TPWD, *2005 Land and Water Resources Conservation and Recreation Plan* (Austin: Texas Parks and Wildlife Department, 2005), 73–75.

<sup>5</sup> TPWD, *Self-Evaluation Report* (Austin: Texas Parks and Wildlife Department, 2019), 35–41.

<sup>6</sup> TPWD, *2015 Land and Water Resources Conservation and Recreation Plan* (Austin: Texas Parks and Wildlife Department, 2015), iv, 7, and 13.

<sup>7</sup> Legislative Budget Board (LBB), *Instructions for Preparing and Submitting Agency Strategic Plans Fiscal Years 2019–2023* (Austin: Legislative Budget Board, 2018), 4.

<sup>8</sup> *Ibid.*

<sup>9</sup> Section 11.0181, Texas Parks and Wildlife Code.

<sup>10</sup> TPWD, *Financial Overview* (Austin: Texas Parks and Wildlife Department, 2019), 2.

## ISSUE 4

# TPWD's Internal Auditing Program Does Not Identify or Address All the Agency's Risks, Limiting Its Effectiveness.

### Background

The Texas Internal Auditing Act requires all large state agencies, including the Texas Parks and Wildlife Department (TPWD), to have an internal auditing program. These programs provide regular, independent, objective, examination and evaluation of an agency's financial, managerial, and compliance risks. The resulting audits furnish agency governing bodies and management with information to evaluate program operations, and identify and address potential risks before they result in more serious problems.

TPWD's internal audit section includes seven employees: the director of internal audit, two supervisors, and four auditors. One specialized auditor focuses on information technology while the rest are generalists. The internal audit section reports to the Texas Parks and Wildlife Commission, which hires the director of internal audit, approves the audit plan, and reviews the annual audit report.<sup>1</sup>

In developing its internal auditing program, TPWD must perform the steps listed in the textbox, *Selected Internal Auditing Program Requirements*.<sup>2</sup> The internal audit section also produces an annual follow-up report on the status of both internal and external audit recommendations, including recommendations TPWD has implemented and those it has accepted, but are still "in progress."

#### Selected Internal Auditing Program Requirements

- Prepare an annual audit plan using risk assessment techniques to identify individual audits for the next fiscal year
- Conduct periodic audits of the agency's major systems and controls including:
  - accounting systems and controls
  - administrative systems and controls
  - electronic data processing systems and controls
  - methods for ensuring compliance with contract practices and controls, and monitoring agency contracts

### Findings

#### TPWD's risk assessment process does not adequately identify all of the agency's risks.

Statute defines a formal risk assessment as an executive management review of an agency's functions, activities, and processes that evaluates and ranks the probability and effects of risks in finance, management, compliance, and information technology.<sup>3</sup> Additionally, the Texas State Auditor's Office (SAO) prescribes a thorough risk assessment process that directs an agency to assess and rank all its activities for risk; and identify any significant changes in risks or controls from the prior year and any audits or reviews conducted in the past five years that could affect the risk level of each activity.<sup>4</sup>

Currently, TPWD's risk assessment process does not identify and assess all agency functions or their risk. Without a complete picture of all the agency's risks, TPWD cannot make the best-informed decisions about what to audit.

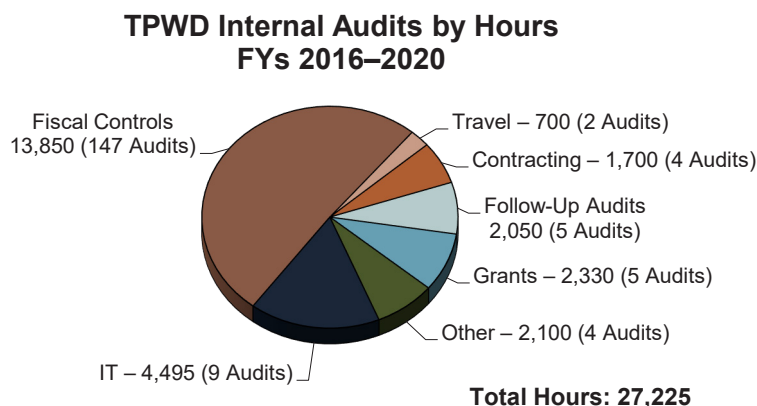
TPWD's risk assessment process largely relies on a small number of staff-identified risks.

Focus on fiscal control audits leaves less capacity to audit all the agency's major systems.

TPWD's risk assessment process, which is not fully documented, largely relies on a small number of staff-identified risks rather than a comprehensive assessment of all TPWD's functions. Instead of identifying and prioritizing all agency activities based on risk, the internal audit director surveys executive management and division directors asking them to identify what they see as risks in their own divisions, other divisions, and agencywide. However, the survey response rate has generally been poor, sometimes as low as 11 percent. The risk assessment process also does not consistently consider previous audit results, controls the agency has implemented to mitigate risks, or changing circumstances. For example, in 2018, the internal audit section began performing a fiscal control audit of a wildlife management area that no longer conducted any fiscal activities. While the auditors spent less than 15 hours on the audit before discovering the site had stopped handling any money the year before, TPWD's internal audit process did not identify this change as part of the risk assessment process. However, the agency's new internal audit director has recognized weaknesses such as this in the agency's internal audit process and intends to formalize a more rigorous process in the future.

**With a limited risk assessment process, TPWD's internal audit plan and the resulting audits tend to focus on a narrow set of the agency's functions.**

Statute requires internal auditing programs to periodically audit the agency's major systems such as accounting, administration, and electronic data processing.<sup>5</sup> However, one result of TPWD's limited risk assessment process is that the internal audits the agency chooses to conduct focus on a narrow set of the agency's functions and provide limited coverage of other major systems and programs as directed by statute. Another result is that TPWD's internal audit section spends a lot of effort auditing low- and medium-risk areas and activities while higher risk areas potentially go unidentified and unaddressed.



In the last five fiscal years, about half of TPWD's internal audit efforts have been dedicated to fiscal control audits, as shown in the *TPWD Internal Audits by Hours* chart. While fiscal control audits are important, less than 15 percent of these audits resulted in a recommendation from the internal auditor, and of those that did, many were for minor issues such as deposit slips not being initialed or reports not being completed on time.

This focus on fiscal control audits leaves less capacity to audit all the agency's major systems, such as property accountability and contracting that have received limited attention. Meanwhile, other agency functions such as fleet

management and safety have not been internally audited in at least five years, and the agency has not conducted an internal audit of human resources in at least 10 years.

**TPWD's internal auditing program would benefit from increased commission involvement and oversight.**

TPWD's internal audit processes provide limited opportunities for the commission to give input and guidance. In practice, the commission's involvement in internal audit is limited to hiring the internal audit director, and reviewing and approving the final audit plan and the annual internal audit report. While the full commission receives briefings by internal audit at commission work sessions, they are general in nature. Additionally, since the commission does not have an audit subcommittee, the internal audit director generally only receives guidance and input from two commission members who have shown interest in the internal auditing program. Having an audit subcommittee allows an agency's governing body to provide more focused guidance to and oversight of the internal audit function, which it oversees. Other state agency governing bodies have established audit subcommittees. For example, the Texas Transportation Commission, Texas Board of Criminal Justice, and Department of Information Resources Board all have audit subcommittees to ensure their input into the audit process and to provide needed oversight by evaluating the implementation of audit recommendations.<sup>6</sup>

Having an audit subcommittee provides more focused guidance and oversight.

**Some significant problems identified by internal audit are not addressed in a timely manner.**

TPWD produces an annual follow-up report on internal and external audit recommendations. A review of these reports showed several audit recommendations for important programs remain in progress for several years. Additionally, TPWD has not re-audited these programs, despite the continuing risk of noncompliance.

- In March 2015, TPWD conducted an internal audit of its payment card processes that identified significant noncompliance. The audit included several recommendations to address the issues, but the 2019 follow-up report shows two of the primary recommendations, strengthening internal controls to improve cardholder noncompliance issues and assigning responsibility for monitoring re-testing of cardholders training are still "in progress." Other documents show the original implementation date for these and other related recommendations was December 2015, but the date has regularly been revised to October 2016, May 2017, October 2017, September 2019, and most recently to December 2019, delaying implementation.
- In October 2016, TPWD conducted an internal audit of property accountability. This audit of the agency's multiple, overlapping capital asset tracking systems found discrepancies in the information recorded for 55 percent of TPWD properties, and concluded capital asset reports submitted

Several audit recommendations for important programs remained in progress for years.



to oversight agencies were “likely to contain incomplete, inconsistent and in some cases unreliable information.” However, property accountability has not been included in any audit plan since this significant finding, and the 2019 internal audit follow-up report still listed the recommendation to address this problem as “in progress.”

Follow-up reports  
do not provide  
the commission  
with a complete  
picture of risks  
the agency faces.

Additionally, TPWD’s follow-up reports do not include information about what, if any, action has been taken on the recommendations that are still in progress and what remains to be done. These reports also do not provide any detail about the audit recommendations that are in progress or a timeframe for expected completion. In comparison, the Texas Transportation Commission Audit Subcommittee has management action plans for audit recommendations, and internal audit staff briefs the subcommittee on the plans’ status quarterly. If an action plan is not completed on time, the agency has to explain why it is off schedule and the expected completion date.

Without this information, the commission and executive management do not have a complete picture of the risks the agency continues to face, limiting their ability to provide guidance and direction on how to address these risks. At a 2018 commission work session, TPWD staff suggested developing an internal audit dashboard to allow commission members and others to easily track the status of audits and recommendations, but this effort was deemed duplicative of other available information.<sup>7</sup> Then in March 2020, the agency developed a quarterly audit status report that provides some of this information, but distribution is currently limited to the executive director, chief operating officer, and the two commission members that have expressed interest in internal audit.

## Sunset Staff Recommendations

### *Management Action*

#### **4.1 Direct the Texas Parks and Wildlife Commission to formally establish an internal audit subcommittee.**

Under this recommendation, the commission would create an internal audit subcommittee with defined responsibilities to provide additional guidance to and oversight of the internal audit section. The subcommittee would ensure the agency has an effective risk assessment, and responds timely and ensures compliance with internal audit recommendations.

#### **4.2 Direct TPWD to fully identify and prioritize the risks of all of the agency’s activities in its risk assessment process.**

This recommendation would direct TPWD to develop and implement a more comprehensive risk assessment process using SAO’s process as a guideline. A more rigorous risk assessment process would provide a more complete picture of all the agency’s potential risks. With this information, the commission and executive management would be better able to provide more effective control and oversight of the agency’s risks and prioritize solutions.

#### **4.3 Direct TPWD to develop a more complete and diversified internal audit plan.**

TPWD would use its improved risk assessment process to develop and implement a more comprehensive internal audit plan, taking into account the statutory requirements for internal auditing programs. The plan should include both risk and compliance audits, and ensure all of the agency's major systems receive audits on a periodic basis. TPWD should also track the allocation of audit resources to ensure it eventually audits all major systems, and that no single activity or function is disproportionately audited over other equally important ones.

#### **4.4 Direct TPWD to use its newly developed quarterly audit status report to provide more information about the status and implementation of audit recommendations.**

Under this recommendation, TPWD would formalize the content and use of its new quarterly audit status report. The report would track the status of ongoing audits and the implementation status of audit recommendations; identify any factors preventing or delaying implementation; and provide a projected completion date for the recommendations as well as explanations for any delays. This report would provide the commission and TPWD executive management a more complete picture of the risks the agency faces, allowing them to better oversee and address implementation roadblocks and take action to mitigate ongoing risks. TPWD should also expand the distribution of the report to include the entire commission.

### **Fiscal Implication**

These recommendations would not have a fiscal impact to the state and could be implemented with existing resources.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 2102.006(a) and 2102.008, Texas Government Code.

<sup>2</sup> Section 2102.005, Texas Government Code.

<sup>3</sup> Section 2102.013, Texas Government Code.

<sup>4</sup> Ibid.; Texas State Auditor's Office, "Small Agency Risk Assessment Instructions," accessed April 7, 2020, [sao.texas.gov/InternalAudit/SmallAgencyRiskAssessment/#instructions](http://sao.texas.gov/InternalAudit/SmallAgencyRiskAssessment/#instructions).

<sup>5</sup> Section 2102.005(a)(2), Texas Government Code.

<sup>6</sup> Texas Transportation Commission, Minute Order 115323, August 30, 2018.

<sup>7</sup> Texas Parks and Wildlife Commission, November 6, 2018, work session transcripts, accessed April 7, 2020, [https://tpwd.texas.gov/business/feedback/meetings/2019/1107/transcripts/work\\_session/](https://tpwd.texas.gov/business/feedback/meetings/2019/1107/transcripts/work_session/).



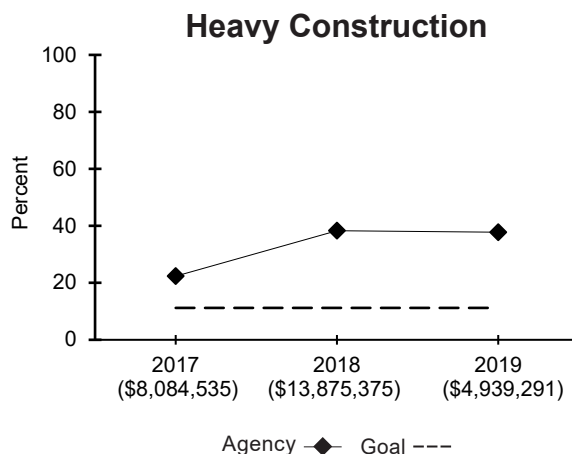
# APPENDIX A

## Historically Underutilized Businesses Statistics, FYs 2017–2019

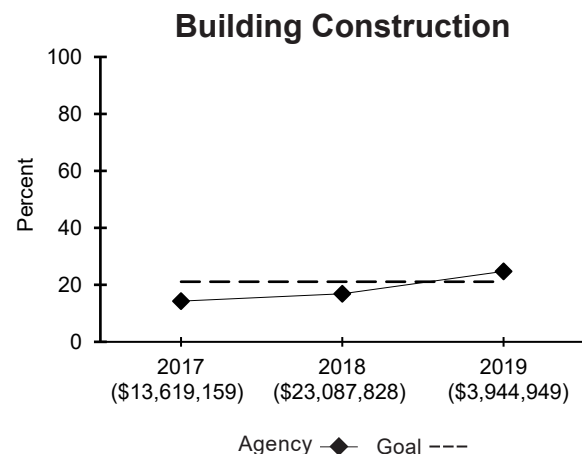
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Parks and Wildlife Department's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2017 to 2019. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency exceeded statewide purchasing goals for the heavy construction, professional services, and commodities categories in all three fiscal years from 2017–19. The agency had varied results for special trade and construction categories for the same time period. The agency has not met the statewide goals in the other services category in each of the last three fiscal years, citing lack of HUB vendors for high dollar, mission-critical contracts and required state contracts for fuel cards and information technology.

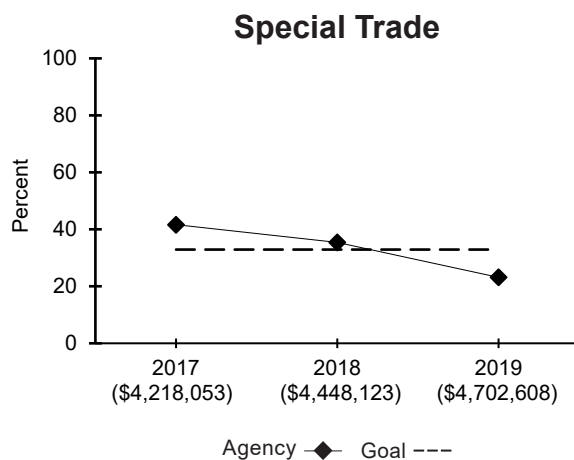


The agency exceeded the statewide goal for spending in heavy construction in each of the last three fiscal years.

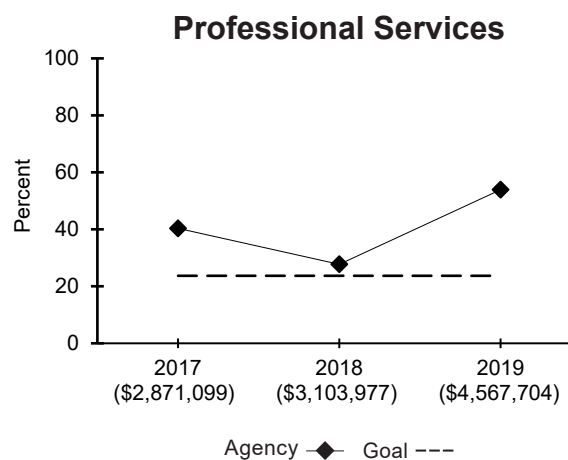


The agency fell short of the statewide goal for spending in building construction in fiscal years 2017 and 2018, but exceeded the goal in 2019.

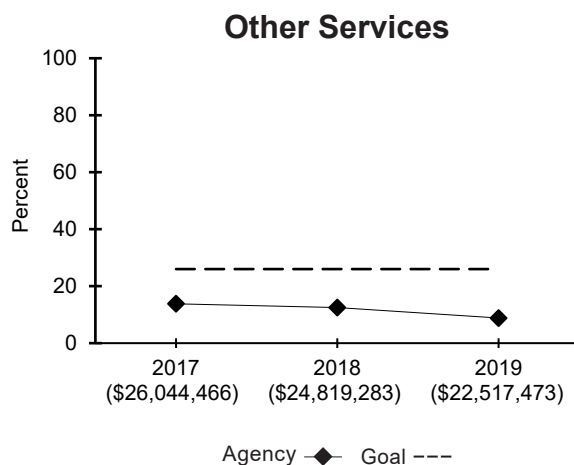
## Appendix A



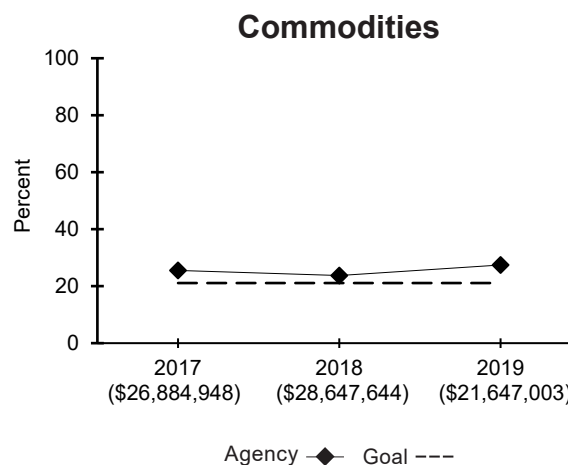
The agency exceeded the statewide goal for special trade in fiscal years 2017 and 2018, but fell short in 2019.



The agency exceeded the statewide goal for professional services in each of the last three fiscal years.



The agency failed to meet the statewide goal for other services in each of the last three fiscal years.



The agency exceeded the statewide goal for commodities in each of the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

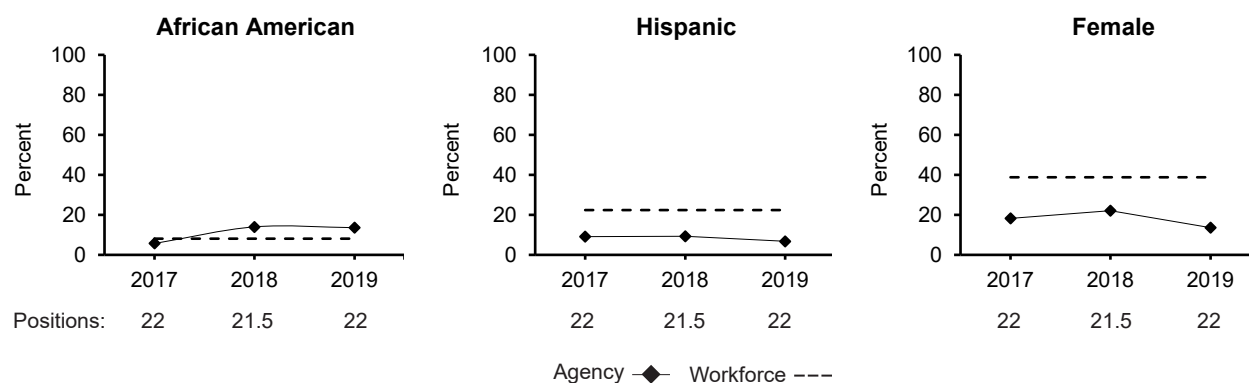
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX B

## Equal Employment Opportunity Statistics, FYs 2017–2019

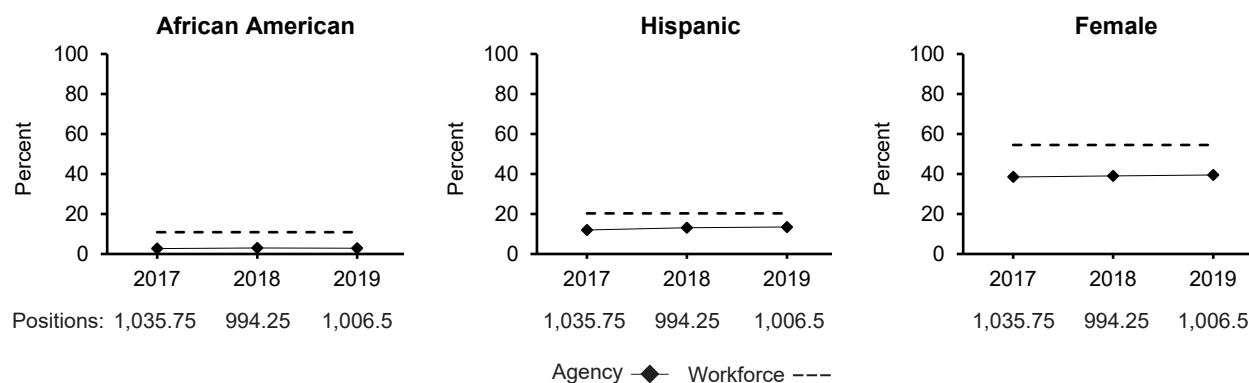
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Parks and Wildlife Department.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from fiscal years 2017–19. The agency failed to meet statewide civilian workforce percentages in almost all categories over the last three fiscal years. The agency exceeded civilian workforce percentages for African Americans in the administration category in fiscal years 2018 and 2019 and females in the administrative support category in each of the past three fiscal years.

### Administration



The agency fell short of statewide civilian workforce percentages for females and Hispanics in each of the last three fiscal years. The agency fell short of statewide percentage for African Americans in fiscal year 2017.

### Professional

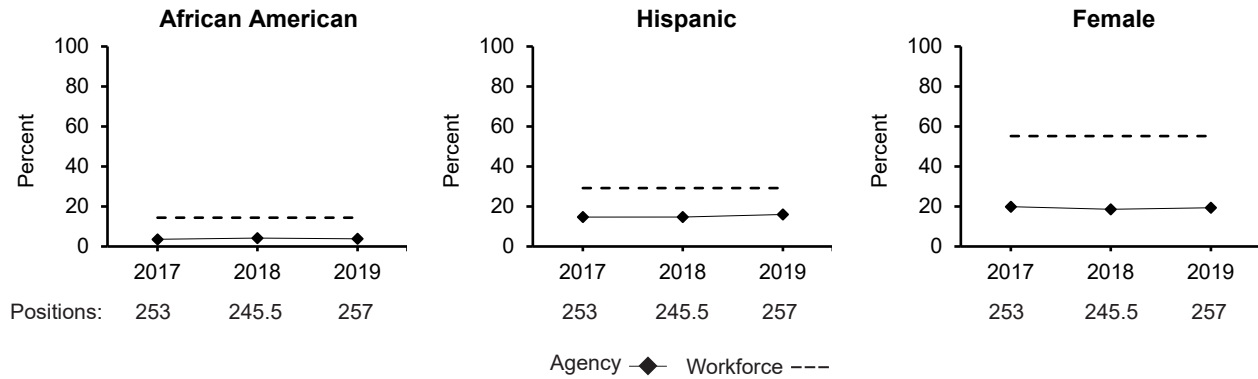


The agency failed to meet civilian workforce percentages in all categories for the last three fiscal years.



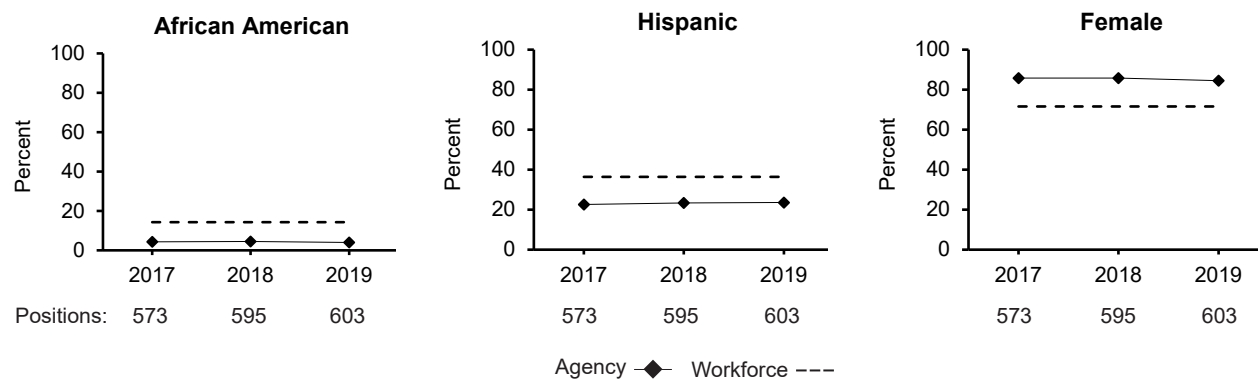
## Appendix B

### Technical



The agency failed to meet civilian workforce percentages in all categories for the last three fiscal years.

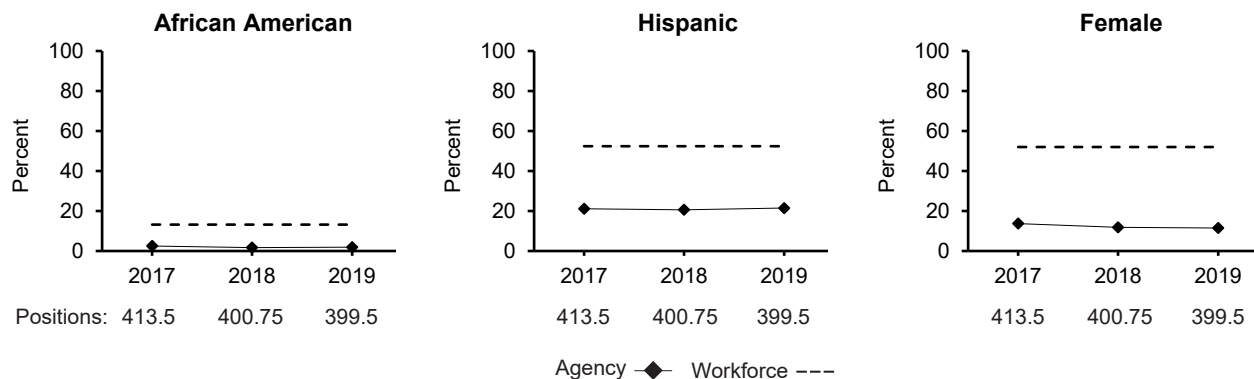
### Administrative Support



The agency exceeded civilian workforce percentages for females in each of the last three fiscal years, but fell short for percentages of African Americans and Hispanics in each of the past three fiscal years.

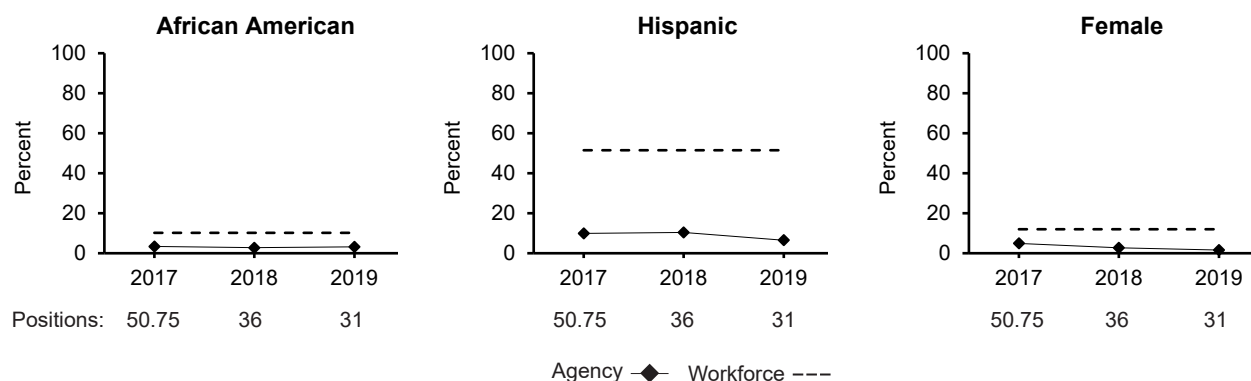
## Appendix B

### Service/Maintenance



The agency failed to meet statewide civilian workforce percentages in all three categories in each of the past three fiscal years.

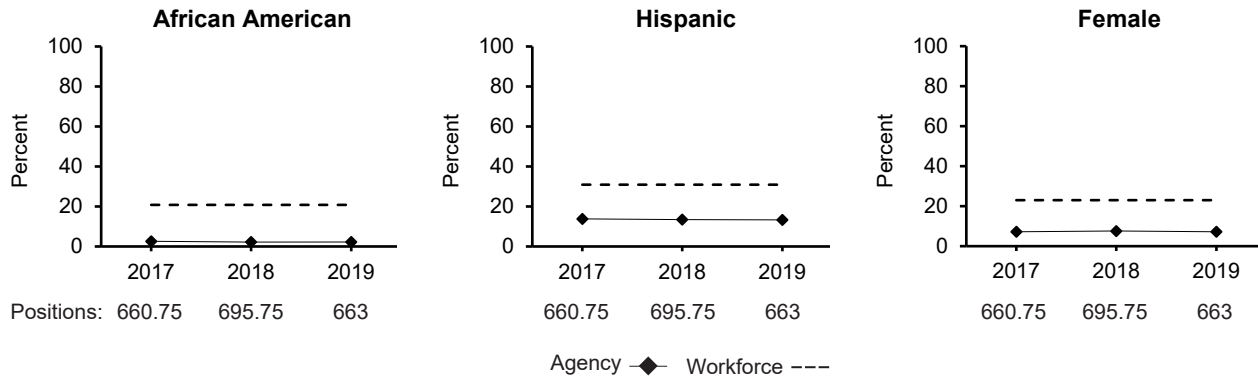
### Skilled Craft



The agency failed to meet statewide civilian workforce percentages in all three categories in each of the past three fiscal years.

## Appendix B

### Protective Services



The agency failed to meet statewide civilian workforce percentages in all three categories in each of the past three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

# APPENDIX C

## TPWD Nonrecreational Permits and Licenses

License / Permit Description	FY19 Number Issued	Appeals Process
<b>Coastal Fisheries</b>		
Bait Shrimp Boat, Commercial	339	Gulf Shrimp License Moratorium Review Board
Bay Shrimp Boat, Commercial	345	Gulf Shrimp License Moratorium Review Board
Crab Fisherman, Commercial	172	Crab License Moratorium Review Board
Finfish Fisherman, Commercial	220	Finfish License Moratorium Review Board
Gulf Shrimp Boat, Commercial	828	Gulf Shrimp License Moratorium Review Board
Menhaden Boat, Class A	12	None
Menhaden Boat, Class B	22	None
Oyster Boat, Commercial	549	Oyster License Moratorium Review Board
<b>Financial Resources</b>		
Marine Dealer, Distributor, or Manufacturer	452	Review Panel
<b>Inland Fisheries</b>		
Commercial Mussel and Clam Fisherman	8	None
Exotic Species, Aquaculture	84	Review Panel
Exotic Species, Aquatic Vegetation Removal	22	None
Exotic Species, Research	25	Review Panel
Exotic Species, Water Spinach	50	Review Panel
Exotic Species, Zoological	11	Review Panel
Nongame Fish	50	Review Panel
Sand and Gravel	3	Contested Case Hearing
Shell Buyer	0	None
Triploid Grass Carp	934	Review Panel
<b>Law Enforcement</b>		
Bait Dealer's Business Building	1,994	None
Bait Dealer's Business Vehicle	90	None
Bait Dealer's Individual	406	None
Bait Shrimp Dealer	208	None
Exotic Snake (commercial and recreational)	578	None

## Appendix C

License / Permit Description	FY19 Number Issued	Appeals Process
Finfish Import	793	None
Fish Dealer, Retail	3,819	None
Fish Dealer, Wholesale	611	None
Fish Dealer's Truck, Retail	477	None
Fish Dealer's Truck, Wholesale	86	None
Fisherman, General Commercial	1,806	None
Fishing Boat, Commercial	208	None
Fur Dealer, Wholesale	8	None
Game Animal Breeder	3	None
Game Bird Breeder, Class 1	74	None
Game Bird Breeder, Class 2	346	None
Guide, All Water Fishing	1,384	None
Guide, Freshwater Fishing	978	None
Guide, Paddlecraft	6	None
Hunting Cooperative, Participating Landowner's Fee	471	None
Hunting Cooperative, Large	4	None
Hunting Cooperative, Medium	5	None
Hunting Cooperative, Small	36	None
Nongame Collecting	333	None
Oyster Boat Captain, Commercial	571	None
Oyster Fisherman, Commercial	18	None
Party Boat Operator	108	Review Panel
Private Bird Hunting Area	382	None
Shrimp Boat Captain, Commercial	1,419	None
Shrimp Offloading	2	None
Wildlife Management Association Area Hunting Lease, Large	5	None
Wildlife Management Association Area Hunting Lease, Medium	22	None
Wildlife Management Association Area Hunting Lease, Participating Landowner	1,025	None
Wildlife Management Association Area Hunting Lease, Small	21	None

## Appendix C

License / Permit Description	FY19 Number Issued	Appeals Process
<b>Wildlife</b>		
Alligator Import	8	None
Aerial Wildlife Management	172	Review Panel
Alligator Control, Nuisance	57	Review Panel
Alligator Dealers, Retail	12	None
Alligator Dealers, Wholesale	4	None
Alligator Farmer	13	None
CITES Tag Dealer, Bobcat*	30	Review Panel
CITES Tag Dealer, Otter*	2	Review Panel
Deer Breeder	949	Review Panel
Deer Management	174	Review Panel
Deer Trap, Transport, and Process	15	Review Panel
Deer Trap, Transport, and Transplant	29	Review Panel
Depredation	34	None
Educational Display	49	Review Panel
Falconry, Apprentice	28	Review Panel
Falconry, General	35	Review Panel
Falconry, Master	32	Review Panel
Falconry, Non-Resident Trapper	8	Review Panel
Nongame Dealer	371	Review Panel
Nongame Sales, Protected	1	Review Panel
Peregrine Trapping	24	Review Panel
Propagation, Fur-bearing	5	Review Panel
Propagation, Raptor	4	Review Panel
Rehabilitation	96	Review Panel
Scientific Plant Research	3	Review Panel
Scientific Research	152	Review Panel
Zoological	18	Review Panel
<b>Total Issued</b>	<b>24,748</b>	

\* CITES is the Convention on the International Trade of Endangered Species





## APPENDIX D | Staff Review Activities

During the review of the Texas Parks and Wildlife Department, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency.

- Accompanied game wardens and state parks police on patrols.
- Visited, toured, and interviewed staff at the Game Warden Training Center, Bastrop and Brazos Bend State Parks, Kerr Wildlife Management Area, Sea Center Texas, and the A.E. Wood Fish Hatchery.
- Observed coastal game warden operations.
- Visited, toured, and interviewed staff at an oyster processing business.
- Conducted a survey of nonrecreational license and permit holders.
- Visited, toured, and interviewed staff at a deer breeding facility.
- Attended several permit renewal hearings.



# Sunset Staff Review of the *Texas Parks and Wildlife Department*

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REPORT PREPARED BY

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