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# Texas Coastal Legislation

FOURTH EDITION

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Prepared by  
the  
Texas Coastal  
and Marine Council

SEPTEMBER 1979

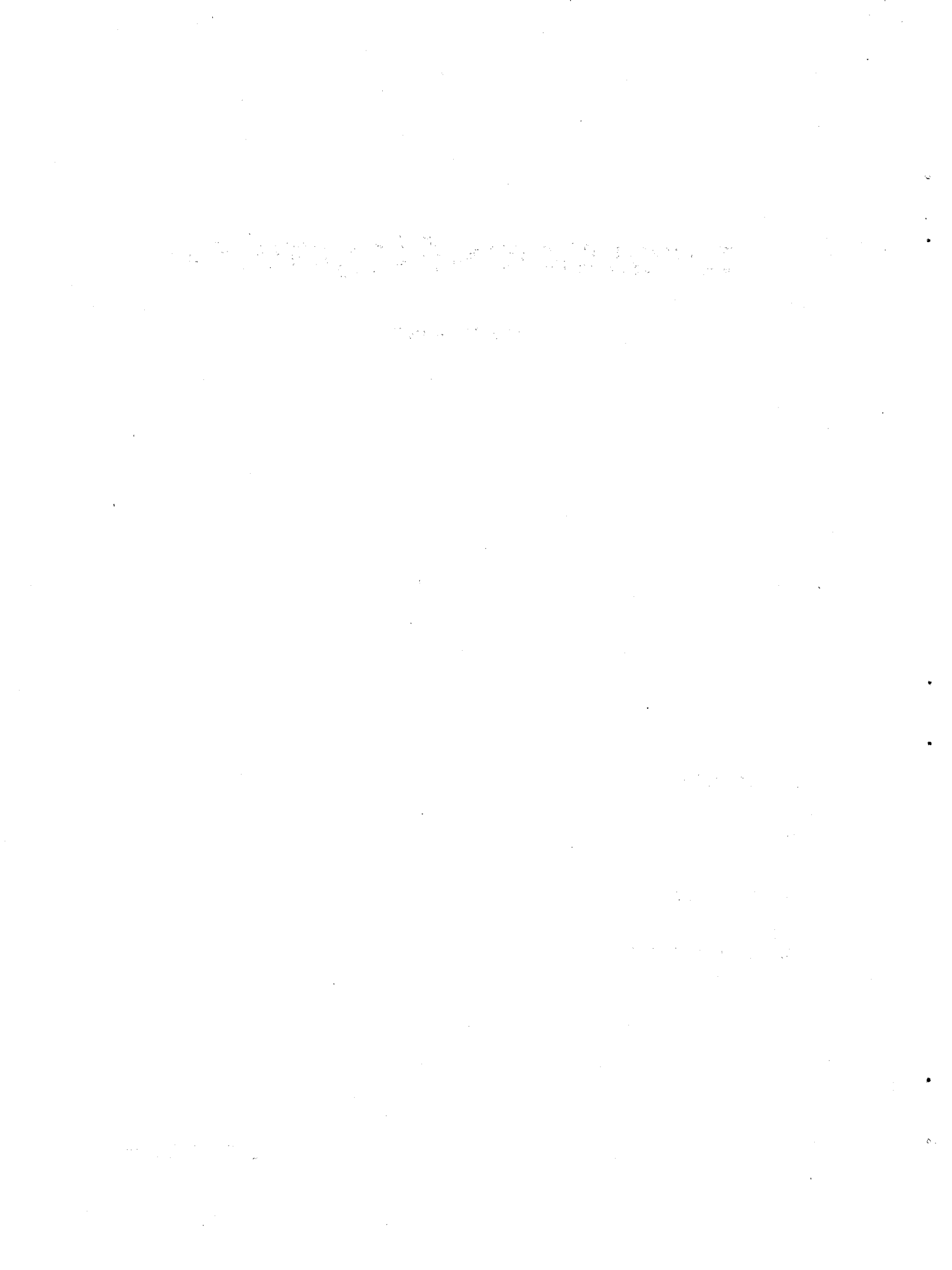


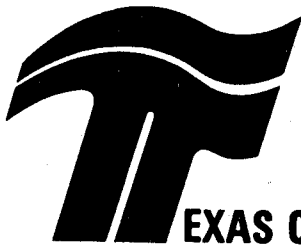
# **Texas Coastal Legislation**

**FOURTH EDITION**

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Texas Coastal  
and Marine Council

**SEPTEMBER 1979**





## TEXAS COASTAL AND MARINE COUNCIL



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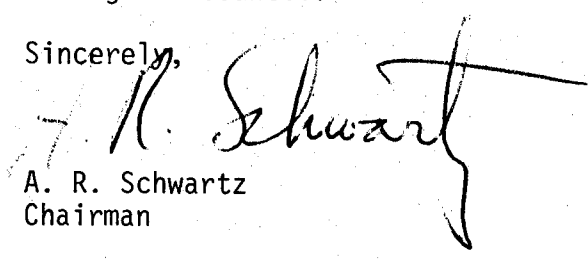
Dear Fellow Texans:

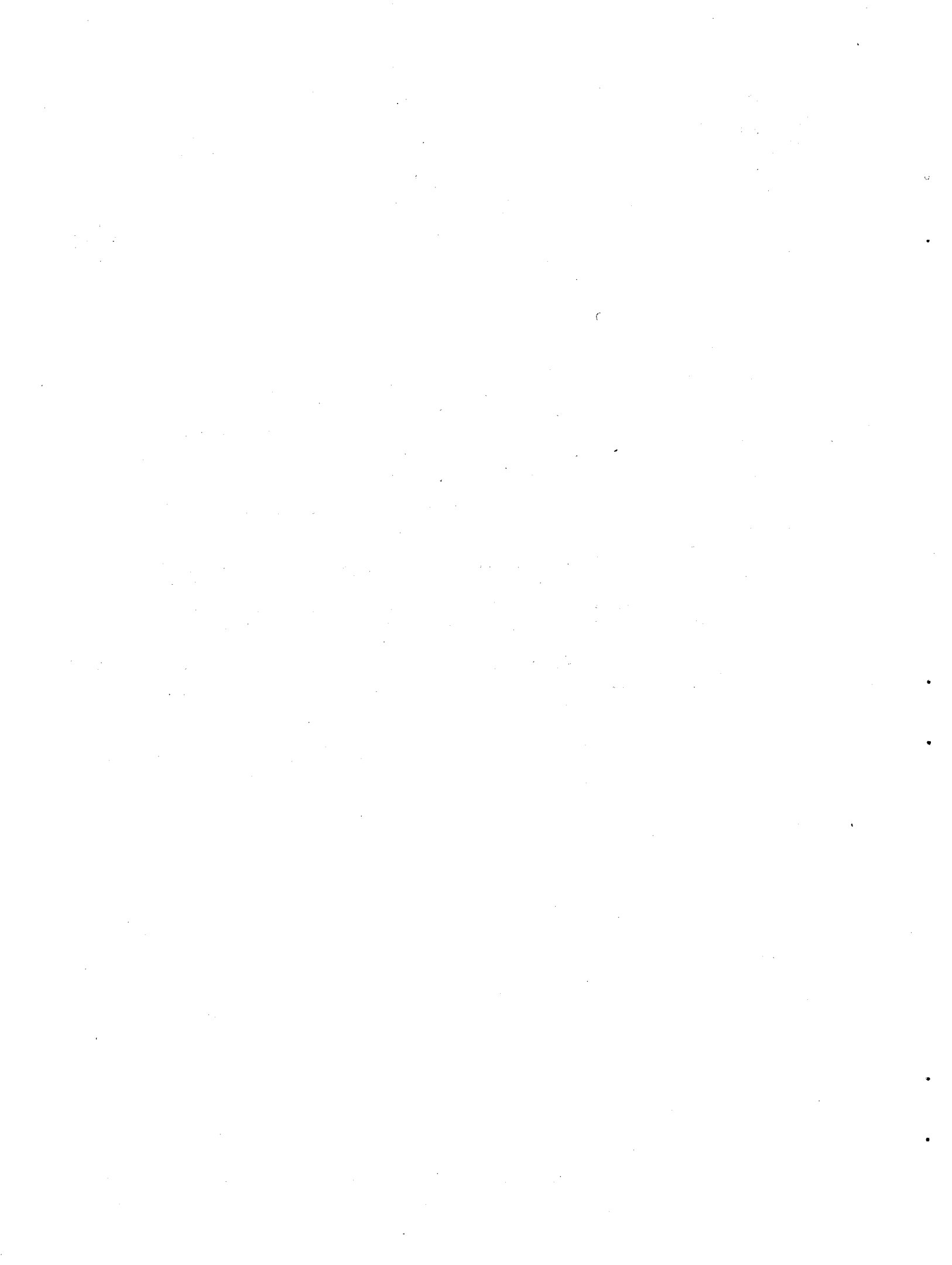
With this fourth edition of the principal coastal-management-related statutes, the Coastal and Marine Council adds a new section dealing with fishery laws. This section is new, as are some of the laws in the Parks and Wildlife Code, but the interest of the Council is not new.

Fishing, whether for recreation or livelihood, is a major activity of Coastal Texas and is affected by so many other activities that it deserves this recognition. Hopefully, this effort to improve the general knowledge of legal guidelines for fishery management will result in improved understanding and preserve this activity for future benefit.

This volume represents another of our efforts to "...cooperate and assist in the comprehensive assessment and planning for coastal resources management..." as directed in the statute creating the Council.

Sincerely,

  
A. R. Schwartz  
Chairman



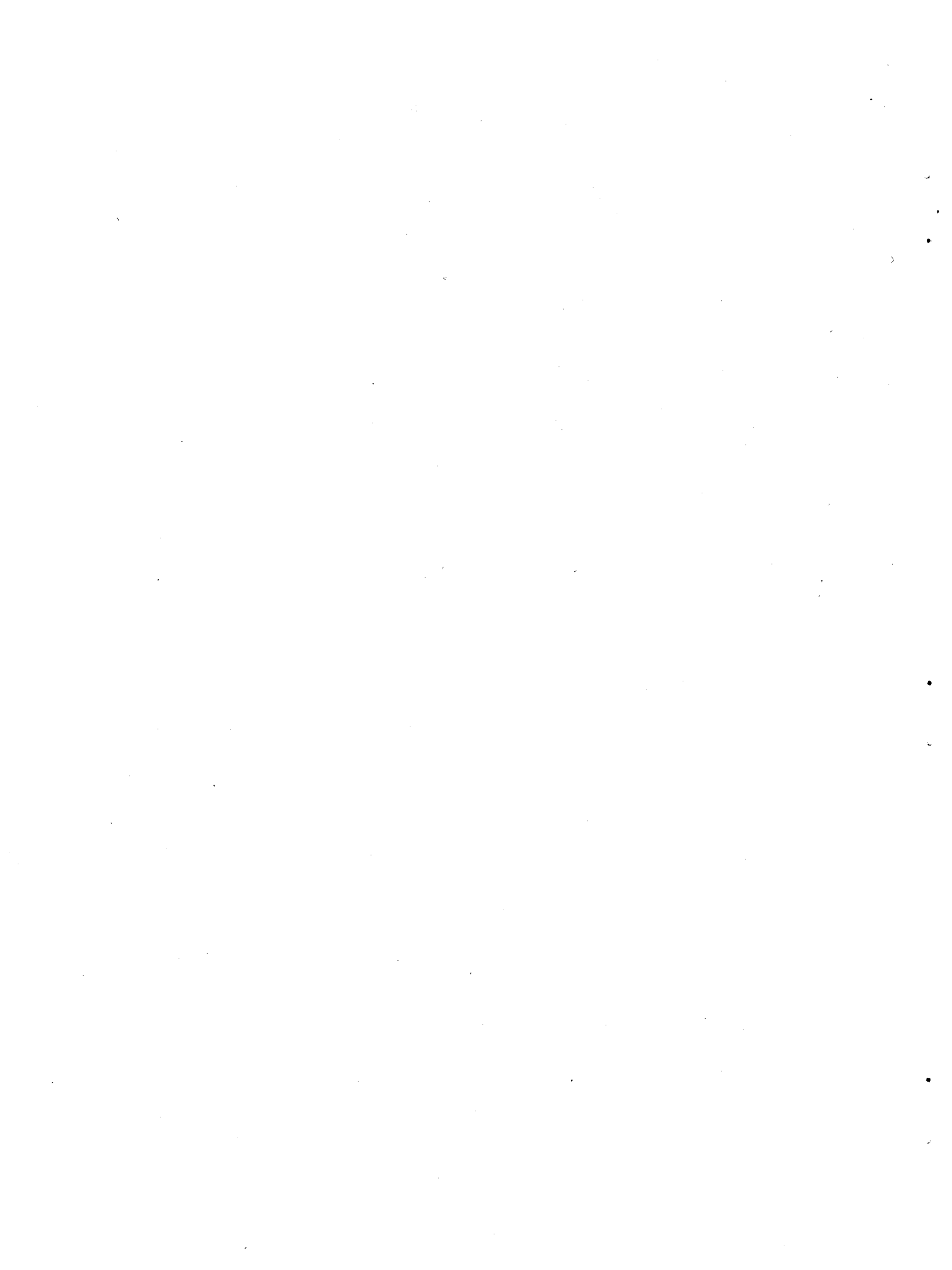
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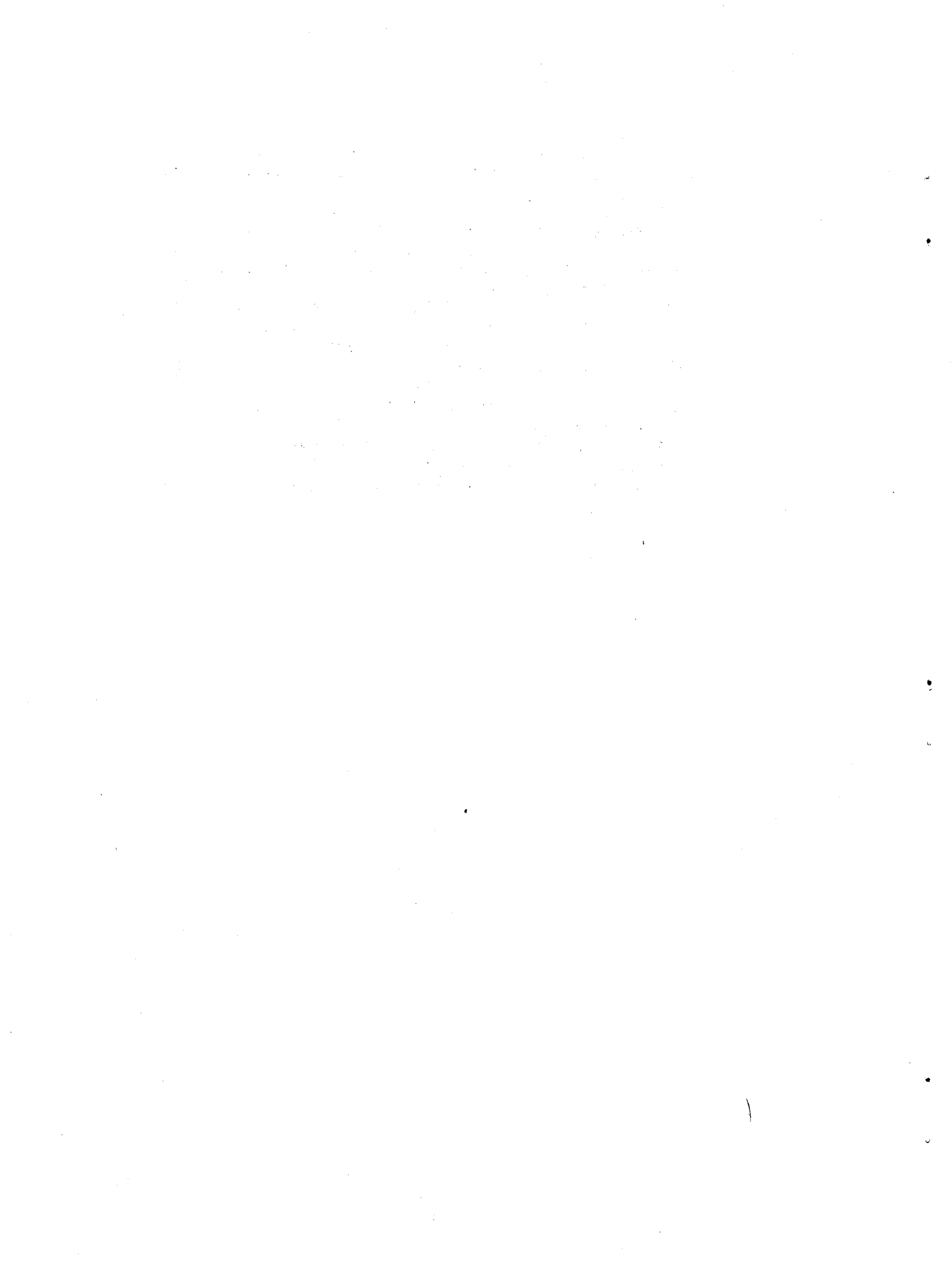


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ARTICLE 4413 (38):  
TEXAS COASTAL AND MARINE COUNCIL

TCMC

Section 1. PURPOSE. There is hereby created the Texas Coastal and Marine Council, the purpose of which shall be to cooperate and assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs affecting this state.

Sec. 1a. The Texas Coastal and Marine Council is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1985.

Sec. 2. (a) The council is composed of 16 members, each of whom must be a Texas resident.

(b) The governor, lieutenant governor, and speaker of the House of Representatives shall each appoint members to the council. The governor shall appoint four members to include one person each to represent government, the educational profession, commerce and industry, and the general public. The lieutenant governor and speaker shall each appoint six members, to include three government members and one each from the educational profession, commerce and industry, and the general public. The representatives of government shall be a personal representative appointed by the governor, three state senators appointed by the lieutenant governor, and three representatives appointed by the speaker.

(c) All members of the council must be persons who are knowledgeable of, and interested in, marine-related affairs.

(d) All initial appointments to the council by the governor shall be for a term to expire on June 30, 1977. All initial appointments by the lieutenant governor shall be for a term to expire on June 30, 1975. All initial appointments by the speaker shall be for a term to expire June 30, 1973. The successor of each member shall be appointed by the original appointing authority for a term of six years.

(e) If a senator or representative ceases to serve in the house in which he was serving when he was appointed to the council, he ceases to be a member of the council. The person appointed by the governor to represent government ceases to be a member of the council if the governor who appointed him ceases to be governor. If any member of the council fails to attend at least 50 percent of the meetings of the council in any 12-month period or ceases to be a Texas resident, he ceases to be a member of the council.

(f) In the case of a vacancy on the council, the original appointing authority shall appoint a person to fill that vacancy for the unexpired portion of the term. The person appointed to fill the vacant position must meet all the qualifications prescribed by this Act for that position.

Sec. 3. (a) The council shall serve as an advisory body to cooperate with and assist the legislature, state and federal agencies, and political subdivisions, with respect to coastal resources management and other marine-related affairs.

(b) The council may hold public hearings relevant to its purpose. The council may participate in hearings or other public meetings, and may appear before federal agencies, commissions, and boards, congressional committees, legislative committees, state agencies, boards and commissions, to provide evidence and testimony with regard to matters and activities affecting coastal resources and marine affairs.

Created

Sunset provision

Membership

Appointments

Qualification

Terms

Succession

Vacancies

Duties

- advisory

- hearings

(c) In order to aid the state in making use of federal funds, facilities, and programs relating to marine affairs, the council shall establish a liaison relationship with all appropriate branches and agencies of the federal government.

(d) The council may accept gifts or grants from any source to be used in connection with any of its lawful purposes.

(e) The council may appoint a director to serve at the will of the council. The director is the chief executive officer of the council and subject to the policy direction of the council. He may appoint employees to serve at his will. The council shall determine the compensation of the director and all other employees.

(f) The council shall meet at least once every calendar quarter, and at other times on the call of the chairman or by the written call of two-thirds of the members of the council.

(g) The council shall elect a chairman and may elect other officers.

(h) The council is authorized to carry out such activities as may be deemed necessary or desirable in furtherance of the purposes of this Act.

Sec. 4. Except for members of the Legislature, members of the council are entitled to compensation of \$50 for each day spent on the official business of the council. All members of the council are entitled to reimbursement for actual and necessary expenses incurred in carrying out council business. Service on the board by a member of the Legislature is part of his duties as a member of the Legislature and does not constitute a separate office.

- liaison

- gifts & grants

- staff

- meetings

- officers

- activities

Expenses

NOTE: Article 4413(38) was originally enacted as Chapter 279, Acts of 62nd Leg., Reg. Ses., 1971. That Act created the Texas Council on Marine Related Affairs composed of 12 members. Chap. 239, Acts of the 63rd Leg., Reg. Ses., amended sections 1, 2(a), 2(b), 3(a), and 3(b) and added 3(h).

AN ACT

adopting the Natural Resources Code, a formal revision of the statutes relating to the public domain, oil, gas, and other natural resources; making conforming amendments to other laws; repealing the laws replaced by the code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. ADOPTION OF CODE. The Natural Resources Code is adopted to read as follows:

NATURAL RESOURCES CODE

TITLE 1. GENERAL PROVISIONS

Chapter 1. General Provisions

TITLE 2. PUBLIC DOMAIN

SUBTITLE A. GENERAL PROVISIONS

Chapter 11. Provisions Generally Applicable to the Public Domain

SUBTITLE B. SURVEYS AND SURVEYORS

Chapter 21. Surveys and Field Notes

Chapter 22. Board of Examiners of Land Surveyors

Chapter 23. County Surveyors

SUBTITLE C. ADMINISTRATION

Chapter 31. General Land Office

Chapter 32. School Land Board

Chapter 33. Management of Coastal Public Land

Chapter 34. Boards for Lease

Chapter 35. Board for Lease of State Park Lands

Chapter 36. Board for Lease of Eleemosynary and State Memorial Park Lands

SUBTITLE D. DISPOSITION OF THE PUBLIC DOMAIN

Chapter 51. Land, Timber, and Surface Resources

Chapter 52. Oil and Gas

Chapter 53. Minerals

SUBTITLE E. BEACHES AND DUNES

Chapter 61. Use and Maintenance of Public Beaches

Chapter 62. Beach Park Board of Trustees

Chapter 63. Dunes

SUBTITLE F. LAND OF POLITICAL SUBDIVISIONS

Chapter 71. Lease for Mineral Development

TITLE 3. OIL AND GAS

SUBTITLE A. ADMINISTRATION

Chapter 81. Railroad Commission of Texas

SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS

Chapter 85. Conservation of Oil and Gas

Chapter 86. Regulation of Natural Gas

Chapter 87. Regulation of Sour Natural Gas

Chapter 88. Control of Oil Property

Chapter 89. Abandoned Wells

Chapter 90. Interstate Compact to Conserve Oil and Gas

Chapter 91. Provisions Generally Applicable

SUBTITLE C. POOLING AND COOPERATIVE AGREEMENTS

Chapter 101. Cooperative Development

Chapter 102. Pooling

Chapter 103. Cooperative Facilities for Conservation and Utilization of Gas

Outline

NOTE: Only those portions of the code dealing directly with coastal activities or general regulation of public lands are included in this publication. The organizational outline is reproduced in its entirety for reference.

**SUBTITLE D. REGULATION OF SPECIFIC  
BUSINESSES AND OCCUPATIONS**

- Chapter 111. Common Carriers, Public Utilities and  
Common Purchasers
- Chapter 112. Used Oil Field Equipment Dealers
- Chapter 113. Liquefied Petroleum Gas Industry

**TITLE 4. MINES AND MINING**

- Chapter 131. Surface Mining and Reclamation Act
- Chapter 132. Interstate Mining Compact

**TITLE 5. GEOTHERMAL ENERGY AND ASSOCIATED  
RESOURCES**

- Chapter 141. Geothermal Resources

**TITLE 6. TIMBER**

- Chapter 151. Provisions Generally Applicable
- Chapter 152. Forest Pest Control

**TITLE 7. RESOURCES PROGRAMS**

- Chapter 161. Veterans Land Board

**TITLE 8. ACQUISITION OF RESOURCES**

- Chapter 181. Texas Conservation Foundation
- Chapter 182. Texas Historical Resources  
Development Council

**TITLE 9. HERITAGE**

- Chapter 191. Antiquities Committee

**RESOURCES CODE**

**TITLE 1. GENERAL PROVISIONS**

**CHAPTER 1. GENERAL PROVISIONS**

Section 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent natural resources law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

\* \* \*



TITLE 2. PUBLIC DOMAIN

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE  
TO THE PUBLIC DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

- (1) "State" means the State of Texas.
- (2) "Land office" means the General Land Office.
- (3) "Commissioner" means the Commissioner of the General Land Office. (New.)

(Sections 11.002-11.010 reserved for expansion)

SUBCHAPTER B. TERRITORY AND BOUNDARIES  
OF THE STATE

Sec. 11.011. VACANT AND UNAPPROPRIATED LAND.

So that the law relating to the public domain may be brought together, the following extract is taken from the joint resolutions of the Congress of the United States relating to the annexation of Texas to the United States, which was approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct," etc.

Sec. 11.012. GULFWARD BOUNDARY OF TEXAS. (a) The gulfward boundary of the State of Texas is the boundary determined in and pursuant to the decision of the United States Supreme Court in State of Texas v. State of Louisiana, 96 Sp. Ct. 2155 (1976).

(b) The State of Texas has full sovereignty over the water, the beds and shores, and the arms of the Gulf of Mexico within its boundaries as provided in Subsection (a) of this section, subject only to the right of the United States to regulate foreign and interstate commerce under Article I, Section 8, of the United States Constitution, and the power of the United States over admiralty and maritime jurisdiction under Article III, Section 2, of the United States Constitution.

(c) The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries provided in this section, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide.

(d) None of the provisions of this section may be construed to relinquish any dominion, sovereignty, territory, property, or rights of the State of Texas previously held by the state. (V.A.C.S. Art. 5415a, Sec. 1, 2, 3 (part), 4.)

Sec. 11.013. GULFWARD BOUNDARIES OF COUNTIES. (a) The gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as determined by the United States Supreme Court.

(b) The area in the extended boundaries of the counties as provided in this section becomes a part of the public free school land and is subject to the constitutional and statutory provisions of this state pertaining to the use, distribution, sale, and lease of public free school land in this state. (V.A.C.S. Art. 1592a, Secs. 1 and 3.)

(Sections 11.014 through 11.018 omitted.)

NOTE: Omitted sections relate to other than coastal boundaries.

## SUBCHAPTER C. SPECIAL FUNDS

Sec. 11.041. PERMANENT SCHOOL FUND. (a) In addition to land and minerals granted to the permanent school fund under the constitution and other laws of this state, the permanent school fund shall include:

- (1) the mineral estate in river beds and channels;
- (2) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state; and
- (3) the arms and the beds and shores of the Gulf of Mexico within the boundary of Texas.

(b) The land and minerals dedicated to the permanent school fund shall be managed as provided by law. (V.A.C.S. Art. 5415a, Sec. 3 (part); Art. 5421c-3, Sec. 2.)

(Sections 11.042 and 11.043 omitted.)

(SUBCHAPTER D. OMITTED)

## SUBTITLE C. ADMINISTRATION

### CHAPTER 31. GENERAL LAND OFFICE

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. DEFINITIONS. In this chapter:

- (1) "State" means the State of Texas.
- (2) "Commissioner" means the Commissioner of the General Land Office. (New.)
- (3) "Land office" means the General Land Office. (R.S. Art. 5261 (part).)

(Sections 31.002-31.010 reserved for expansion)

## CHAPTER 32. SCHOOL LAND BOARD

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

- (1) "Board" means the School Land Board.
  - (2) "Commissioner" means the Commissioner of the General Land Office.
  - (3) "Land office" means the General Land Office.
  - (4) "Land" means land dedicated to the permanent school fund and the asylum funds by the constitution and laws of this state and the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state, and the mineral estate in river beds and channels.
- (New.)

(Sections 32.002-32.010 reserved for expansion)

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 32.011. CREATION OF BOARD. There is created a board to be known as the School Land Board. (V.A.C.S. Art. 5421c-3, Sec. 3 (part).)

Sec. 32.012. MEMBERS OF THE BOARD. (a) The board is composed of:

- (1) the commissioner;
- (2) a citizen of the state appointed by the governor with the advice and consent of the senate; and
- (3) a citizen of the state appointed by the attorney general with the advice and consent of the senate.

(b) The authority of the attorney general to appoint one of the members of the board, including the authority to make appointments during the recess of the senate, is the same as the authority of the governor to fill vacancies in state offices under the Texas Constitution.

(c) Each appointment made by the governor and the attorney general shall be made in accordance with and subject to the provisions of the Texas Constitution authorizing the filling of vacancies in state offices by appointment of the governor. (V.A.C.S. Art. 5421c-3, Sec. 3 (part).)

Sec. 32.013. TERMS OF APPOINTED MEMBERS. The members appointed to the board by the governor and the attorney general serve for terms of two years. (V.A.C.S. Art. 5421c-3, Sec. 3 (part).)

Sec. 32.014. CHAIRMAN OF THE BOARD. The commissioner serves as chairman of the board. (V.A.C.S. Art. 5421c-3, Sec. 3 (part).)

Sec. 32.015. PER DIEM AND REIMBURSEMENT. Each citizen member of the board is entitled to receive a per diem allowance for each day spent in performing his duties and as reimbursement for actual and necessary travel expenses incurred in performing his duties the amount provided in the General Appropriations Act. (59th Legis., Ch. 321, Sec. 3.)

Sec. 32.016. BOARD MEETINGS. (a) The board shall meet on the first and third Tuesdays of each month in the land office.

(b) Subject to recesses at the discretion of the board, meetings of the board shall continue until the board has completed its docket. (V.A.C.S. Art. 5421c-3, Sec. 5 (part).)

Sec. 32.017. SECRETARY OF THE BOARD. (a) The board shall select a secretary from persons nominated by the commissioner.

(b) The person selected as secretary shall be approved by a majority of the board. (V.A.C.S. Art. 5421c-3, Sec. 5 (part).)

Sec. 32.018. EMPLOYMENT OF GEOLOGIST AND MINERALOGIST. The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on public school land and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects. (V.A.C.S. Art. 5421c-3, Sec. 5 (part).)

Sec. 32.019. BOARD EMPLOYEES. (a) The commissioner may employ additional employees necessary for the discharge of the duties of the board.

(b) Employees of the board shall be considered employees of the land office, and civil and criminal laws regulating the conduct and relations of employees of the land office apply to employees of the board. (V.A.C.S. Art. 5421c-3, Sec. 5 (part).)

Sec. 32.020. MINUTES OF BOARD. The board shall keep minutes which shall include a record of its proceedings and a docket on which the secretary shall enter matters to be considered by the board. (V.A.C.S. Art. 5421c-3, Sec. 6 (part).)

Sec. 32.021. RECORDS AND PROCEEDINGS AS ARCHIVES. The records and proceedings of the board shall be records and archives of the land office. (V.A.C.S. Art. 5421c-3, Sec. 6 (part).)

Sec. 32.022. INSPECTION OF MINUTES AND DOCKET. (a) On payment of the fees prescribed by law for examination of other land office records, the minutes and docket shall be subject to inspection by any citizen of the state who desires to make the examination.

(b) An examination made under this section shall be made in the presence of the secretary of the board or a clerk designated by law. (V.A.C.S. Art. 5421c-3, Sec. 6 (part).)

(Sections 32.023-32.060 reserved for expansion)

### SUBCHAPTER C. POWERS AND DUTIES

Sec. 32.061. BOARD'S GENERAL DUTIES. The board shall:

- (1) set the dates for the sale and lease of surveyed land;
- (2) determine the prices for which surveyed and unsurveyed land shall be sold and leased; and
- (3) perform any other duties which may be required by law. (V.A.C.S. Art. 5421c-3, Sec. 4 (part).)

Sec. 32.062. ADOPTION OF RULES. The board shall adopt rules of procedure and rules for the sale and lease of land covered by this chapter which are not inconsistent with this chapter and laws relating to the sale and lease of school and asylum land and islands, lakes, and bays within tidewater limits and the bed of the sea which belong to the state, and the lease of the mineral estate in river beds and channels. (V.A.C.S. Art. 5421c-3, Sec. 7.)

Sec. 32.063. DUTY TO ADVISE COMMISSIONER. The board shall advise the commissioner regarding any matters submitted to it for that purpose. (V.A.C.S. Art. 5421c-3, Sec. 11.)

## CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. POLICY

Sec. 33.002. PURPOSE

Sec. 33.003. SHORT TITLE

Sec. 33.004. DEFINITIONS

Sec. 33.005. EFFECT OF CHAPTER

(Sections 33.006-33.010 reserved for expansion)

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AND ENFORCE CHAPTER
- Sec. 33.012. LAND OFFICE TO ASSIST BOARD
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(Sections 33.017-33.050 reserved for expansion)

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- Sec. 33.058. PURCHASE OF FEE AND LESSER IN-  
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- Sec. 33.059. STUDIES
- Sec. 33.060. LOCATING AND MARKING BOUNDARIES
- Sec. 33.061. COMPLAINTS
- Sec. 33.062. DESIGNATED OFFICIAL REPRESENTATIVE
- Sec. 33.063. FEES
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(Sections 33.065-33.100 reserved for expansion)

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### CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. POLICY. (a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intracoastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

NOTE: Chapter 33 is derived from the Coastal Public Lands Management Act of 1973.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired. (V.A.C.S. Art. 5415e-1, Sec. 2.)

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 of this code by delegating to the board, assisted by the planning division and other staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 3.)

Sec. 33.003. SHORT TITLE. This chapter may be cited as the Coastal Public Lands Management Act of 1973. (V.A.C.S. Art. 5415e-1, Sec. 1.)

Sec. 33.004. DEFINITIONS. In this chapter:

(1) "Land office" means the General Land Office. (New.)

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal public land management program provided by this chapter and shall include a comprehensive statement in words, maps, illustrations, or other media inventorying coastal public land resources and capabilities and setting forth objectives, policies, and standards to guide planning and to control the utilization of those resources.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 4.)

Sec. 33.005. EFFECT OF CHAPTER. (a) This subchapter does not repeal the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter D of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112-66.118, 66.205, 76.031-76.036, 78.001-78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law. (V.A.C.S. Art. 5415e-1, Sec. 18 (part).)

(Sections 33.006-33.010 reserved for expansion)

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 33.011. BOARD TO ADMINISTER, IMPLEMENT, AND ENFORCE CHAPTER. The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter. (V.A.C.S. Art. 5415e-1, Sec. 5 (part).)

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The planning division and other staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter. (V.A.C.S. Art. 5415e-1, Sec. 5 (part).)

Sec. 33.013. ADDITIONAL PERSONNEL. The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter. (V.A.C.S. Art. 5415e-1, Sec. 5 (part).)

Sec. 33.014. DISPOSITION OF MONEY FOR GRANTS OF CERTAIN INTERESTS. Money received by the board for grants of surface interests under this chapter whose initial term equals or exceeds 20 years shall be deposited in the state treasury to the credit of the permanent school fund. (V.A.C.S. Art. 5415e-1, Sec. 14, subsec. (a).)

Sec. 33.015. SPECIAL FUND. A special fund is created, and money received by the board for the grant of permits under this chapter shall be deposited in the state treasury to the credit of this special fund. (V.A.C.S. Art. 5415e-1, Sec. 14, subsec. (b).)

Sec. 33.016. DISPOSITION OF OTHER FUNDS. Money received by the board for the grant of any interest not under Section 33.014 or 33.015 of this code shall be deposited in the state treasury to the credit of the available school fund. (V.A.C.S. Art. 5415e-1, Sec. 14, subsec. (c).)

(Sections 33.017-33.050 reserved for expansion)

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 33.051. GENERAL DUTY. The board, with the technical advice and assistance of the planning division and other staff of the land office, shall perform the duties provided in this subchapter. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.052. DEVELOPMENT OF MANAGEMENT PROGRAM. The board shall develop a continuing comprehensive management program pursuant to the policies stated in Section 33.001 of this code. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.053. ELEMENTS OF MANAGEMENT PROGRAM. The management program, in compliance with the Coastal Zone Management Act of 1972 (Public Law 92-583), shall include the following elements:

(1) a continuous inventory of coastal public land and water resources including a determination of the extent and location of the coastal public land;



(2) a continuous analysis of the potential uses for which the coastal public land and water might be used, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses in coastal public land within the coastal area, including specifically those uses of lowest priority;

(4) a definition of the permissible uses of the coastal public land and water and definitions of the uses of adjacent areas which would have a significant adverse impact on the management or use of coastal public land or water;

(5) recommendations as to increments of jurisdiction or authority necessary to protect coastal public land and water from adverse consequences flowing from the uses of adjacent land;

(6) an inventory of endangered environments and resources in the coastal public land; and

(7) recommendations for any changes necessary in the organizational structure by which the program is implemented and administered. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.054. REVIEW AND AMENDMENT OF MANAGEMENT PROGRAM. The board may review the management program periodically and may amend the management program as new information or changed conditions may warrant. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.055. PUBLIC HEARINGS TO CONSIDER MANAGEMENT PROGRAM. (a) In developing the management program, after due notice to littoral owners and the public generally, the board shall hold or have held public hearings in the number and at the locations it determines to be appropriate.

(b) In reviewing or amending the management program, the board may hold or have held public hearings in the manner provided in Subsection (a) of this section. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.056. STRUCTURES ON LAND ADJACENT TO COASTAL PUBLIC LAND. (a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from adjacent land not owned by the state.

(b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.057. GIFTS OF INTERESTS IN LAND. (a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.

(b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.058. PURCHASE OF FEE AND LESSER INTERESTS IN LAND. (a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.

(b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.

(c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.

(d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.059. STUDIES. The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.060. LOCATING AND MARKING BOUNDARIES. The board may locate and have marked on the ground the boundaries separating coastal public land from other land. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.061. COMPLAINTS. (a) The board shall receive and evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.

(b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.062. DESIGNATED OFFICIAL REPRESENTATIVE. The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal government of any authority it may have over navigable water under the Constitution of the United States. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, and permits. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

Sec. 33.064. RULES. The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter. (V.A.C.S. Art. 5415e-1, Sec. 6 (part).)

(Sections 33.065-33.100 reserved for expansion)

#### SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

Sec. 33.101. APPLICATION TO ACQUIRE RIGHTS IN COASTAL PUBLIC LAND. Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board. (V.A.C.S. Art. 5415e-1, Sec. 7, subsec. (a) (part).)

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include:

(a) an adequate legal description of the land in which the rights are sought;

(2) a statement of the rights sought;

(3) a statement of the purpose or purposes for which the land is to be used;

(4) a description of the nature and extent of the improvements, if any, which will be made on the land;

(5) an estimate of the time within which any improvements to be made will be completed; and

NOTE: See also Chap. 19 Water  
Code relative to Texas  
Deepwater Port Authority

(6) any additional information the board considers necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done. (V.A.C.S. Art. 5415e-1, Sec. 7, subsec. (a) (part).)

**Sec. 33.103. INTERESTS WHICH MAY BE GRANTED BY THE BOARD.** The board may grant the following interests in coastal public land for the indicated purposes:

- (1) leases for public purposes;
- (2) easements for purposes connected with ownership of littoral property;
- (3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property; and
- (4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests. (V.A.C.S. Art. 5415e-1, Sec. 7, subsec. (b).)

**Sec. 33.104. PROCESSING APPLICATION.** (a) On receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor.

(b) The board shall determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.

(c) If the application is granted, the board shall determine the reasonable term, conditions, and consideration for the grant and may consummate the transaction. (V.A.C.S. Art. 5415e-1, Sec. 7, subsec. (c).)

**Sec. 33.105. PERSONS TO WHOM LAND MAY BE LEASED.** The board may lease coastal public land to:

- (1) the Parks and Wildlife Department, or to any eligible city or county, for public recreational purposes;
- (2) the Parks and Wildlife Department, for management of estuarine preserves;
- (3) any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge; and
- (4) any scientific or educational organization or institution for conducting scientific research. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (a).)

**Sec. 33.106. POLICIES, PROVISIONS, AND CONDITIONS OF LEASES.** In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107-33.110 of this code. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (b) (part).)

**Sec. 33.107. PROTECTION OF RIGHTS.** The littoral rights of the adjacent upland owner shall be protected in a lease. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (b) (part).)

**Sec. 33.108. RIGHTS OF THE PUBLIC.** Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (b) (part).)

**Sec. 33.109. COUNTIES AND CITIES ELIGIBLE TO LEASE COASTAL PUBLIC LAND.** (a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (b) (part).)

Sec. 33.110. **CONTRACTS AND FRANCHISES.** (a) With the approval of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) No contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of the property. (V.A.C.S. Art. 5415e-1, Sec. 8, subsec. (b) (part).)

Sec. 33.111. **GRANTING EASEMENTS.** The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (a) (part).)

Sec. 33.112. **FAILURE TO OBTAIN AN EASEMENT.** (a) Any owner of littoral property or any person acting under the owner of littoral property who, for purposes connected with the ownership of the littoral property, shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than \$200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (b).)

Sec. 33.113. **INTERPRETATION OF EASEMENT GRANT.** The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (a) (part).)

Sec. 33.114. **POLICIES, PROVISIONS, AND CONDITIONS OF EASEMENTS.** In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (a) (part).)

Sec. 33.115. **PIERS.** (a) Without obtaining an easement from the board, the owner of littoral property may construct a pier which:

(1) may be used for any purpose except commercial purposes;

(2) is 100 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) The location and dimensions of the pier must be registered with the board in the manner provided in this chapter. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (a) (part).)

Sec. 33.116. **FAILURE TO REGISTER PIER.** Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than \$200. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (a).)

Sec. 33.117. **PUBLIC POLICY OF STATE TO BE CONSIDERED.** In administering Sections 33.111-33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (a) (part).)

Sec. 33.118. **SINGLE PERMIT.** If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document incorporating all rights and privileges of the applicant. (V.A.C.S. Art. 5415e-1, Sec. 9, subsec. (b).)

Sec. 33.119. **ISSUANCE OF PERMITS.** The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the ownership of littoral property. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (a).)

Sec. 33.120. **FAILURE TO OBTAIN A PERMIT.** A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than \$50 nor more than \$1,000. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (c).)

Sec. 33.121. **UNAUTHORIZED STRUCTURES.** Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than \$50 nor more than \$1,000. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (d).)

Sec. 33.122. **EXCEPTION TO PERMIT REQUIREMENT.** No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water. (V.A.C.S. Art. 5415e-1, Sec. 16 (part).)

Sec. 33.123. **POLICIES, PROVISIONS, AND CONDITIONS OF PERMITS.** In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120-33.122 and 33.124-33.126 of this code. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.124. **PERMITS PROHIBITED FOR CERTAIN STRUCTURES.** The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of:

- (1) privately owned littoral property, without written consent of the littoral owner;
- (2) any federal or state wildlife sanctuary or refuge; or
- (3) any federal, state, county, or city park bordering on coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.125. **AUTOMATIC REVOCATION AND TERMINATION OF A PERMIT.** A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

- (1) subsequently leased for public purposes;
- (2) exchanged for littoral property under this chapter; or
- (3) conveyed to a navigation district as provided by law. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.126. **TERMINATION OF PERMIT BY BOARD.** Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.127. **TERMS AND RENEWAL OF PERMITS.** Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.128. **USE OF PREVIOUSLY UNAUTHORIZED STRUCTURES.** Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.129. PROHIBITIONS ON THE GRANT OF PERMITS. The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.130. REPAIRS AND REBUILDING. If a structure for which a permit is issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (b) (part).)

Sec. 33.131. STRUCTURES AS PROPERTY OF THE STATE. A structure presently existing or to be constructed in the future for which a permit is required under this subchapter is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited. (V.A.C.S. Art. 5415e-1, Sec. 10, subsec. (c).)

Sec. 33.132. REGISTRATION BY BOARD. (a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner. (V.A.C.S. Art. 5415e-1, Sec. 11 (part).)

Sec. 33.133. REMEDIES CUMULATIVE. Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (e).)

Sec. 33.134. USE AND DEVELOPMENT OF LAND BY LITTORAL OWNER. None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property. (V.A.C.S. Art. 5415e-1, Sec. 16 (part).)

(Sections 33.135-33.170 reserved for expansion)

## SUBCHAPTER E. ENFORCEMENT AND APPEAL

Sec. 33.171. ENFORCEMENT OF RIGHTS OF LITTORAL OWNERS. (a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner. (V.A.C.S. Art. 5415e-1, Sec. 13.)

Sec. 33.172. VENUE. Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

(1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;

(2) touching any interest in land sought or granted under this chapter; and

(3) to determine the boundaries or title to any coastal public land. (V.A.C.S. Art. 5415e-1, Sec. 12, subsec. (f).)

Sec. 33.173. RIGHT TO APPEAL. Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County. (V.A.C.S. Art. 5415e-1, Sec. 15 (part).)

Sec. 33.174. TIME FOR FILING PETITION. The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date. (V.A.C.S. Art. 5415e-1, Sec. 15 (part).)

Sec. 33.175. SERVICE OF CITATION. Service of citation on the board may be accomplished by serving the commissioner. (V.A.C.S. Art. 5415e-1, Sec. 15 (part).)

Sec. 33.176. ISSUE ON APPEAL. In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or unreasonable. (V.A.C.S. Art. 5415e-1, Sec. 15 (part).)

## SUBCHAPTER F. COASTAL COORDINATION

Sec. 33.201. SHORT TITLE. This subchapter may be cited as the Coastal Coordination Act of 1977. (V.A.C.S. Art. 5415e-1.5, Sec. 1.)

Sec. 33.202. POLICY. (a) It is declared to be the policy of this state to make more effective and efficient use of public funds and public facilities in coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, the performance of state coastal programs, and the measures required to resolve identified coastal problems; and

(2) making the state's many existing coastal management processes more visible, accessible, and accountable to the people of Texas.

(b) It is declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas. (V.A.C.S. Art. 5415e-1.5, Sec. 2.)

Sec. 33.203. DEFINITIONS. (a) In this subchapter:

(1) "Coastal natural resource areas" means areas in the Gulf of Mexico within the boundaries of this state, tidal inlets and tidal deltas, bays, lagoons which contain seawater and which have unimpaired connection with the Gulf of Mexico, oyster reefs, grassflats, channels which contain seawater, coastal lakes containing seawater, beaches adjacent to seawater.

This subchapter added by  
HB 1816, Acts 66th Leg. 1979.

barrier islands, wind tidal flats, marsh which contains seawater, washover areas, sand dune complexes on the Gulf shoreline, river mouths and tidal streams up to the farthest point of intrusion by seawater, and spoil deposits in direct contact with seawater or located within, upon, or in direct contact with any of these coastal natural resource areas, but does not include any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale.

(2) "Council," means the Natural Resources Council created by the Natural Resources Council Act of 1977 (Article 4413(48), Vernon's Texas Civil Statutes).

(3) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

(b) The definition in Subsection (a)(1) of this section is not admissible in evidence in any court of law for any purpose other than the implementation and construction of this subchapter unless otherwise agreed by all parties to the case or controversy before the court. (V.A.C.S. Art 5415e-1.5, Sec. 3.)

Sec. 33.204. STUDY OF COASTAL PROBLEMS AND ISSUES. (a) The council shall make studies of problems and issues affecting the coastal natural resource areas of the state that are in the public interest.

(b) The council shall prepare and submit to the governor and legislature before March 1 of each even-numbered year a comprehensive report with recommendations for action on problems and issues affecting the coastal natural resource areas of the state. The comprehensive report may include a minority report and recommendations and shall include:

(1) a short description of the environmental, social, and economic changes in or affecting the coastal natural resource areas of the state during the preceding two years, this description to include changes in boundaries and state or federal coastal policies;

(2) a statement of the principal problems of state concern in or affecting coastal natural resource areas;

(3) a statement of the steps recommended by the council to resolve identified problems, including additions to or changes in state policies, programs, or statutes affecting coastal natural resource areas, transfers of programs among agencies, and the creation of new programs or elimination of old ones;

(4) a review of the effectiveness of current programs for implementing state policy affecting coastal natural resource areas;

(5) a report on the success of actions taken by the council during the preceding two years, including public hearings, administration of federal grant funds, and specific studies; and

(6) recommended state coastal natural resource research and data acquisition priorities.

(c) The state agencies, university systems, other bodies, and elected officials represented on the council shall perform or have performed all research and analyses requested by the council for the preparation of the report and transmit the research and analyses to the council by such time as is necessary to ensure the timely submission of the council's finished report to the governor and legislature.

(d) In the course of preparing the report, the council shall receive and consider the oral or written testimony of any person regarding the coastal policies, programs, and procedures of the state. The council may reasonably limit the length and format of the testimony and the time at which it will be received. Notice of the period during which the testimony will be



received shall be published in the Texas Register not less than 30 days before the commencement of that period. (V.A.C.S. Art. 5415e-1.5, Sec. 4.)

Section 2. Chapter 33, Natural Resources Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. COASTAL WETLAND ACQUISITION

Sec. 33.231. SHORT TITLE. This subchapter may be cited as the Coastal Wetland Acquisition Act. (V.A.C.S. Art. 5415e-3, Sec. 1.)

Sec. 33.232. POLICY. It is the declared policy of the state:

(1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;

(2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wetland and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and

(3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure. (V.A.C.S. Art. 5415e-3, Sec. 2.)

Sec. 33.233. DEFINITIONS. In this subchapter;

(1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Certifying agency" means the General Land Office.

(3) "Coastal wetland" means marshes and other areas of high biologic productivity where seawater is present during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale, but does not include any areas seaward of the line of mean annual low spring tide, nor any mainland area where seawater is present only during storms or hurricanes as defined by the Beaufort Wind Scale, and the presence at a given point of vegetation characteristic of marshes containing seawater is prima facie evidence that seawater is present at the point during times other than and in addition to storms or hurricanes as defined by the Beaufort Wind Scale.

(4) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico. (V.A.C.S. Art. 5415e-3, Sec. 3.)

Sec. 33.234. DUTIES AND AUTHORITY OF ACQUIRING AGENCY. (a) The acquiring agency shall do the following:

(1) accept gifts, grants, or devises of interests in land;

(2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified by the certifying agency as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and

(3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.

(b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include

This subchapter added by  
HB 1816, Acts 66th Leg. 1979.

regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either;

(1) seek to condemn the fee interest in the surface estate in the coastal wetland; or

(2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland. (V.A.C.S. Art. 5415e-3, Sec. 4.)

Sec. 33.235. AGRICULTURAL EXEMPTION. Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland, activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate. (V.A.C.S. Art. 5415e-3, Sec. 5.)

Sec. 33.236. DUTIES AND AUTHORITY OF CERTIFYING AGENCY. (a) The certifying agency shall do the following:

(1) certify to the acquiring agency that coastal wetland which is most essential to the public interest in accordance with the criteria in this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The commissioner of the General Land Office shall forward a copy of any certification to the county judge of every county in which any part of the wetland certified is located and shall request the recommendation of the commissioners of the county on the certification.

(d) Within 45 days of receipt of a certification from the commissioner of the General Land Office, the commissioners court shall send to the commissioner of the General Land Office written recommendations concerning the certification.

(e) If the commissioners court of a county described in Subsection (c) of this section agrees that the portion of the certified wetland within the county should be certified, or if the commissioners court does not submit recommendations to the commissioner of the General Land Office within the time specified in Subsection (d) of this section, then as to that portion of the wetland, the certification shall continue in full force and effect.

(f) If the commissioners court of any county described in Subsection (c) of this section recommends that certified wetland or any part of it within the county should not be certified, the certification shall be revoked as to that part of the wetland.

(g) If the commissioner of the General Land Office wishes to contest a revocation of certification pursuant to Subsection

(f) of this section, he shall forward the certification to the governor, together with the recommendations of the commissioners courts and any further information the commissioner of the General Land Office shall deem advisable.

(h) If the governor determines that any certification revoked pursuant to Subsection (f) of this section should be reinstated in whole or in part, he shall notify the commissioner of the General Land Office within 60 days of receipt of the certification pursuant to Subsection (g) of this section. Upon receipt of notice from the governor, the commissioner of the General Land Office may recertify the part of the wetland to the acquiring agency, and the certification shall be in full force and effect. (V.A.C.S. Art. 5415e-3, Sec. 6.)

Sec. 33.237. MOST ESSENTIAL COASTAL WETLAND CERTIFICATION. (a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the certifying agency shall consider the following criteria:

(1) whether the land is coastal wetland within the definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated. (V.A.C.S. Art. 5415e-3, Sec. 7.)

Sec. 33.238. FUNDING. The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds obtained through:

(1) gift, grant, or devise;

(2) legislative appropriation; or

(3) gift or grant from the United States. (V.A.C.S. Art. 5415e-3, Sec. 8.)

## CHAPTER 51

### SUBCHAPTER G. EASEMENTS

Sec. 51.291. GRANTS OF EASEMENTS. The commissioner may execute grants of easements for rights-of-way across unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for telephone, telegraph, electric transmission, and powerlines, for oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature, and for irrigation canals, laterals, and water pipelines. (V.A.C.S. Art. 6020a, Sec. 1 (part).)

Sec. 51.292. EASEMENTS AND LEASES FOR CERTAIN FACILITIES. The commissioner may execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms to be located on state land other than land owned by The University of Texas System. (V.A.C.S. Art. 6020a, Sec. 1 (part).)

#### Sec. 51.296. Term of Easements

(a) Except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Sections 51.291 through 51.293 of this code may be granted for a term that is longer than 10 years, but an easement may be renewed by the officials responsible for execution of grants of easement and leases under this subchapter.

(b) A right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license. (V.A.C.S. Art. 6020a, Sec. 3.)

## CHAPTER 52. OIL AND GAS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
  - (2) "Land office" means the General Land Office.
  - (3) "Board" means the school land board. (New.)
- (Sections 52.002-52.010 reserved for expansion)

### SUBCHAPTER B. LEASE OF PUBLIC SCHOOL AND GULF LAND

Sec. 52.011. AREA SUBJECT TO LEASE. Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

- (1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;
- (2) the portion of the Gulf of Mexico within the jurisdiction of the state; and
- (3) all unsold surveyed and unsurveyed public school land. (R.S. Art. 5353; V.A.C.S. Art. 5421c, Sec. 8 (part); V.A.C.S. Art. 5421c-5, Sec. 1 (part).)

## CHAPTER 53. MINERALS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
- (2) "Land office" means the General Land Office. (New.)  
(Sections 53.002-53.010 reserved for expansion)

### SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

Sec. 53.011. LAND SUBJECT TO PROSPECT. Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for all minerals except:

- (1) oil and gas;
- (2) coal, lignite, sulphur, salt, and potash;
- (3) shell, sand, and gravel; and
- (4) fissionable minerals other than uranium and thorium on land sold with a reservation of minerals to the state. (V.A.C.S. Art. 5421c-7, Sec. 1 (part).)

### SUBCHAPTER E. LEASE OF PUBLIC SCHOOL AND GULF LAND FOR COAL, LIGNITE, SULPHUR, SALT, AND POTASH

This subchapter added by  
HB 1059, Acts 66th Leg. 1979.

Sec. 53.151. LEASE OF CERTAIN AREAS. Under this subchapter, the board may lease to any person for the production of coal, lignite, sulphur, salt, and potash:

- (1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;
- (2) the portion of the Gulf of Mexico within the jurisdiction of the state; and
- (3) unsold surveyed and unsurveyed public school land.

Sec. 53.152. LAWS APPLICABLE TO LEASES. (a) Leases of land described by Section 53.151 of this code shall be made in the same manner as leases of that land for oil and gas under Chapter 52 of this code.

(b) Sections 52.034 and 52.086 of this code do not apply to leases of coal, lignite, sulphur, salt, and potash under this subchapter.

Sec. 53.153. CONDITIONS OF LEASE. Coal, lignite, sulphur, salt, and potash may be leased together or separately.

Sec. 53.154. ROYALTY AND DELAY RENTALS. (a) In addition to the cash amount bid for a lease, the board shall lease the area for not less than one-eighth of the gross production of sulphur or the value of the sulphur that may be produced or that may be produced and sold off the area and not less than one-sixteenth of the value of the coal, lignite, salt, and potash that may be produced plus an amount determined by the board until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, in an amount determined by the board as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease.

SUBTITLE E. BEACHES AND DUNES

CHAPTER 61. USE AND MAINTENANCE  
OF PUBLIC BEACHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Department" means the Parks and Wildlife Department.

(2) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(3) "Highest wave" means the highest swell of the surf with such regularity that vegetation cannot grow and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

(4) "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

(5) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. (V.A.C.S. Art. 5415d, Sec. 3, subsec. (a) (part), (b), (e); Art. 5415d-1, Sec. 11 (part); Art. 5415d-4, Sec. 7 (part); Art. 5415g, Sec. 11.)

(Sections 61.002-61.010 reserved for expansion)

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

Sec. 61.011. PUBLIC POLICY. It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico. (V.A.C.S. Art. 5415d, Sec. 1 (part).)

Sec. 61.012. DEFINITION. In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public. (V.A.C.S. Art. 5415d, Sec. 3, subsec. (c).)

Section 61.013. PROHIBITION OF OBSTRUCTIONS. (a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively:

(1) to enter or to leave any public beach; or

(2) to use lawfully and legally any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) For purposes of this section, 'public beach' shall mean

Sections 61.013 and 61.014  
amended by SB 1069, Acts 66th  
Leg. 1979.

any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach which is not accessible by a public road or public ferry.

(c) A person who creates, erects, or constructs an obstruction, barrier, or restraint in violation of Subsection (a) of this section is liable to the state for a civil penalty of not less than \$50 nor more than \$1,000.

Sec. 61.014. DENIAL OF ACCESS BY POSTING. (a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Any person who displays or causes to be displayed on any public beach any sign, marker, or warning, or who shall make or have made any written or oral communication which states that the public beach is private property or who states in any other manner that the public does not have the right of access to the public beach in violation of the lawful access rights of the public guaranteed by this subchapter is liable to the state for a civil penalty of not less than \$50 nor more than \$1,000.

(c) Each day that the communication is made constitutes a separate offense.

(d) Any person who violates the provisions of this section shall be prosecuted in the county in which the public beach is located.

(e) This section does not apply to any island or peninsula that is not accessible by public road or common carrier ferry facility so long as the condition exists. (V.A.C.S. Art. 5415d-2.)

Sec. 61.015. SATISFACTION OF INGRESS AND EGRESS REQUIREMENT. The requirement of free and unrestricted right of ingress and egress over an area landward of the line of vegetation is considered fully satisfied by access roads or ways which are in existence now and available to the public or which by or with the approval of any governmental authority having jurisdiction may be provided in the future. (V.A.C.S. Art. 5415d, Sec. 1 (part).)

Sec. 61.016. BOUNDARIES FOR AREAS WITH NO MARKED VEGETATION LINE. (a) To determine the elevation reached by the highest waves of the Gulf of Mexico, in any area in which there is no clearly marked vegetation line (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the extended line shall not extend inland further than 200 feet from the seaward line of mean low tide. (V.A.C.S. Art. 5415d, Sec. 3, subsec. (a) (part).)

Sec. 61.017. LINE OF VEGETATION UNAFFECTED BY CERTAIN CONDITIONS. (a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them and by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place. (V.A.C.S. Art. 5415d, Sec. 3, subsec. (a) (part).)

Sec. 61.018. SUIT TO REMOVE OBSTRUCTIONS. (a) The attorney general or any county attorney, district attorney, or criminal district attorney shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction to remove any obstruction or barrier or to prohibit any restraint or interference which restricts the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from any area described in Section 61.012 of this code or any property abutting on or contiguous to the state-owned beach on which the public has acquired a prescriptive right.

(b) In the same suit, the attorney general, county attorney, district attorney, or criminal district attorney may seek recovery of the costs of removing any obstruction or barrier if it is removed by public authorities pursuant to an order of the court. (V.A.C.S. Art. 5415d, Sec. 5.)

Sec. 61.019. DECLARATORY JUDGMENT SUITS. (a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general. (V.A.C.S. Art. 5415d, Sec. 6.)

Sec. 61.020. PRIMA FACIE EVIDENCE. In a suit brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area, subject to proof of easement, a prescriptive right or easement in favor of the public for ingress and egress to the sea. (V.A.C.S. Art. 5415d, Sec. 2.)

Sec. 61.021. AREA NOT COVERED BY SUBCHAPTER. None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists. (V.A.C.S. Art. 5415d, Sec. 1 (part).)

Sec. 61.022. EXEMPTION FOR CERTAIN STRUCTURES. The provisions of this subchapter do not prevent any agency, department, institution, subdivision, or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States. (V.A.C.S. Art. 5415d, Sec. 1 (part).)



Sec. 61.023. EFFECT ON LAND TITLES AND PROPERTY ADJACENT TO AND ON BEACHES. The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach. (V.A.C.S. Art. 5415d, Sec. 1 (part).)

Sec. 61.024. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom. (V.A.C.S. Art. 5415d, Sec. 4.)

(Sections 61.025-61.060 reserved for expansion)

#### SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

Sec. 61.061. PURPOSE. It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches. (V.A.C.S. Art. 5415c-1, Sec. 1, subsec. (a).)

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter. (V.A.C.S. Art. 5415d-1, Sec. 1, subsec. (b).)

Sec. 61.063. DEFINITION. In this subchapter, "clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols. (V.A.C.S. Art. 5415d-1, Sec. 11, subsec. (c).)

Section 61.064. APPLICATION OF SUBCHAPTER. This subchapter applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

Sec. 61.065. DUTY OF CITIES. (a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located. (V.A.C.S. Art. 5415d-1, Sec. 5, subsec. (a).)

Sec. 61.066. DUTY OF COUNTY. It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village. (V.A.C.S. Art. 5415d-1, Sec. 5, subsec. (b).)

Sec. 61.067. DUTY OF STATE. It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department. (V.A.C.S. Art. 5415d-1, Sec. 5, subsec. (c).)

Sec. 61.068. APPLICATION REQUIREMENT. A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the department. (V.A.C.S. Art. 5415d-1, Sec. 3 (part).)

Sec. 61.069. CONTENTS OF APPLICATION. To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the department may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the department. (V.A.C.S. Art. 5415d-1, Sec. 3 (part).)

Sec. 61.070. PARKING AND USE FEES. Section 61.069(4) of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public. (V.A.C.S. Art. 5415d-1, Sec. 3 (part).)

Sec. 61.071. COMPLIANCE BEFORE APPROVAL. The department shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code. (V.A.C.S. Art. 5415d-1, Sec. 4.)

Sec. 61.072. STATE FUNDS. The department shall pay to each city or county that has an application approved under Sections 61.068-61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (a) (part).)

Sec. 61.073. CONDITIONS FOR PAYMENTS. No payments shall be made under this section until the department finds that:

(1) there will be available in the budget of the city or county not less than \$20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (a) (part).)

Sec. 61.074. **SUBMISSION OF PROPOSED EXPENDITURES.** A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the department proposed expenditures for cleaning and maintaining the public beaches. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (b) (part).)

Sec. 61.075. **FAIR DISTRIBUTION OF FUNDS.** The department shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the department. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (b) (part).)

Sec. 61.076. **LIMITATION ON STATE SHARE.** (a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The department shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (c).)

Sec. 61.077. **FUNDS FOR ADMINISTRATIVE PURPOSES AND EMERGENCIES.** (a) The department may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The department may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches. (V.A.C.S. Art. 5415d-1, Sec. 7, subsec. (d).)

Sec. 61.078. **AUTHORITY TO SPEND COUNTY FUNDS.** The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter. (V.A.C.S. Art. 5415d-1, Sec. 6.)

Sec. 61.079. **NOTICE OF INELIGIBILITY.** After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the department finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the department is satisfied that there is no longer any failure to comply. (V.A.C.S. Art. 5415d-1, Sec. 10.)

Sec. 61.080. **PUBLIC BEACHES IN INELIGIBLE CITY.** (a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the department for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The department shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public. (V.A.C.S. Art. 5415d-1, Sec. 8.)

Sec. 61.081. PUBLIC BEACHES IN INELIGIBLE COUNTY. (a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the department for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The department shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public. (V.A.C.S. Art. 5415d-1, Sec. 9.)

Sec. 61.082. AUTHORITY OF LOCAL GOVERNMENTS.

(a) The provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter. (V.A.C.S. Art. 5415d-1, Sec. 1, subsec. (c).)

Sec. 61.083. EXEMPTIONS FROM SUBCHAPTER. None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists. (V.A.C.S. Art. 5415d-1, Sec. 12.)

(Sections 61.084-61.120 reserved for expansion)

#### SUBCHAPTER D. REGULATION OF TRAFFIC AND LITTER

Sec. 61.121. DEFINITION. In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code. (New.)

Section 61.122. Regulation of Traffic, Prohibition of Litter, Possession of Animals on Beaches, and Swimming in Passes to and from the Gulf of Mexico

(a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county and may prohibit the littering of the beach and may define the term 'littering.'

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

Sec. 61.123. NOTICE OF HEARING. (a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (b) (part).)

Sec. 61.124. COPIES OF ORDER. The commissioners court shall make copies of the proposed order available to interested persons. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (b) (part).)

Sec. 61.125. PUBLIC HEARING. (a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (b) (part).)

Sec. 61.126. TRAFFIC REGULATIONS. If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (b) (part).)

Sec. 61.127. CRIMINAL PENALTIES. In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

- (1) for a first conviction, a fine of not more than \$50;
- (2) for a second conviction, a fine of not more than \$200;
- (3) for any subsequent convictions after the second conviction, a fine of not more than \$500 or confinement in the county jail for not more than 60 days, or both. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (c).)

Sec. 61.128. ORDER PREVAILS OVER STATE LAW. If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order. (V.A.C.S. Art. 5415d, Sec. 8, subsec. (d).)

Sec. 61.129. ORDINANCE PREVAILS OVER ORDER AND STATE LAW. (a) This subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance. (V.A.C.S. Art. 5415d, Sec. 9.)

Sec. 61.130. RIGHTS OF THE PUBLIC. The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village. (V.A.C.S. Art. 5415d, Sec. 10.)

Sec. 61.131. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom. (V.A.C.S. Art. 5415d, Sec. 4.)

(Sections 61.132-61.160 reserved for expansion)

NOTE: The word "construct" is in the Act on which this provision is based, however, the original as shown in Senate Journal for July 1, 1959, pg. 51, used "constrict".

**SUBCHAPTER E. LICENSES FOR  
BUSINESS ESTABLISHMENTS**

Sec. 61.161. **PUBLIC POLICY.** It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use. (V.A.C.S. Art. 5415d-4, Sec. 1.)

Sec. 61.162. **FINDINGS.** (a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter. (V.A.C.S. Art. 5415d-4, Sec. 2, 3 (part).)

Sec. 61.163. **DEFINITION.** In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale. (V.A.C.S. Art. 5415d-4, Sec. 7, subdiv. (3).)

Sec. 61.164. **APPLICATION.** A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the department. (V.A.C.S. Art. 5415d-4, Sec. 3 (part).)

Sec. 61.165. **CONTENTS OF APPLICATION.** The application shall include:

(1) the name and street address of the applicant;  
(2) the commodity to be sold or leased; and  
(3) the limits of the territory within which the mobile business establishment will operate. (V.A.C.S. Art. 5415d-4, Sec. 4 (part).)

Sec. 61.166. **FILING FEE.** (a) The application shall be accompanied by a filing fee in an amount determined by the department, not to exceed \$25.

(b) The filing fee shall be deposited in the state treasury in the Land and Water Recreation and Safety Fund 63, and the department may pay from this fund the expenses of carrying out the provisions of this subchapter. (V.A.C.S. Art. 5415d-4, Sec. 4 (part).)

Sec. 61.167. SEPARATE APPLICATIONS. Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed. (V.A.C.S. Art. 5415d-4, Sec. 4 (part).)

Sec. 61.168. GRANTING LICENSE. (a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the department shall grant the license.

(b) The license shall be valid for one year from the day it is issued.

(c) If the license is not granted, the department shall return the filing fee to the applicant. (V.A.C.S. Art. 5415d-4, Sec. 5.)

Sec. 61.169. APPLICATIONS NOT TO BE GRANTED. The department shall not grant an application:

(1) for a business establishment located at a fixed or permanent location on a public beach;

(2) for a business establishment that does not traverse the beach while doing business; or

(3) that does not otherwise meet the terms and provisions of this subchapter. (V.A.C.S. Art. 5415d-4, Sec. 10.)

Sec. 61.170. LICENSE PROHIBITION AGAINST GLASS CONTAINERS. (a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code. (V.A.C.S. Art. 5415d-4, Sec. 10A.)

Sec. 61.171. ASSIGNMENT. No license issued under this subchapter may be assigned. (V.A.C.S. Art. 5415d-4, Sec. 6 (part).)

Sec. 61.172. TERMINATION AND REVOCATION OF LICENSE. (a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license. (V.A.C.S. Art. 5415d-4, Sec. 6 (part).)

Sec. 61.173. MAXIMUM TERRITORIAL LIMITS. (a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the department may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate. (V.A.C.S. Art. 5415d-4, Sec. 4 (part).)

Sec. 61.174. ADDITIONAL STANDARDS. In addition to other standards provided in this subchapter, it is the intention of the legislature that the department exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the department should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the department under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the

public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the department. (V.A.C.S. Art. 5415d-4, Sec. 8.)

Sec. 61.175. RULES, PROCEDURES, AND CONDITIONS. The department may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter. (V.A.C.S. Art. 5415d-4, Sec. 5A).

Sec. 61.176. AREAS EXEMPT FROM SUBCHAPTER. This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists. (V.A.C.S. Art. 5415d-4, Sec. 9.)

Sec. 61.177. PENALTY. A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the department shall be fined not less than \$10 nor more than \$200. (V.A.C.S. Art. 5415d-4, Sec. 11.)

(Sections 61.178-61.210 reserved for expansion)

#### SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

Sec. 61.211. FINDINGS. The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property. (V.A.C.S. Art. 5415g, Sec. 1.)

Sec. 61.212. EXEMPTIONS FROM SUBCHAPTER. (a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961, before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court. (V.A.C.S. Art. 5415g, Sec. 7.)

Sec. 61.213. APPLICATION. Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.



Sec. 61.214. CONTENTS OF APPLICATION. The application shall include:

- (1) the name of the applicant;
- (2) the location and dimensions of the proposed excavation;
- (3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and
- (4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of \$50. (V.A.C.S. Art. 5415g, Sec. 3.)

Sec. 61.215. PREREQUISITES TO ISSUANCE OF PERMIT. No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner. (V.A.C.S. Art. 5415g, Sec. 6.)

Sec. 61.216. NOTICE OF APPLICATIONS RECEIVED. (a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity. (V.A.C.S. Art. 5415g, Sec. 10 (part).)

Sec. 61.217. PUBLIC HEARING. (a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code. (V.A.C.S. Art. 5415g, Sec. 10 (part).)

Sec. 61.218. NOTICE OF PUBLIC HEARING. Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county. (V.A.C.S. Art. 5415g, Sec. 10 (part).)

Sec. 61.219. ISSUANCE OF PERMIT. (a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits. (V.A.C.S. Art. 5415g, Sec. 4, 12A.)

Sec. 61.220. RETURN OF FILING FEE. If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer. (V.A.C.S. Art. 5415g, Sec. 5.)

Sec. 61.221. ASSIGNMENT OF PERMITS. No permit may be assigned without the approval of the commissioners court. (V.A.C.S. Art. 5415g, Sec. 9 (part).)

Sec. 61.222. **TERMINATION AND REVOCATION OF PERMIT.** Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit. (V.A.C.S. Art. 5415g, Sec. 9 (part).)

Sec. 61.223. **SUITS FOR ORDERS AND INJUNCTIONS.** The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct takes place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter. (V.A.C.S. Art. 5415g, Sec. 13.)

Sec. 61.224. **PENALTY.** A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense. (V.A.C.S. Art. 5415g, Sec. 14.)

Sec. 61.225. **SAND, MARL, GRAVEL, OR SHELL FROM PUBLIC BEACHES WITHIN INCORPORATED CITIES.** No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of publicly owned and operated recreational facility or for the construction of a shoreline protection structure. (V.A.C.S. Art. 5415g, Sec. 11A.)

Sec. 61.226. **APPLICATION OF SUBCHAPTER TO CERTAIN ISLANDS AND PENINSULAS.** The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues. (V.A.C.S. Art. 5415g, Sec. 12.)

Sec. 61.227. **AUTHORITY OF PARKS AND WILDLIFE DEPARTMENT.** None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 3 of Title 67. (V.A.C.S. Art. 5415g, Sec. 8.)

## CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. **APPLICABILITY**

Sec. 62.002. **DEFINITION**

(Sections 62.003-62.010 reserved for expansion)

### SUBCHAPTER B. CREATION OF BOARD

Sec. 62.011. **PURPOSE AND AUTHORITY**

Sec. 62.012. **METHOD OF CREATING BOARD**

Sec. 62.013. **ELECTION**

(Sections 62.014-62.040 reserved for expansion)

#### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

- Sec. 62.041. MEMBERS OF BOARD
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- Sec. 62.043. OATH AND BOND
- Sec. 62.044. COMPENSATION; EXPENSES
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- Sec. 62.047. PARK MANAGER
- Sec. 62.048. LEGAL SERVICES
- Sec. 62.049. EMPLOYEES OF BOARD
- Sec. 62.050. MEETINGS
- Sec. 62.051. BOARD RECORDS
- Sec. 62.052. MANAGEMENT OF FUNDS
- Sec. 62.053. AUDIT
- Sec. 62.054. COURT ACTIONS
- Sec. 62.055. SEAL

(Sections 62.056-62.090 reserved for expansion)

#### SUBCHAPTER D. POWERS AND DUTIES

- Sec. 62.091. LAND UNDER JURISDICTION, MANAGEMENT, AND CONTROL
- Sec. 62.092. PRIORITY OF JURISDICTION
- Sec. 62.093. PARK AUTHORITY
- Sec. 62.094. FEE CHARGED
- Sec. 62.095. USE OF FUNDS
- Sec. 62.096. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO LAND AND FACILITIES
- Sec. 62.097. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO MANAGEMENT, OPERATION, AND MAINTENANCE OF LAND AND FACILITIES
- Sec. 62.098. CONTRACTS WITH OTHER GOVERNMENTAL AGENCIES
- Sec. 62.099. ADVERTISING
- Sec. 62.100. RULES
- Sec. 62.101. LEGISLATIVE INTENT

(Sections 62.102-62.130 reserved for expansion)

#### SUBCHAPTER E. ISSUANCE OF BONDS

- Sec. 62.131. AUTHORITY TO ISSUE REVENUE BONDS
- Sec. 62.132. FORMAL REQUIREMENTS OF BONDS
- Sec. 62.133. SALE OF BONDS
- Sec. 62.134. APPROVAL AND REGISTRATION
- Sec. 62.135. AUTHORIZED INVESTMENTS
- Sec. 62.136. SECURITY FOR DEPOSITS
- Sec. 62.137. TAX BONDS
- Sec. 62.138. REFUNDING BONDS

### CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. APPLICABILITY. (a) The provisions of this chapter apply to counties that are located or border on the Gulf of Mexico and have within their boundaries beaches that are suitable for park purposes. The suitability of a beach for park purposes is established conclusively when the commissioners court of the county makes a finding that the beach located within its boundaries, but not located within the boundaries of an incorporated city, is suitable for park purposes.

(b) As long as an island or peninsula is not accessible by a public road or common carrier ferry facility, the provisions of this chapter do not apply to that island or peninsula.

(c) The provisions of this chapter do not interfere with, preempt, or in any manner restrict or usurp the authority of the land office over state-owned beaches.

(d) The provisions of this chapter do not prohibit the creation of, or limit the lawful actions of, a beach park board of trustees of a home-rule city as provided in Chapter 33, Acts of the 57th Legislature, 3rd Called Session, 1962.

(e) The provisions of this chapter do not permit any interference with the right the public has under the provisions of Subchapter B of Chapter 61 of this code to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation, as that term is defined in Section 61.001(2) of this code. A county, county official, or anyone acting under the authority of this chapter may not exercise any authority, contract out a right to exercise authority, or otherwise delegate authority beyond that specifically granted to it in Sections 61.122-61.128 of this code over that area notwithstanding any of the specific provisions of this chapter. The rights established in Subchapters B and D of Chapter 61 of this code are paramount over the rights or interests that might otherwise be created by the provisions of this chapter, and nothing in this chapter encroaches on those rights or upon land, or interests in land, that may ultimately be held subject to those rights. (V.A.C.S. Art. 5415d-3, Sec. 1, 10, 11.)

Sec. 62.002. DEFINITION. In this chapter, "board" means the Beach Park Board of Trustees. (V.A.C.S. Art. 5415d-3, Sec. 2 (part).)

(Sections 62.003-62.010 reserved for expansion)

#### SUBCHAPTER B. CREATION OF BOARD

Sec. 62.011. PURPOSE AND AUTHORITY. A county located or bordering on the Gulf of Mexico with a beach suitable for park purposes may create a board in the manner provided in this subchapter for the purpose of improving, equipping, maintaining, financing, and operating a public park or parks, or any facilities owned by the county, or to be acquired by the county, or to be managed by the county under the terms of a written contract. The board, to be designated beach park board of trustees, has the powers and duties specified in this chapter. (V.A.C.S. Art. 5415d-3, Sec. 2 (part).)

Sec. 62.012. METHOD OF CREATING BOARD. A board may be created after a favorable majority vote of the qualified voters of the county voting at an election held on the proposition. (V.A.C.S. Art. 5415d-3, Sec. 2 (part).)

Sec. 62.013. ELECTION. (a) The election shall be called by the commissioners court.

(b) Notice of the election shall be given in the manner provided by Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended.

(c) The ballots shall be printed to provide for voting for or against the proposition: "Establishing a beach park board of trustees." (V.A.C.S. Art. 5415d-3, Sec. 2 (part).)

(Sections 62.014-62.040 reserved for expansion)

#### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 62.041. MEMBERS OF BOARD. (a) The board is composed of seven members appointed by the commissioners court.

(b) One board member shall be a member of the commissioners court. (V.A.C.S. Art. 5415d-3, Sec. 3 (part).)

Sec. 62.042. TERM OF OFFICE. (a) With the exception of the trustees first appointed, a trustee serves for a term of two years from the date of appointment.

(b) At the time of the appointment of the first trustees, the commissioners court shall designate three trustees to serve for one year and four trustees to serve for two years. (V.A.C.S Art. 5415d-3, Sec. 3 (part).)

Sec. 62.043. OATH AND BOND. (a) A trustee shall qualify within 15 days after his appointment by taking the official oath and filing a good and sufficient bond with the county clerk.

(b) The bond shall be approved by the commissioners court, payable to the county, in a sum not to exceed \$5,000 as approved by the commissioners court of the county, and conditioned on the faithful performance of the duties of the trustee, including his proper handling of all money which may come into his hands in his capacity as a member of the board.

(c) The cost of the bond shall be paid by the board. (V.A. C.S. Art. 5415d-3, Sec. 4.)

Sec. 62.044. COMPENSATION; EXPENSES. A trustee serves without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of his official duties. (V.A.C.S. Art. 5415d-3, Sec. 3 (part).)

Sec. 62.045. VACANCY. A vacancy on the board shall be filled by appointment of the commissioners court. (V.A.C.S. Art. 5415d-3, Sec. 3 (part).)

Sec. 62.046. OFFICERS OF BOARD. (a) On the appointment of the first trustees, the commissioners court shall designate one of the trustees to serve as chairman of the board for a period of one year.

(b) After the first year the board annually shall elect a chairman, a vice-chairman, a secretary, and a treasurer from among its members. The office of secretary and treasurer may be held by the same person. (V.A.C.S. Art. 5415d-3, Sec. 5 (part).)

Sec. 62.047. PARK MANAGER. The board may employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.048. LEGAL SERVICES. (a) The board may call on the county attorney of the county for the legal services it requires.

(b) In lieu of or in addition to the county attorney, the board may employ and compensate its own counsel and legal staff. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.049. EMPLOYEES OF BOARD. (a) The board may employ temporary or permanent secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents and employees it requires.

(b) The board shall determine the qualifications, duties, and compensation of its employees. (V.A.C.S Art. 5415d-3, Sec. 7 (part).)

Sec. 62.050. MEETINGS. (a) The board shall hold regular meetings at times set by the board.

(b) The board may hold special meetings at the times business or necessity requires. Special meetings may be called by the chairman or any three members of the board. (V.A.C.S. Art. 5415d-3, Sec. 5 (part).)

Sec. 62.051. BOARD RECORDS. (a) The board shall keep a true and full record of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof safe or vault.

(b) The board may contract with the commissioners court of the county to have the county keep and maintain its records.

(c) All the records are the property of the board and are subject to inspection by the commissioners court at all reasonable times. (V.A.C.S. Art. 5415d-3, Sec. 6 (part).)

Sec. 62.052. MANAGEMENT OF FUNDS. The money belonging to or under control of the board shall be deposited and secured in the same manner prescribed by law for county funds. (V.A.C.S. Art. 5415d-3, Sec. 5 (part).)

Sec. 62.053. AUDIT. Independent auditors selected by the board shall make an annual audit of all financial transactions and records of the board. (V.A.C.S. Art. 5415d-3, Sec. 6 (part).)

Sec. 62.054. COURT ACTIONS. The board may sue and be sued in its own name. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.055. SEAL. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments usually executed under seal and on other instruments required by the board. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

(Sections 62.056-62.090 reserved for expansion)

#### SUBCHAPTER D. POWERS AND DUTIES

Sec. 62.091. LAND UNDER JURISDICTION, MANAGEMENT, AND CONTROL. (a) The following land is under the jurisdiction of the board:

(1) public beaches owned in fee by the county; and

(2) land used as parks in connection with public beaches not located inside the boundaries of an incorporated city and not inside the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Section 61.001 (2) of this code.

(b) The commissioners court may designate the following land to be under the management and control of the board:

(1) additional parks and facilities owned by the county; or

(2) additional parks and facilities to be managed by the county under the terms of a written contract. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.092. PRIORITY OF JURISDICTION. (a) The board has no jurisdiction over a public beach located inside the boundaries of the county that has been designated a national park, national seashore, or state park.

(b) The authority of the board preempts the right of the county board of park commissioners to act with regard to a beach, park, or facility within the jurisdiction of the board.

(c) The provisions of this chapter are cumulative of other laws relating to county parks but take precedence in the event of conflict. (V.A.C.S. Art. 5415d-3, Sec. 8, 9.)

Sec. 62.093. PARK AUTHORITY. The board may manage, operate, maintain, equip, and finance an existing public park placed under its jurisdiction by the commissioners court and may improve, manage, operate, maintain, equip, and finance additional parks acquired by gift but not acquired by the exercise of the power of eminent domain. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.094. FEE CHARGED. The board may charge and collect a reasonable fee for access or entrance to or parking on the land under its jurisdiction, other than public beaches owned by the county, or use of a facility located on land under its jurisdiction. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.095. USE OF FUNDS. (a) The board may accept, receive, and spend gifts of money or other things of value from any person for the purpose of performing any function, power, or authority vested in the board and funds from the county that are appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control.

(b) The board may spend money appropriated by the commissioners court for the purpose of cleaning and maintaining public beaches and land within its jurisdiction, including money appropriated to the commissioners court by the state for that purpose. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.096. **CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO LAND AND FACILITIES.** The board may enter into a contract, lease, or other agreement connected with, incident to, or affecting the financing, construction, equipping, maintenance, or operation of facilities located or to be located on or pertaining to land under its jurisdiction or facilities under its control and may execute and perform its lawful powers and functions on land leased from others. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.097. **CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO MANAGEMENT, OPERATION, AND MAINTENANCE OF LAND AND FACILITIES.** The board may enter into any contract, lease, or agreement with any person for a period of not more than 40 years relating to the management, operation, and maintenance of a concession, facility, improvement, leasehold, land, or other property over which the board has jurisdiction and control. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.098. **CONTRACTS WITH OTHER GOVERNMENTAL AGENCIES.** To accomplish any purpose authorized in this chapter, the board may enter into contracts with:

- (1) adjacent counties;
- (2) boards in adjacent counties; and
- (3) boards in cities of the same county in which the board has jurisdiction. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.099. **ADVERTISING.** The board may advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 61.100. **RULES.** The board may adopt and enforce reasonable rules for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons carrying on a business activity inside the area of the public parks and facilities. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.101. **LEGISLATIVE INTENT.** It is the intent of the legislature in enacting the provisions of this chapter that the rights established or recognized in Subchapters B and D of Chapter 61 of this code are paramount over any rights or interests that might otherwise be considered created by this chapter, and none of the provisions of this chapter may trench on those rights or encroach on land or interests in land that may ultimately be held subject to those rights. (V.A.C.S. Art. 5415d-3, Sec. 11 (part).)

(Sections 62.102-62.130 reserved for expansion)

#### SUBCHAPTER E. ISSUANCE OF BONDS

Sec. 62.131. **AUTHORITY TO ISSUE REVENUE BONDS.** For the purpose of improving and enlarging public parks and facilities, the board may issue revenue bonds payable solely from the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.132. **FORMAL REQUIREMENTS OF BONDS.**  
(a) The bonds may be issued by resolution adopted by the board without the necessity of an election.

(b) The bonds may be issued in the name of the board in one or more installments or series and shall mature serially or otherwise within 40 years from their date or dates.

(c) The bonds shall be issued on the terms and conditions, with regard to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds, that the board specifies in the resolution or resolutions authorizing the bonds.

(d) The bonds shall be executed by the chairman and secretary of the board and shall be signed by the chairman and secretary or shall bear the facsimile signature of either or both.

(e) The bonds shall display the seal of the board, which may be impressed, printed, or lithographed on the bonds. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.133. SALE OF BONDS. The board shall sell the bonds on the best terms obtainable but not for less than par and accrued interest. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.134. APPROVAL AND REGISTRATION. The bonds shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved as to legality by the attorney general and the bonds are registered by the comptroller of public accounts. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.135. AUTHORIZED INVESTMENTS. The bonds issued under the provisions of this subchapter are legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.136. SECURITY FOR DEPOSITS. The bonds are eligible to secure the deposit of public funds of the state and public funds of cities, towns, villages, or other political corporations or subdivisions of the state and are lawful and sufficient security for deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant to them. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.137. TAX BONDS. (a) The board shall not issue bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and spend the proceeds of bonds payable from taxes which are issued by the governing body of the county for park purposes after the bonds are authorized at an election held in the manner required by law. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

Sec. 62.138. REFUNDING BONDS. (a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding bonds of the board.

(b) The refunding bonds shall be issued, approved as to legality by the attorney general, and registered by the comptroller of public accounts in the manner and on the terms and conditions provided in this subchapter for the issuance of original revenue bonds. (V.A.C.S. Art. 5415d-3, Sec. 7 (part).)

## CHAPTER 63. DUNES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. FINDINGS OF FACT

Sec. 63.002. DEFINITIONS

Sec. 63.003. EFFECT OF CHAPTER

(Sections 63.004-63.010 reserved for expansion)

### SUBCHAPTER B. DUNE PROTECTION LINE

Sec. 63.011. ESTABLISHING DUNE PROTECTION LINE

Sec. 63.012. LOCATION OF DUNE PROTECTION LINE

Sec. 63.013. NOTICE

Sec. 63.014. MAP AND DESCRIPTION OF DUNE PROTECTION LINE

Sec. 63.015. DUNE PROTECTION LINE PROHIBITED

(Sections 63.016-63.050 reserved for expansion)



### SUBCHAPTER C. PERMITS

- Sec. 63.051. PERMIT REQUIREMENT
- Sec. 63.052. PERMIT NOT REQUIRED
- Sec. 63.053. FEE
- Sec. 63.054. GRANT OF APPLICATION
- Sec. 63.055. TERMS AND CONDITIONS OF PERMIT
- Sec. 63.056. NOTICE TO AND COMMENTS OF COMMISSIONER ON PERMITS
- Sec. 63.057. PERMIT FOR RECREATIONAL VEHICLE PROHIBITED

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### SUBCHAPTER D. PROHIBITIONS

- Sec. 63.091. CONDUCT PROHIBITED BETWEEN THE TEXAS-LOUISIANA STATE LINE AND ARANSAS PASS
- Sec. 63.092. CONDUCT PROHIBITED BETWEEN ARANSAS PASS AND MANSFIELD SHIP CHANNEL
- Sec. 63.093. PROHIBITED OPERATION OF RECREATIONAL VEHICLES

(Sections 63.094-63.120 reserved for expansion)

### SUBCHAPTER E. CRITICAL DUNE AREAS

- Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS
- Sec. 63.122. NOTICE TO COUNTIES

(Sections 63.123-63.150 reserved for expansion)

### SUBCHAPTER F. APPEALS

- Sec. 63.151. APPEAL BY LITTORAL OWNER
- Sec. 63.152. APPEAL BY COMMISSIONER

(Sections 63.153-63.180 reserved for expansion)

### SUBCHAPTER G. PENALTIES

- Sec. 63.181. PENALTY

## CHAPTER 63. DUNES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. FINDINGS OF FACT. The legislature finds and declares:

(1) that the barrier islands and peninsulas of this state and the adjacent mainland areas contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of natural or artificially constructed vegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles over these dunes has destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline;

(8) that the area bounded on the north by the Mansfield Ship Channel and extending to the southern tip of South Padre Island is an area of irregular dunes, the vast majority of which are unvegetated, unstable, and migratory, and these dunes do not afford significant protection to persons and property inland from this area; and

(9) that the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel is an area of a mixture of irregular dunes as described in Subdivision (8) of this section and dunes that afford protection to persons and property inland. (V.A.C.S. Art. 5415h, Sec. 1.)

Sec. 63.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office. (New.)

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes. (V.A.C.S. Art. 5415h, Sec. 2.)

Sec. 63.003. EFFECT OF CHAPTER. The provisions of this chapter do not apply to any island or peninsula not accessible by public road or common carrier ferry facility for as long as that condition exists. (V.A.C.S. Art. 5415h, Sec. 3, subsec. (e).)

(Sections 63.004-63.010 reserved for expansion)

#### SUBCHAPTER B. DUNE PROTECTION LINE

Sec. 63.011. ESTABLISHING DUNE PROTECTION LINE. After notice and hearing, the commissioners court of any county bordering on the Gulf of Mexico that has within its boundaries a barrier island or peninsula located north of the Mansfield Ship Channel may establish a dune protection line on the island or peninsula for the purpose of preserving sand dunes that offer a defense against storm water and erosion of the shoreline. (V.A.C.S. Art. 5415h, Sec. 3, subsec. (a).)

Sec. 63.012. LOCATION OF DUNE PROTECTION LINE. The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico. (V.A.C.S. Art. 5415h, Sec. 3, subsec. (d).)

Sec. 63.013. NOTICE. (a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing. (V.A.C.S. Art. 5415h, Sec. 3, subsec. (b).)

Sec. 63.014. MAP AND DESCRIPTION OF DUNE PROTECTION LINE. (a) The commissioners court in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the county clerk and with the commissioner.

(b) Notice of alternations in the dune protection line shall be filed with the county clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description. (V.A.C.S. Art. 5415h, Sec. 3, subsec. (c).)

Sec. 63.015. DUNE PROTECTION LINE PROHIBITED. No dune protection line may be established for the purpose of protecting dunes located inside a state or national park area. (V.A.C.S. Art. 5415h, Sec. 6, subsec. (c).)

(Sections 63.016-63.050 reserved for expansion)

#### SUBCHAPTER C. PERMITS

Sec. 63.051. PERMIT REQUIREMENT. An owner of land or a person holding an interest in land under the owner who desires to perform any acts on the land which are prohibited in Sections 63.091-63.092 of this code must apply for a permit from the commissioners court. (V.A.C.S. Art. 5415h, Sec. 5, subsec. (a).)

Sec. 63.052. PERMIT NOT REQUIRED. No permit is required for the following activities:

- (1) grazing livestock;
- (2) production of oil and gas; and
- (3) recreational activity other than the operation of a recreational vehicle. (V.A.C.S. Art. 5415h, Sec. 6, subsec. (b).)

Sec. 63.053. FEE. The commissioners court may require a reasonable fee to accompany the application. (V.A.C.S. Art. 5415h, Sec. 5, subsec. (c) (part).)

Sec. 63.054. GRANT OF APPLICATION. (a) The commissioners court shall evaluate the permit application, and if the commissioners court finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the application.

(b) In determining whether or not to grant the application, the commissioners court shall consider the height, width, and slope of the dune and the restoration of protection affected by construction as well as the restoration of vegetation. (V.A.C.S. Art. 5415h, Sec. 5, subsec. (b).)

Sec. 63.055. TERMS AND CONDITIONS OF PERMIT. The commissioners court may include in a permit the terms and conditions it finds necessary to assure the protection of life and property. (V.A.C.S. Art. 5415h, Sec. 5, subsec. (c) (part).)

Sec. 63.056. NOTICE TO AND COMMENTS OF COMMISSIONER ON PERMITS. (a) After receiving an application for a permit to perform any of the acts prohibited in Sections 63.091-63.092 of this code in a critical dune area, the commissioners court shall notify the commissioner by sending to him, not less than 10 days before the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land. (V.A.C.S. Art. 5415h, Sec. 7, subsec. (b).)

Sec. 63.057. PERMIT FOR RECREATIONAL VEHICLE PROHIBITED. No permit may be issued by the commissioners court that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line. (V.A.C.S. Art. 5415h, Sec. 6, subsec. (a).)

(Sections 63.058-63.090 reserved for expansion)

## SUBCHAPTER D. PROHIBITIONS

Sec. 63.091. CONDUCT PROHIBITED BETWEEN THE TEXAS-LOUISIANA STATE LINE AND ARANSAS PASS. Unless a permit is obtained authorizing the conduct, no person in any county in the area bounded on the south by the inlet known as Aransas Pass and on the north by the Texas-Louisiana state line, where a dune protection line has been established, may damage, destroy, or remove a sand dune or portion of a sand dune on a barrier island or peninsula seaward of the dune protection line or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of the dune protection line. (V.A.C.S. Art. 5415h, Sec. 4, subsec. (a).)

Sec. 63.092. CONDUCT PROHIBITED BETWEEN ARANSAS PASS AND MANSFIELD SHIP CHANNEL. In any county in the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel, where a dune protection line has been established, no person without a permit may:

(1) excavate, remove, or relocate a sand dune or a portion of a sand dune that is located seaward of the dune protection line, thus reducing the sand dune to an elevation less than the elevation or elevations shown on the Special Flood Hazard Map of the area adopted by the administrator of the Federal Insurance Administration under the National Flood Insurance Act (Public Law 90-448); or

(2) kill, destroy, or remove in any manner vegetation growing on a sand dune seaward of the dune protection line without making provision for the stabilization of the dune by the installation or construction of improvements or the replanting or resodding of vegetation on the dune to maintain the dune at the minimum elevation provided in Subdivision (1) of this section. (V.A.C.S. Art. 5415h, Sec. 4, subsec. (b).)

Sec. 63.093. PROHIBITED OPERATION OF RECREATIONAL VEHICLES. No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established. (V.A.C.S. Art. 5415h, Sec. 4, subsec. (c).)

(Sections 63.094-63.120 reserved for expansion)

## SUBCHAPTER E. CRITICAL DUNE AREAS

Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS. The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas that are essential to the protection of state-owned land, shores, and submerged land. (V.A.C.S. Art. 5415h, Sec. 7, subsec. (a) (part).)

Sec. 63.122. NOTICE TO COUNTIES. After the commissioner has identified the critical dune areas, notice of the critical dune areas shall be given to the commissioners court of each county in which one or more of these areas is located. (V.A.C.S. Art. 5415h, Sec. 7, subsec. (a) (part).)

(Sections 63.123-63.150 reserved for expansion)

## SUBCHAPTER F. APPEALS

Sec. 63.151. APPEAL BY LITTORAL OWNER. A littoral owner aggrieved by a decision of the commissioners court under this chapter may appeal to a district court in that county. (V.A.C.S. Art. 5415h, Sec. 8 (part).)

Sec. 63.152. APPEAL BY COMMISSIONER. The commissioner, in his role as trustee of the public land of this state, may appeal to a district court of that county any decision of the commissioners court that the commissioner determines to be a violation of this chapter. (V.A.C.S. Art. 5415h, Sec. 8 (part).)

(Sections 63.153-63.180 reserved for expansion)

## SUBCHAPTER G. PENALTIES

Sec. 63.181. PENALTY. (a) A person who violates the provisions of this chapter shall be fined not more than \$200.

(b) Each day that a violation occurs constitutes a separate offense. (V.A.C.S. Art. 5415h, Sec. 9.)

## TITLE 10. CAVES

### CHAPTER 201. CAVERN PROTECTION

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. POLICY. It is declared to be the public policy and in the public interest of the State of Texas to protect and preserve all caves on or under any of the land in the State of Texas, including tidelands, submerged lands, and the bed of the sea within the jurisdiction of the State of Texas. (V.A.C.S. Art. 5415j, Sec. 1.)

Sec. 201.002. DEFINITIONS. In this chapter:

(1) "Cave" means any naturally occurring subterranean cavity, and includes or is synonymous with cavern, pit, pothole, well, sinkhole, and grotto.

(2) "Gate" means any structure, lock, door, or device located to limit or prohibit access or entry to any cave.

(3) "Speleothem" means a natural mineral formation or deposit occurring in a cave, and includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, palettes, flowstone, or other similar crystalline mineral formations commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals and formations.

(4) "Owner" means a person who owns title to land on which a cave is located, including a person who owns title to a leasehold estate in the land. (V.A.C.S. Art. 5415i, Sec. 2.)

[Sections 201.003-201.010 reserved for expansion]

#### SUBCHAPTER B. PERMITS

Sec. 201.011. PERMIT REQUIRED. No person may excavate, remove, destroy, injure, alter in any significant manner, or deface any part of a cave owned by the State of Texas, unless he first obtains a permit under Section 201.012 of this code. (V.A.C.S. Art. 5415j, Sec. 6(a).)

Sec. 201.012. ISSUANCE OF PERMIT. The General Land Office may issue a permit under this subsection if the person seeking the permit furnishes the following information:

(1) a detailed statement giving the reasons and objectives for the excavation, removal, or alteration and the benefits expected to be obtained from the contemplated work;

(2) data and results of any completed excavation;

(3) the prior written permission from the state agency which manages the site of the proposed excavation;

(4) a sworn statement that he will carry the permit while exercising the privileges granted; and

(5) any other reasonable information which the General Land Office may prescribe. (V.A.C.S. Art. 5415j, Sec. 6(b).)

Sec. 201.013. REVOCATION. The General Land Office may for good cause revoke any permit issued under Section 201.012 of this code. (V.A.C.S. Art. 5415j, Sec. 6(c).)

Sec. 201.014. PENALTIES. (a) A person who violates Section 201.011 of this code is guilty of a Class B misdemeanor.

(b) A person who violates Section 201.012 of this code is guilty of a Class C misdemeanor and the permit shall be revoked. (V.A.C.S. Art. 5415j, Sec. 6(d).)

[Sections 201.015-201.040 reserved for expansion]

SUBCHAPTER C. PROHIBITIONS

Sec. 201.041. VANDALISM. (a) A person may not, without express, prior, written permission of the owner, wilfully or knowingly:

(1) break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural material in a cave, including speleothems;

(2) disturb or alter in any manner the natural condition of any cave; or

(3) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance to the cave may not be gained.

(b) A person who violates a provision of this section is guilty of a Class A misdemeanor, unless he has previously been convicted of violating this section, in which case he is guilty of a felony of the third degree. (V.A.C.S. Art. 5415j, Sec. 3.)

Sec. 201.042. SALE OF SPELEOTHEMS. (a) A person may not sell or offer for sale any speleothems in this state, or export them for sale outside the state, without written permission from the owner of the cave from which the speleothems were removed.

(b) A person who violates this section is guilty of a Class B misdemeanor. (V.A.C.S. Art. 5415j, Sec. 4.)

Sec. 201.043. POLLUTION. (a) A person may not, without prior permission of the owner, store, dump, dispose of, or otherwise place in caves any chemicals, dead animals, sewage, trash, garbage, or other refuse.

(b) A person who violates any provision of this section is guilty of a Class C misdemeanor. A person who violates any provisions of this section is, for the second offense, guilty of a Class A misdemeanor. A person who violates any provision of this section is, for the third or any subsequent offense, guilty of a felony of the third degree. (V.A.C.S. Art. 5415j, Sec. 5.)

Sec. 2. (a) The following laws are repealed:

(1) Title 86, Revised Civil Statutes of Texas, 1925, as amended, and all other statutes compiled in that title of Vernon's Texas Civil Statutes (Articles 5249-5421z, Vernon's Texas Civil Statutes); \*

(2) Title 102, Revised Civil Statutes of Texas, 1925, as amended and all other statutes compiled in that title of Vernon's Texas Civil Statutes (Articles 6004-6066d, Vernon's Texas Civil Statutes);

(3) Title 123, Revised Civil Statutes of Texas, 1925, as amended (Articles 7360-7363b, Vernon's Texas Civil Statutes);

(4) the Acts compiled as Articles 165-9, 1592a, 3183a, 6145-7, 6145-9, 6145-10, and 9015, Vernon's Texas Civil Statutes; and

(5) the following articles and Acts:

V.A.C.S. Article

1111a-1  
3954-1  
3954-2  
3954-3  
3954-4

V.A.C.S. Article

5920-1  
5920-2  
5920-3  
5920-4  
5920-10

NOTE: This section repeals Article 5415i-The Texas Deepwater Port Procedures Act (S.B. 809 of the 64th Leg. 1975). Senate Bill 7 of the First Called Session, 1977, purports (in sec. 2) to amend the article here repealed. Sec. 1 of SB 7 enacts Chap. 19 of the Water Code to establish the Texas Deepwater Port Authority.

Uncompiled Session Laws

Legis.	Sess.	Vol.	Ch.
41st	Reg. Sess.		313
42nd	Reg. Sess.	G.L.	358
43rd	2nd C.S.		20
44th	Reg. Sess.	G.L.	29
59th	Reg. Sess.		321

(b) The following laws are not repealed:

V.A.C.S. Article	V.A.C.S. Article
5282a	5421d
5298a	5421f
5311b	5421f-1
5326i	5421f-2
5330a	5421j
5330b	5421j-1
5337-2	5421j-2
5341d	5421k
5341e	5421k-1
5366a	5421k-2
5382b-1	5421k-3
5414a	5421/
5414c	5421o
5414a-1	5421q
5415e-2	5421r
5421b	5421z
5421b-1	6032a
5421c-4	6050-6066
5421c-6	6066a
5421c-9	5415d, Sec. 7
5421c-12	5421c, Sec. 8-A, Subsec. 6b,6c
5421c-13	

Uncompiled Session Laws

Legis.	Sess.	Ch.	Sec.
55th	Reg. Sess.	210	3
62nd	Reg. Sess.	934	4

Sec. 3. (Amends a portion of the Texas Business Corporation Act.)

Sec. 4. This restatement of the law does not change the substantive laws of this state, and unless amended by some other act of the legislature to make a substantive change, it is the intent of the legislature that each provision of this code be interpreted to have the same meaning as the statutes from which it is derived.

Sec. 5. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to proceedings under this code, and to the extent of any conflict between this code and the Administrative Procedure and Texas Register Act, the Administrative Procedure and Texas Register Act prevails. To the extent that provisions of this code impose requirements not in conflict with the Administrative Procedure and Texas Register Act, the provisions of this code are in addition to the requirements of that Act.

Sec 6. This Act takes effect on September 1, 1977.

Sec. 7. Emergency.

Art. 2372/ Zoning of Padre Island

Section 1. The Legislature finds as a matter of fact that that portion of Padre Island lying within Cameron and Willacy Counties is frequented for recreational purposes by citizens from every part of the State and that the orderly development and utilization of this area is a matter of concern to the entire State. The Legislature further finds as a matter of fact that buildings on islands which are frequented as resort areas tend to become congested and to be put to uses which interfere with the proper use of the area as a place of recreation, to the detriment of the health, safety, morals, and the general welfare of the public.

Sec. 2. For the purpose of promoting health, safety, peace, morals and the general welfare of the community, including the recreational use of county parks, the Commissioners Courts of Cameron and Willacy Counties are hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes, and to regulate the placing of water, sewerage, park and other public requirements on such island in areas of such island lying outside the corporate limits of a city, town or village, and within two miles of any publicly owned park or recreational development and all areas which lie within two miles of any beach, wharf or bath house which is used by as many as five hundred persons annually.

Sec. 3. For any or all of said purposes the Commissioners Court of each said county may divide said area in said islands into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

Sec. 4. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets and roads; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, parks, and other public requirements, and to assist in developing said island into parks, playgrounds and places of recreation for the inhabitants of the State of Texas, and other states and nations. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said islands, and it is hereby provided that this Act shall not enable said Commissioners Courts to require the removal or destruction of property existing at the time said Commissioners Courts shall take advantage of this Act.

Zoning of Padre Island in  
Cameron and Willacy Counties  
Legislative findings

Commissioner Courts  
authorized to regulate.

Area may be divided into  
districts.

Plan required.



Sec. 5. The said Commissioners Courts shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a paper of general circulation in each said county.

Sec. 6. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty (20%) per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the Commissioners Court. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments.

Sec. 7. In order to avail itself of the powers conferred by this Act, the said Commissioners Courts shall appoint a commission, all of whom shall be residents of each said county, and to be known as the Zoning Commission, to be composed of seven (7) members, to recommend the boundaries of the various original districts, and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and said Commissioners Court shall not hold its public hearings or take action until it has received the final report of such commission. Where a Board of Park Commissioners for each said county already exists, it may be appointed as the Zoning Commission. Written notice of all public hearings on proposed changes in classification shall be sent to all owners of property, or to the person rendering the same for county taxes, affected by such proposed changes of classification, and to all owners of property, or to the person rendering the same for county taxes, located within two hundred (200) feet of any property affected thereby, within not less than ten (10) days before any such hearing is held. Such notice may be served by depositing the same, properly addressed and postage paid, in the post office.

The Zoning Commission shall choose from its own membership its chairman for such tenure (not extending beyond the term of his office as a member of said commission) as it sees fit and at any time may choose from its own membership for any particular meeting or occasion, an acting chairman; and it may employ its own secretary, and at any time an acting secretary, and other technical and clerical help to be paid by each said county, compensation not in excess of the amount determined by prior order of the said Commissioners Court.

No member of the commission shall be entitled to compensation as such, but may be entitled to expenses actually incurred while serving on the commission in accordance with the provisions of any order entered by the County Commissioners Court to that effect.

Commissioners Courts to set manner of regulation after hearing

Changes in regulations.

Courts to appoint Zoning Commissions

Board of Park Commissioners may serve as zoning commission

Commission officers

Commission expenses

Sec. 8. The said Commissioners Court may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the provisions of any order adopted pursuant to this Act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county or of any municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act or of any order adopted pursuant thereto;

2. To hear and decide special exceptions to the terms of the order upon which such board is required to pass under such order;

3. To authorize upon appeal in specific cases such variance from the terms of the order as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the order will result in unnecessary hardship, and so that the spirit of the order shall be observed and substantial justice done.

Commissioners Court may  
appoint Board of Adjustment

Board composition

Board rules

Appeals to Board

Stay during appeal

Hearing on appeal

Powers of Board

In exercising the above mentioned powers such board may, in conformity with the provisions of this Act, reverse or re-affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such order, or to effect any variation in such order.

Any person, or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the county or of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Sec. 9. The said Commissioners Court may provide by order for the enforcement of this Act and of any order or regulation made thereunder. A violation of this Act or of such order or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

Votes on reversal

Petition to court of record

Certiorari

Certified copies

Court process

Costs of court action

Precedence

Enforcement

In case any building or structure is erected, constructed, re-constructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Act or of any order or other regulation made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, re-construction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct business, or use in or about such premises.

Sec. 10. Wherever the regulations made under authority of this Act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local order or regulation, the provisions of the regulations made under authority of this Act shall govern. Wherever the provisions of any other statute or local order or regulation requires a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Act, the provisions of such statute or local order or regulation shall govern.

Sec. 10a. The provisions of this Act or of any orders, regulations or restrictions made or entered under the authority of this Act, shall not apply to the location, construction, maintenance or use of central office buildings of corporations, firms, or individuals engaged in the furnishing of telephone service to the public, or to the location, construction, maintenance or use of any equipment in connection with such buildings or as a part of such telephone system, necessary in the furnishing of telephone service to the public.

Acts 1953, 53rd Leg. ch. 246.

## Violations

Regulations hereunder may  
supercede others

Telephone system exclusions

Uniform Act Regulating Traffic  
On Highways - Art. 6701d, VTCS.  
as amended-in part-

\* \* \*

Section 17A. 'Public beach' shall mean any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.

\* \* \*

(d) A person may not operate a motor vehicle on a beach at a speed greater than 25 miles per hour during the daytime or greater than 20 miles per hour during the nighttime.

Article 6701f-1. INTOXICATED DRIVER; PENALTY. Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

Article 6701f-2. SUBSEQUENT OFFENSE OF DRIVING WHILE INTOXICATED. Any person who has been convicted of the misdemeanor offense of driving or operating an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within an incorporated city, town or village, while intoxicated or under the influence of intoxicating liquor, and who shall thereafter drive or operate an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall for each and every subsequent such violation be guilty of a felony; and upon conviction shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Thousand (\$5,000.00) Dollars or confinement in the county jail not less than ten (10) days nor more than two (2) years, or by both such fine and imprisonment, or by confinement in the state penitentiary not to exceed five (5) years.

S.B. 1071...

Section 6. An offense committed under the law repealed by this Act is covered by that law as it existed on the date of the offense, and the repealed law is continued in effect for the prosecution of the offense.

Section 7. This Act takes effect September 1, 1979.

ARTICLE 6701d-22. V.T.C.S.  
SPEED OF VEHICLES IN PARKS OF COUNTIES  
BORDERING GULF OF MEXICO

Section 1. MAXIMUM SPEED. No person shall drive a vehicle at a speed greater than thirty (30) miles per hour within the boundaries of any county park situated in a county that borders on the Gulf of Mexico.

Sec. 2. LITTERING OF COUNTY PARKS. No person shall litter any county park situated in a county that borders on the Gulf of Mexico. Littering, as used in this Act, means the discarding of garbage, paper, and other forms of refuse in any place other than officially designated refuse containers or disposal units.

Sec. 3. APPLICATION OF ACT. The provisions of this Act shall not apply to any beach, as that term is defined in Chapter 19 of the Acts of the Fifty-sixth Legislature, Second Called Session, 1959, whenever a beach is included within the boundaries of a county park situated in a county that borders on the Gulf of Mexico.

<sup>1</sup>Sec. 61.001, Nat. Res. Code

Sec. 4. VIOLATIONS; FINES. Any person who violates any provision of this Act shall be fined not less than One Dollar (\$1) nor more than Two Hundred Dollars (\$200) for each offense.

Acts 1963, 58th Leg., p. 61, ch. 41.

AN ACT

TEXAS COASTAL WATERWAY ACT  
OF 1975  
(Chapter 181 of 64th)

relating to the importance of coastal public lands, the coastal marshes, and similar coastal areas of the state located on both publicly and privately owned lands and the importance of the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, and to the importance of the Gulf Intracoastal Waterway; providing for the administration by the State of Texas of nonfederal sponsorship requirements for the future maintenance and improvement of the Gulf Intracoastal Waterway consistent with the policy of the State of Texas; prescribing the powers and duties of the State Highway Department in implementing this Act and of other state agencies and political subdivisions in cooperating with the department; authorizing appropriations for funding; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS.

Section 1. SHORT TITLE. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

Sec. 2. POLICY. It is the policy of the State of Texas (i) to support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries; and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

Sec. 3. FINDINGS. The legislature finds and declares that:  
(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

Title

Policy

Findings

Sec. 4. DEFINITIONS. As used in this chapter: (a) "Coastal public lands" means all or any portion of the state-owned submerged land, the waters overlying those lands, and all state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(b) "Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(c) "Commission" means the State Highway Commission.

(d) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel that is generally referred to as the Gulf Intracoastal Canal.

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

Sec. 5. ADMINISTRATIVE PROVISIONS. (a) This Act shall be administered by the State Highway Commission.

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(c) Nothing in this Act shall diminish the duties, powers and authorities of the School Land Board to manage the coastal public lands of the state.

Sec. 6. DUTIES AND POWERS. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(c) Subject to the provisions of Subsection (g) of this section, the commission is authorized to acquire by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway, including but not limited to easements and rights-of-way for dredge material disposal sites and easements and rights-of-way for channel expansion, relocation, or alteration, save and except oil, gas, sulphur, and other minerals of any kind or character which can be recovered without utilizing the surface of any such land for exploration, drilling, or mining purposes. All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. However, the commission does not have the authority to condemn any submerged public lands under the jurisdiction of the School Land Board.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

## Definitions

- coastal public lands
- coastal marshes and similar areas
- commission (see note)
- Gulf Intracoastal Waterway
- person

## Administrative Provisions (see note)

- School Land Board powers

## Duties and Powers

- local sponsorship
- right-of-way acquisition

- environmental coordination

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act. All such agencies and political subdivisions are hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the commission to meet its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway.

(f) The commission, in cooperation with all appropriate persons, shall continually evaluate the Gulf Intracoastal Waterway as it relates to Texas. Such evaluations shall include an assessment of the importance of the Gulf Intracoastal Waterway, including an identification of direct and indirect beneficiaries; identification of principal problems and possible solutions to such problems, including estimated costs, economic benefits, and environmental effects; evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and specific recommendations for legislative actions that the commission believes to be in the best interest of the state in carrying out the policy of the state as declared in Section 2 of this Act. The results of this evaluation shall be published in a report to be presented to each regular session of the legislature.

(g) Prior to approval or implementation by the commission of any plan or project for acquisition or acquisition of any property or interest in property for any dredge material disposal site, or for the widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway which requires the acquisition of any additional property or interest in property, to satisfy federal local sponsor requirements, the commission shall hold public hearings for the purpose of receiving evidence and testimony concerning the desirability of such proposed dredge material disposal site and of any such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, prior to which hearing the commission shall publish notice of such plan, project, and hearing, at least once a week for three successive weeks in a newspaper of general circulation published in the county seat of each county in which any such proposed dredge material disposal site or part thereof is located and in which the channel or any portion of the channel of the Gulf Intracoastal Waterway to be widened, relocated, or altered is located, of the date, time, and place of such hearing. If after such public hearing the commission shall determine that such proposed dredge material site plan or project or such proposed plan or project for widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, as the case may be, can be accomplished without unjustifiable waste of publicly or privately owned natural resources and without permanent substantial adverse impact on the environment, wildlife, or fisheries, the commission may then, upon its approval of such plan or project, proceed to implement such plan or project and acquire, in such manner as is provided in Section 6(c) of this Act, such additional property or interest in property necessary to satisfy federal local sponsorship requirements for implementation of such plans for such dredge material site or for such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway.

Sec. 7. FUNDING. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purpose of this Act.

Sec. 8. EMERGENCY.

- cooperation

- continued evaluation

- hearing

- notice

- determination

NOTE: Chapter 678, Acts of the 64th Leg., Reg. Session, 1975, as amended Article 6663 to change the State Highway Commission to the State Highway and Public Transportation Commission.

Funding



SENATE BILL 579

AN ACT

Dredge Materials Act  
(Art. 5415e-4, V.A.C.S.)

providing for the exercise by the state of the regulatory authority of the United States Army Corps of Engineers over the discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), and regulations issued thereunder; providing that the provisions of this Act are not severable; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. SHORT TITLE. This Act may be cited as the Dredge Materials Act.

Sec. 2. POLICY. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

Sec. 3. DEFINITIONS. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Texas Water Quality Board.

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

Sec. 4. LIMITATIONS. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

(1) by the corps of engineers;

(2) by persons operating under contract with the corps of engineers;

Title

Policy

Definitions

- agency (see note)
- agreement
  
- corps of engineers
- discharge of dredge or fill material
- navigable waters
  
- section 404

Limitations

NOTE: Texas Water Quality Board was abolished and its duties transferred to Texas Department of Water Resources by Sec. 9, Chap. 870, Acts of 65th Leg. Reg. Sess., 1977.

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or post-marked before the effective date of the agreement described in this Act.

Sec. 5. AGREEMENT. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the united States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

Sec. 6. NOT SEVERABLE. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

Sec. 7. EMERGENCY.

Agreement

Provisions not severable

NOTE: S.B. 579 was enacted as Chapter 759, Acts of the 65th Leg., Reg. Ses., 1977

SENATE BILL 7

Sec. 2. Section 5, Texas Deepwater Port Procedures Act (Article 5415i, Vernon's Texas Civil Statutes) is amended to read as follows:

"Section 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to the commissioner of the general land office and to the Attorney General of Texas.

"(b) If the governor determines that the application transmitted from the secretary of transportation is substantially similar to a previous application already reviewed under the terms of this Act, the governor may notify the secretary of transportation whether the governor approves or disapproves the application, and there shall be no further proceedings under this Act on such application.

"(c) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

"(d) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein.

"(e) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (d) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

"(f) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

"(g) If any state or local agency reports to the commissioner that the application is not in compliance, such agency shall set forth in detail the manner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

Texas Deepwater Port Authority  
-(related provisions)

“(h) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (f) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

“(i) One copy of the application shall be filed in the general land office and in the office of the county judge of the adjacent coastal county for public inspection and shall be available to the public for inspection or duplication during normal business hours. A person requesting a copy of the application may be charged a reasonable fee for duplicating and mailing costs. The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.”

Sec. 3. There is appropriated from the General Revenue Fund to the Texas Deepwater Port Authority \$500,000 for the purposes of providing for any necessary expenses for carrying out the provisions and responsibilities of this Act, until the bonds anticipated under this Act are issued. The amounts appropriated shall be repaid to the General Revenue Fund from the proceeds of the bonds issued.

Sec. 4. Severability.

Sec. 5. Emergency.

## Appropriation

NOTE: This Act was passed as Chapter 5, Acts of the 65th Legislature, First Called Session, 1977. Section 1 added Chapter 19 to the Texas Water Code. Although the quoted Sec. 2 purports to amend Article 5415i, V.T.C.S., that article was specifically repealed by Sec. 2 (a)(1) of Chapter 871, Acts of the 65th Leg., Reg. Ses., 1977 enacting the Natural Resources Code.

SENATE BILL 1139

"TITLE 2. STATE WATER ADMINISTRATION  
"SUBTITLE A. EXECUTIVE AGENCIES  
"CHAPTER 5. TEXAS DEPARTMENT OF WATER  
RESOURCES  
"SUBCHAPTER A. GENERAL PROVISIONS

WATER CODE  
Title 2-Revised  
(Acts 65th Leg., 1977,  
Chap. 870)

"Section 5.001. DEFINITIONS. In this chapter:

"(1) 'Department' means the Texas Department of Water Resources.

"(2) 'Board' means the Texas Water Development Board.

"(3) 'Commission' means the Texas Water Commission.

"(4) 'Executive director' means the executive director of the Texas Department of Water Resources.

"Section 5.002. SCOPE OF CHAPTER. The powers and duties enumerated in this chapter are the general powers and duties of the department and those incidental to the conduct of its business. The department has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

"(Sections 5.003-5.010 reserved for expansion)

"SUBCHAPTER B. ORGANIZATION OF THE  
TEXAS DEPARTMENT OF WATER RESOURCES

"Section 5.011. DECLARATION OF POLICY. The Texas Department of Water Resources is the agency of the state given primary responsibility for implementing the provisions of the constitution and laws of this state relating to water. To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.

"Section 5.012. DEPARTMENT AS AGENCY OF THE STATE; DIVISION OF DEPARTMENT BY FUNCTIONS. (a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.

"(b) With respect to the department, the terms 'legislative,' 'executive,' and 'judicial' mean those functions of the department that most closely resemble the same functions of the three branches of the state government.

"Section 5.013. LEGISLATIVE FUNCTIONS. The legislative functions of the department are vested in the Texas Water Development Board.

"Section 5.014. EXECUTIVE FUNCTIONS. (a) The executive functions of the department are vested in the executive director.

"(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.

"Section 5.015. JUDICIAL FUNCTIONS. The judicial functions of the department are vested in the Texas Water Commission.

"Section 5.016. GENERAL DUTIES AND RESPONSIBILITIES; INTERPRETATION. (a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.

“(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.

“Section 5.017. CONSTRUCTION OF TITLE. This title shall be liberally construed to allow the board, the executive director, and the commission to carry out their powers and duties in a manner that respects the separation of governmental functions.

“Section 5.018. PURPOSE OF ACT. Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibilities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.

“(Sections 5.019-5.050 reserved for expansion)

#### “SUBCHAPTER D. TEXAS WATER DEVELOPMENT BOARD

“Section 5.091. STATE AGENCY. The Texas Water Development Board is an agency of the state and shall exercise the legislative functions of the department as defined herein.

“Section 5.092. MEMBERS OF THE BOARD; APPOINTMENT. (a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

“(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

“Section 5.093. OFFICERS OF STATE; OATH. Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

“Section 5.094. TERMS OF OFFICE. (a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

“(b) No person appointed to the board may serve for more than two six-year terms.

“Section 5.095. BOARD OFFICERS. (a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

“(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

“Section 5.096. BOARD MEETINGS. (a) The board shall meet at least once each month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

“(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

“(c) A majority of the members constitute a quorum to transact business.

“Section 5.097. COMPENSATION; EXPENSES. A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

“Section 5.098. SEAL. The board shall have a seal bearing the words ‘Texas Water Development Board’ encircling the oak and olive branches common to other official seals.

“(Sections 5.099-5.130 reserved for expansion)

NOTE: Subchapter C. Administrative Provisions omitted.

"SUBCHAPTER E. GENERAL POWERS AND DUTIES  
OF THE BOARD

"Section 5.131. RULES. (a) The board shall make any rules necessary to carry out the powers and duties under the provisions of this code and other laws of this state.

"(b) The executive director and the commission may recommend to the board for its consideration any rules that they consider necessary.

"(c) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

"Section 5.132. GENERAL POLICY. The board, in the rules, shall establish and approve all general policy of the department.

"Section 5.133. BUDGET APPROVAL. The board shall examine and approve all budget recommendations for the department that are to be transmitted to the legislature. The commission may provide as a supplement to those recommendations statements of particular concern to the commission.

"Section 5.134. ADVISORY COUNCILS. The board may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils which the board may consider appropriate.

"Section 5.135. APPOINTMENT. The board shall appoint an executive director of the department to serve at the will of the board.

"(Sections 5.136-5.170 reserved for expansion)

"SUBCHAPTER F. EXECUTIVE DIRECTOR

"Section 5.171. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall manage the administrative affairs of the department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department.

"Section 5.172. ADMINISTRATIVE ORGANIZATION OF DEPARTMENT. The executive director may organize and reorganize the administrative sections and divisions of the department in a manner and in a form that will achieve the greatest efficiency and effectiveness.

"SUBCHAPTER G. TEXAS WATER COMMISSION

"Section 5.221. CREATION OF COMMISSION. The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.

"Section 5.222. MEMBERS OF COMMISSION; APPOINTMENT. (a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.

"(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

"Section 5.223. OFFICERS OF STATE; OATH. Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

"Section 5.224. TERMS OF OFFICE. (a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

"(b) No person appointed to the commission may serve for more than two six-year terms.

NOTE: Sec's. 5.173 thru 5.181  
omitted.

“Section 5.225. FULL-TIME SERVICE. Each member of the commission shall serve on a full-time basis.

“Section 5.226. OFFICERS; MEETINGS. (a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

“(b) The chairman may designate another commissioner to act for him in his absence.

“(c) The chairman shall preside at the meetings and hearings of the commission.

“(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

“(e) A majority of the commission is a quorum.

“Section 5.227. CHIEF CLERK. (a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

“(b) The chief clerk shall issue notice of public hearings held under the authority of the commission.

#### “SUBCHAPTER H. GENERAL POWERS AND DUTIES OF THE COMMISSION

“Section 5.261. SCOPE OF SUBCHAPTER. The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

“Section 5.262. RULES. (a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

“(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes).

#### “SUBTITLE B. WATER RIGHTS

#### “CHAPTER 11. WATER RIGHTS

#### “SUBCHAPTER A. GENERAL PROVISIONS

“Section 11.001. VESTED RIGHTS NOT AFFECTED. (a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

“(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

“Section 11.002. DEFINITIONS. In this chapter and in Chapter 12 of this code:

“(1) ‘Commission’ means the Texas Water Commission.

“(2) ‘Board’ means the Texas Water Development Board.

“(3) ‘Executive director’ means the executive director of the Texas Department of Water Resources.

“(4) ‘Department’ means the Texas Department of Water Resources.

“(5) ‘Beneficial use’ means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

“(6) ‘Water right’ means a right acquired under the laws of this state to impound, divert, or use state water.

“(7) ‘Appropriator’ means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171,

NOTE: Sec's. 5.263 thru 5.357  
omitted Chap's. 6-10  
reserved for expansion



General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

NOTE: Sec's. 11.003-11.005 omitted.

#### "SUBCHAPTER B. RIGHTS IN STATE WATER

"Section 11.021. STATE WATER. (a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

"(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

"Section 11.022. ACQUISITION OF RIGHT TO USE STATE WATER. The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

"Section 11.023. PURPOSES FOR WHICH WATER MAY BE APPROPRIATED. (a) State water may be appropriated, stored or diverted for:

"(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

"(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

"(3) irrigation;

"(4) mining and recovery of minerals;

"(5) hydroelectric power;

"(6) navigation;

"(7) recreation and pleasure;

"(8) stock raising;

"(9) public parks; and

"(10) game preserves.

"(b) State water also may be stored or diverted for any other beneficial use.

"(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

"(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section loses its character and classification as storm water or floodwater and is considered percolating ground water.

"(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code.

"(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

**“Section 11.024. APPROPRIATION: PREFERENCES.**

In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

“(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

“(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

“(3) irrigation;

“(4) mining and recovery of minerals;

“(5) hydroelectric power;

“(6) navigation;

“(7) recreation and pleasure; and

“(8) other beneficial uses.

**“Section 11.050. TIDEWATER GATES, ETC. (a)** An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

“(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

“(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.

**“Section 11.090. POLLUTING AND LITTERING. (a)** No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

“(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100 or by confinement in the county jail for not more than six months or by both.

**“Section 11.147. EFFECTS OF PERMIT ON BAYS AND ESTUARIES.** In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas.

NOTE: Sec's. 11.025-11.049  
omitted.

NOTE: Sec's 11.051-11.052  
omitted

11.053-11.080 reserved  
11.081-11.089 omitted

NOTE: Sec's. 11.091-11.096  
omitted

11.097-11.120 reserved  
11.121-11.146 omitted  
11.148-11.170 reserved

Chapter 12 omitted  
Chap's. 13-15 reserved

"SUBTITLE C. WATER DEVELOPMENT  
"CHAPTER 16. PROVISIONS GENERALLY APPLICABLE  
TO WATER DEVELOPMENT

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 16.001. DEFINITIONS. In this chapter:

"(1) 'Board' means the Texas Water Development Board.

"(2) 'Commission' means the Texas Water Commission.

"(3) 'Chairman' means the chairman of the Texas Water Development Board.

"(4) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(5) 'Department' means the Texas Department of Water Resources.

"(6) 'Political subdivision' means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any inter-state compact commission to which the state is a party.

"(7) 'Project' means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

"(8) 'Bonds' means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

"(9) 'Waste' has the same meaning as provided in Section 26.001 of this code.

"(10) 'Water development bonds' means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

"(Sections 16.002-16.010 reserved for expansion)

"SUBCHAPTER B. DUTIES OF THE EXECUTIVE  
DIRECTOR

"Section 16.011. GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR. The executive director shall determine the responsibilities of each administrative division of the department and its staff in carrying out the authority, duties, and functions provided in this code.

"Section 16.012. STUDIES, INVESTIGATIONS, SURVEYS. (a) The executive director shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

“(b) The executive director shall:

“(1) determine suitable locations for future water facilities, including reservoir sites;

“(2) locate land best suited for irrigation;

“(3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

“(4) examine and survey reservoir sites; and

“(5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

“(c) The executive director shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

“(d) In performing his duties under this section, the executive director shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

#### “SUBCHAPTER C. PLANNING

“Section 16.051. STATE WATER PLAN. (a) The executive director shall prepare, develop, and formulate a comprehensive state water plan.

“(b) The plan shall define and designate river basins and watersheds as separate units for the purpose of water development and interwatershed transfers.

“(c) The executive director shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive director shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

“(d) The executive director shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.

“Section 16.058. STUDIES OF BAYS AND ESTUARIES. The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the department in this undertaking.

#### “SUBCHAPTER G. IMPROVEMENTS

“Section 16.231. PURPOSE OF SUBCHAPTER. The chief purpose of this subchapter is to provide for planning and marking out upon the ground all improvements necessary to reclaim for agricultural use all overflowed land, swampland, and other land in this state that is not suitable for agricultural use because of temporary or permanent excessive accumulation of water on or contiguous to the land.

#### “SUBCHAPTER I. FLOOD INSURANCE

“Section 16.311. SHORT TITLE. This subchapter may be cited as the Flood Control and Insurance Act.

“Section 16.312. PURPOSE. The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those

in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

"Section 16.313. DEFINITIONS. In this subchapter:

"(1) 'Political subdivision' means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; 'political subdivision' also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

"(2) 'National Flood Insurance Act' means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the Secretary of the United States Department of Housing and Urban Development.

"(3) 'Secretary' means the Secretary of the United States Department of Housing and Urban Development.

"Section 16.314. COOPERATION OF TEXAS DEPARTMENT OF WATER RESOURCES. In recognition of the necessity for a coordinated effort at all levels of government, the department shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

"Section 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

"(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

"(2) guiding the development of proposed future construction, where practicable, away from location which is threatened by flood hazards;

"(3) assisting in minimizing damage caused by floods;

"(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

“(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

“(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

“(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

“(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

“(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

“(8) cooperating with the secretary’s studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

“(9) taking steps to improve the long-range management and use of flood-prone areas;

“(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

“(11) requesting aid pursuant to the entire authorization from the board;

“(12) satisfying criteria adopted and promulgated by the department pursuant to the National Flood Insurance Program; and

“(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

“Section 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY DEPARTMENT. (a) The department shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

“(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the department shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

“(c) The aforementioned aid may include but is not necessarily limited to:

“(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

“(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

“(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

“(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

“(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

“(d) On the basis of such studies and evaluations, the department, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state’s coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

“Section 16.317. COOPERATION OF STATE BOARD OF INSURANCE. Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the department, and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

“Section 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

“Sec. 16.319. **Qualification**

“Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Department of Housing and Urban Development and by:

“(1) evidencing to the secretary a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

“(2) giving to the secretary satisfactory assurance that measures will have been adopted for the political subdivision which measures will be consistent with the comprehensive criteria for land management and use developed by the Department of Housing and Urban Development, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling elevations is available.”

“CHAPTER 19. TEXAS DEEPWATER PORT AUTHORITY  
“SUBCHAPTER A. GENERAL PROVISIONS

“Section 19.001. POLICY. It is the policy, intent, and determination of the legislature that:

“(1) Texas urgently needs an offshore deepwater port capable of accommodating supertankers for the importation of crude oil and other fluid commodities that may be carried in ships of that size;

(2) it is most desirable for private enterprise to own, construct, and operate such an offshore port;

“(3) in the absence of any active and viable plan to develop a deepwater, offshore port by private enterprise, the State of Texas should construct such a facility, which should be self-supporting and whose design, construction, and operation should be carried out by private companies under contract;

“(4) protecting the environment is essential to the proper operation of such a port;

“(5) the credit of the State of Texas shall not be pledged to finance such a port; and

“(6) the Texas Deepwater Port Authority be created to implement this policy.

“Section 19.002. DEFINITIONS. In this chapter;

“(1) ‘General manager’ means the General Manager of the Texas Deepwater Port Authority.

“(2) ‘Authority’ means the Texas Deepwater Port Authority.

“(3) ‘Board’ means the Board of Commissioners of the Texas Deepwater Port Authority.

“(4) ‘Commissioner’ means a member of the Board of Commissioners of the Texas Deepwater Port Authority.

“(5) ‘Deepwater port’ means the facilities defined in Section 3(10) of the Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes the onshore storage tank facilities and the pipelines located within the State of Texas that connect the onshore facilities with the offshore facilities of a deepwater port.

“(6) ‘Petroleum’ means petroleum, crude oil, natural gas, and any substance refined from crude oil or natural gas.

“Section 19.003. AUTHORIZATION FOR DEEPWATER PORT. In order to insure that the policy stated in this chapter is not circumvented, the Texas Deepwater Port Authority created by this chapter shall not commence operations unless and until the governor determines, and so states by executive order, that no active and viable plan to develop a deepwater, offshore port by private enterprise exists in Texas and that the Texas Deepwater Port Authority should carry out its responsibilities under this chapter.

“Section 19.004. EXPIRATION. If the governor has not made the finding and issued the executive order provided in Section 19.003 of this code, all provisions of this chapter, including the existence of the Texas Deepwater Port Authority, shall expire on January 1, 1979.

“Section 19.005. TIDELANDS. None of the provisions of this chapter shall be interpreted or construed to affect Texas’s claim to its tidelands or the location of Texas’s coastline as interpreted by the State of Texas.

“(Sections 19.006-19.010 reserved for expansion)

NOTE: Chapter 19 was added to the Water Code by Sec. 1, S.B. 7 (Chapter 5) Acts of 65th Leg., 1977 1st Called Session, Remainder of S.B. 7 will be found elsewhere in this book.



## "SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

"Section 19.011. TEXAS DEEPWATER PORT AUTHORITY. The Texas Deepwater Port Authority is created as an agency of the state and pursuant to Article XVI, Section 59, Subsection (a) of the Texas Constitution.

"Section 19.012. COMMISSIONERS; APPOINTMENT. The authority shall be governed by a board of commissioners with nine members who shall be appointed by the governor with the advice and consent of the senate.

"Section 19.013. TERMS OF OFFICE; VACANCIES. (a) Of the initial appointees to the board, the governor shall designate three persons to serve until January 31, 1979, three persons to serve until January 31, 1981, and three persons to serve until January 31, 1983.

"(b) Except for the initial appointees, each commissioner shall hold office for a staggered term of six years and until his successor is appointed and has qualified.

"(c) Any vacancy that occurs on the board shall be filled for the unexpired term in the manner provided in Section 19.012 of this code for making the original appointment.

"Section 19.014. OFFICERS. (a) Before June 1 of each even-numbered year, the board of commissioners shall elect a chairman, except for the initial election of chairman which shall be made as soon as possible after the effective date of this chapter.

"(b) The board may elect other officers at the times and by the means as it may provide by rule.

"Section 19.015. BOARD MEETINGS. (a) The board shall meet at least once every three months and may hold other meetings at the call of the chair or of five of the commissioners.

"(b) The board shall provide by rule for the conduct of meetings.

"(c) A majority of the commissioners shall constitute a quorum for the transaction of business.

"(d) All meetings of the board shall be open to the public to the same extent as may be provided by general law for meetings of state boards and agencies.

"Section 19.016. COMPENSATION AND EXPENSES. Each commissioner is entitled to receive reimbursement for travel and other necessary expenses resulting from the performance of his duties under this chapter and is entitled to receive as compensation \$75 a day for each day actually engaged in the work of the authority.

"Section 19.017. POWERS AND DUTIES OF THE BOARD; DELEGATION. (a) The board shall formulate general policy to govern the authority and its activities.

"(b) The board shall exercise the powers and duties of the authority and may delegate to the agents and employees of the authority such powers and duties as the board may provide.

"Section 19.018. GENERAL MANAGER. (a) The board shall employ a general manager to serve at the pleasure of the board.

"(b) The general manager shall be the chief administrative officer of the authority and shall manage the executive and administrative functions of the authority under policies adopted by the board.

"(c) The general manager shall have kept full and accurate minutes of all transactions and proceedings of the authority.

"(d) The general manager shall have any other duties the board may direct.

“Section 19.019. EMPLOYEES; COMPENSATION; ETC. (a) The general manager shall employ necessary attorneys, accountants, engineers, technical personnel, and other employees as the board may consider necessary.

“(b) In employing persons under Subsection (a) of this section, the general manager shall comply with all federal laws and rules relating to equal employment opportunity and shall employ for each position the best qualified person for that position.

“(c) The employees of the authority shall receive the compensation provided by the board.

“(d) Employees of the authority shall not be considered employees of the State of Texas.

“Section 19.020. RULES. The board shall, after proper notice and hearings, adopt rules governing the conduct of authority operations and the manner of carrying out its powers, duties, and responsibilities.

“Section 19.021. DOCUMENTS, ETC.; OPEN FOR INSPECTION. (a) All information, documents, and data collected by the authority in the performance of its duties are open to inspection by any person to the same extent as if that information or the documents or data were the property of the state.

“(b) The general manager shall be the custodian of all the files and records of the authority.

(“Sections 16.002-19.035 reserved for expansion)

#### “SUBCHAPTER C. INITIAL ACTIVITIES AND STUDIES

“Section 19.036. SECURING OF LICENSE. (a) Prior to the acquisition of any facilities, the sale of any bonds or notes, or the borrowing of any money, the authority shall secure all necessary licenses and permits for the acquisition, construction, and operation of a deepwater port facility.

“(b) No license or permit may be requested or accepted by the authority nor may the state be a party to a license or permit which would impose on the State of Texas or the authority any liability or financial obligation by virtue of contract, tort, or otherwise unless that liability or financial obligation is fully indemnified without expense of state funds.

“(c) With the exception of the initial appropriation from the General Revenue Fund to the Texas Deepwater Port Authority and revenues of the authority, the state may not pledge its faith and credit or contribute any state funds to a project of the Texas Deepwater Port Authority or for expenses of carrying out the powers and duties of the authority. Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state. The authority is not authorized to incur any liability or financial obligations which cannot be serviced from the revenues of the authority or from the initial appropriation to the authority.

“Section 19.037. ENGINEERING AND ENVIRONMENTAL STUDIES. Concurrent with any applications for licenses and permits for the construction and operation of a deepwater port facility, the authority shall conduct or cause to be conducted engineering and environmental impact studies to determine engineering feasibility of the proposed facility and to determine that adverse effects on the environment will be minimized. The authority may receive information concerning engineering and environmental impact data from any person, firm or corporation possessing that information and, if construction of such deepwater port facility is commenced, may compensate that person, firm, or corporation a reasonable amount for the information as determined by the authority.

“Section 19.038. FINANCIAL FEASIBILITY. After securing all necessary licenses and permits to enable the acquisition, construction, and operation of a deepwater port facility, the authority shall conduct a study to determine the financial feasibility of constructing and operating a deepwater port facility. In addition to any financial details or other matters it deems relevant, the authority shall specifically investigate financing alternatives and determine which alternative is feasible and most attractive to the state. In no event does the authority have the ability to pledge the general credit of the state.

“Section 19.039. FINAL REPORT OF COMMISSION; SUBMISSION OF REPORT TO GOVERNOR. After consideration of the studies required by Sections 19.036 through 19.038 of this code, the authority shall determine whether or not the facility is feasible and in the public interest and shall submit a detailed report of its findings to the governor and the legislature.

“Section 19.040. SUBMISSION TO NATURAL RESOURCES COUNCIL. On receiving the report containing the findings of the authority, the governor shall transmit a copy of the report to the Natural Resources Council. The Natural Resources Council shall review the report of the authority and submit a recommendation to the governor on the report. If the council has objections to any part of the report, it shall state those objections in detail in its recommendation to the governor. If the council fails to act within 60 days after the report of the authority is received from the governor, the report is deemed approved by the council.

“Section 19.044. ACTION BY THE GOVERNOR. The governor shall, within 120 days after the report of the authority is received, either approve or disapprove the findings of the authority. If the report is disapproved, the governor shall state in detail his reasons for disapproval of the report. If the governor disapproves the report of the authority, the authority may revise its report or undertake additional studies and submit a new report to meet the objections of the governor. If the governor has taken no action on the report within 120 days after submission, it is deemed approved.

“Section 19.042. APPROVAL NECESSARY FOR CONSTRUCTION AND ISSUANCE OF BONDS. Prior to the acquisition of any property or construction of any facilities to be used as a part of a deepwater port facility, the sale of any bonds or notes, or the borrowing of any money, both the authority and the governor must find that the construction and operation of a deepwater port facility is feasible and in the public interest.

“(Sections 19.043-19.050 reserved for expansion)

#### “SUBCHAPTER D. POWERS AND DUTIES

“Section 19.051. GENERAL POWERS AND DUTIES.

(a) The authority has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

“(b) The authority shall have, in general, all the powers that are permitted to a corporation by the general laws of this state.

“Section 19.052. SPECIFIC POWERS AND DUTIES.

(a) In addition to its powers and duties under Section 19.051 of this code, the authority shall have the following specific powers and duties as to each individual deepwater port facility;

“(1) to acquire by purchase, lease, gift, or in any other manner other than by condemnation and to maintain, use and operate property of any kind, real, personal, or mixed, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the

powers, rights, privileges, and functions conferred on it by this chapter;

“(2) to acquire by condemnation property of any kind, real, personal, or mixed, other than minerals or interests in minerals, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter, in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925, amended;

“(3) subject to the provisions of this chapter, from time to time to sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest in that property that shall not be necessary to carry on the business of the authority;

“(4) subject to the limitations of Subsection (a) of Section 19.054 of this chapter, to construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate, any and all facilities of any kind necessary or convenient to the exercise of such powers, rights, privileges, and functions;

“(5) to sue and be sued in its corporate name;

“(6) to adopt, use, and alter a corporate seal;

“(7) to make bylaws for the management and regulation of its affairs;

“(8) to make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter;

“(9) to borrow money for its corporate purposes and without limitation of the generality of the foregoing, to borrow money and accept grants from the United States or from any corporation or agency created or designated by the United States, and in connection with any such loan or grant, to enter into agreements as the United States or the corporation or agency may require, and to make and issue its bonds and notes for money borrowed, in the manner and to the extent provided in Subchapter F of this chapter;

“(10) to apply for, request, solicit, contract for, receive and accept money and other assistance from any source to carry out its duties; and

“(11) to do any and all other acts or things necessary or convenient to the exercise of the powers, rights, privileges, or functions conferred on it by this chapter or any other law.

“(b) If the authority requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, or facilities, or pipelines in the exercise of the power of eminent domain, all of the relocation, raising, lowering, rerouting, or changes in grade or alteration of construction due to the exercise of the power of eminent domain shall be the sole expense of the authority. The term ‘sole expense’ means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

“Section 19.053. STATE-OWNED WATER BOTTOMS; LEASE; ETC. (a) The School Land Board shall lease to the authority state-owned water bottoms that are necessary for the construction, operation, and maintenance of a deepwater port.

“(b) The School Land Board shall not lease to any third party any water bottoms that may be necessary for construction, operation, or maintenance of a deepwater port unless the authority certifies to the School Land Board that those water bottoms are not required for use by the authority.

“(c) Necessary water bottoms shall be leased to the authority on the terms and for the compensation to which the School Land Board and the authority shall mutually agree.

“(d) Mineral rights and interests in the leased areas are reserved to the state; however, the School Land Board may not lease for mineral development any areas leased to the authority without the consent of the authority unless the mineral lease will not adversely affect the deepwater port.

“(e) The School Land Board, the authority, and the lessee may enter into agreements to coordinate the use of sites needed by the authority if the sites have existing mineral leases.

“(f) Nothing in this section shall authorize the authority to explore for, develop, or produce any minerals of whatever kind.

“Section 19.054. DEVELOPMENT OF A DEEPWATER PORT. (a) The authority shall, as soon as possible after the effective date of this chapter:

“(1) have designed, licensed, developed, built, operated, maintained, or modified any deepwater port or ports as it shall determine to be necessary from time to time;

“(2) provide that the engineering, design, construction, operation, and maintenance of those deepwater ports shall be carried out by suitable private enterprise under the regulation and supervision of the authority;

“(3) finance those deepwater ports through self-supporting revenue bonds backed by tariffs charged the users of the facilities and by any other means that may be necessary or convenient and consistent with the provisions of this chapter;

“(4) enter into contracts with public or private entities necessary to carry out the provisions of this chapter, provided, however, that no contract for purposes of operation of a deepwater port may be entered into by the authority unless the contract stipulates that the public or private entities contracting with the authority shall assume any liability of the authority for any causes of action arising from environmental damage;

“(5) apply for any necessary licenses, permits, or other permissions necessary to carry out the provisions of this chapter;

“(6) set and collect those charges the authority may determine are appropriate for any service or other action performed by or requested of the authority;

“(7) take any actions the authority may determine are necessary or cause to be done any of the things required of the authority under this chapter;

“(8) enter into agreements with port and navigation districts and other political subdivisions or agencies of the state regarding matters of mutual concern;

“(9) make payments in lieu of taxes to the state and political subdivisions of the state to the same extent as if the property of the authority were privately owned, provided, however, that any payments in lieu of taxes shall be based on full value less the value of the interests of any public or private entities contracted with to operate the facility; and

“(10) take any other actions determined by the board to be necessary for the authority to carry out its duties and responsibilities in implementing the provisions of this chapter.

“(b) in addition to the foregoing, the authority may:

“(1) own, construct, maintain, lease as lessor or lessee, and sell by installment sale or otherwise, deepwater mooring facilities, wharves, sheds, pipelines, pumping stations, tanks, tank farms and facilities, heliports, warehouses, vessels, and other property, structures, equipment, and other facilities functionally related to a deepwater port;

“(2) dredge and maintain shipways, channels, anchorage, roadsteads, and fairways;

“(3) establish, operate, and maintain navigable waterway systems in the immediate area of the facilities constructed hereunder, in cooperation with the United States, this state, and political subdivisions of this state;

“(4) enter into a contract with any public or private entity to provide public utility service to the authority and its facilities, or provide its own utility services;

“(5) negotiate with and enter into contracts, compacts, and other agreements with the United States and other states of the United States concerning development programs including jurisdictional aspects of the location of deepwater ports and adoption and enforcement of rules governing authority operations;

“(6) adopt tolls, fees, rates, tariffs, and charges for use of the terminal or terminals or any of its facilities;

“(7) provide for use of existing port facilities and provide for rates, wharfage fees, and other matters of mutual interest, by agreements with existing port authorities and navigation districts; and

“(8) enter into contracts or agreements with any person, corporation, trust, or partnership for the financing, construction, operation, maintenance, and sale by installment or otherwise of a deepwater port or any facilities relative to a deepwater port.

“Section 19.055. AUTHORITY CONTRACTS. (a) The authority may let any contracts for the purchase of materials, machinery, and equipment to constitute the plant, works, facilities, and improvements of a deepwater port, for construction, or for other purposes.

“(b) All these contracts shall be let to the lowest responsible bidder after sealed bids are solicited by public notice.

“(Sections 19.056-19.100 reserved for expansion)

#### “SUBCHAPTER E. ENVIRONMENTAL PROTECTION

“Section 19.101. PROTECTION OF THE ENVIRONMENT. (a) The authority shall take all reasonable steps to protect the coastal environment and the high seas from any short-term or long-term damage or harm that might occur from any action the authority may take.

“(b) The general manager, under the direction of the board, shall formulate an environmental protection plan as soon as possible, which shall be adopted by the authority after proper notice and hearing.

“(c) In preparing and adopting the environmental protection plan, the authority shall consult and coordinate with any federal, state, and local agencies that have responsibility for environmental protection within the state and shall comply with applicable rules.

“(d) The environmental protection plan may be amended at any time by the authority after proper notice and hearing.

“(e) Environmental protection shall be a primary responsibility of the authority, and costs incurred to develop the plan to protect the environment shall be considered a necessary cost to the authority and shall be considered a cost to the same extent that economic, engineering, or promotional programs are considered costs.

“(Sections 19.102-19.130 reserved for expansion)

## "SUBCHAPTER F. FINANCIAL PROVISIONS

"Section 19.131. GENERAL PROVISIONS. The authority may:

"(1) borrow money from time to time for any corporate purpose or in aid of any corporate purpose;

"(2) issue and sell notes and provide the terms and conditions for repayment with interest and the rights of the holders of the notes;

"(3) issue and sell bonds and provide the terms and conditions for repayment with interest and the rights of the bondholders;

"(4) pledge, hypothecate, or otherwise encumber all or any designated part of the revenues and receipts of the authority as security for any of its notes or bonds;

"(5) invest money held in any sinking fund, reserve fund, or other fund or money not required for immediate use or disbursement in such securities as it shall determine;

"(6) apply for, accept, and administer grants, loans, and other assistance from the United States or any agency or instrumentality of the United States and any agency or instrumentality of this state to carry out the purpose of this chapter, and enter into any agreement in relation to those grants, loans, or other assistance as may be provided by the authority subject to the provisions of Section 19.036, which is not in conflict with the constitution of this state; and

"(7) fix, charge and alter, and collect reasonable rentals, rates, fees, and other charges for the use of any works and facilities or for any services rendered by the authority and provide for the imposition of reasonable penalties for any of those rates, fees, and charges that are delinquent.

"Section 19.132. FORM AND TERMS OF BONDS AND NOTES. (a) Bonds and notes issued under the provisions of this chapter together with any interest coupons shall be authorized by resolution of the board and shall have the form and characteristics and bear the designation as are therein provided.

"(b) Bonds and notes shall:

"(1) be authorized by resolution or resolutions of the board;

"(2) bear the date or dates, mature at the time or times, serially, terms, or otherwise in not more than 50 years from their dates; and

"(3) be callable prior to stated maturity on the terms and at the prices, bear interest at such rate or rates, be payable annually, semiannually, or otherwise, be in the denominations, be in the form, either coupon or registered, carry the registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or notes or vice versa and successive exchange of bonds or notes of one denomination for bonds or notes of other denominations, be executed in the manner, and be payable at the place or places within or without the state as the resolution or resolutions may provide.

"(c) Bonds or notes may be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable.

"(d) The proceeds of the sale of bonds or notes shall be deposited in the bank or banks or trust company or trust companies and shall be paid out pursuant to the terms and conditions that may be agreed on between the authority and the purchasers.

"Section 19.133. EXECUTION OF BONDS, NOTES, AND COUPONS. (a) Bonds or notes issued under the provisions of this chapter shall be signed by the chairman or vice-chairman of the board, be attested by its general manager, and bear the seal of the authority.

“(b) Any interest coupons appurtenant to the bonds or notes shall be signed by the chairman or the vice-chairman of the board and be attested by its general manager.

“(c) The resolution or resolutions authorizing the issuance of an installment or any series of bonds or notes may prescribe the extent to which the authority, in executing the bonds, notes, or appurtenant coupons, may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals.

“(d) If an officer whose manual or facsimile signature appears on a bond or note or whose facsimile signature appears on any coupons ceases to be an officer before the bond or note is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

“(e) Neither the members of the board nor officers of the authority nor anyone executing the bonds or notes for and on behalf of the authority shall be liable personally on the bonds or notes of the authority by reason of participation in any way in the issuance of the bonds or notes.

“Section 19.134. SECURITY PROVISIONS, ETC. (a) The bonds or notes may be secured by a pledge of all or any part of the revenues or receipts of the authority or by the revenues of any one or more leases or other contracts theretofore or thereafter made or other revenues or income specified by the resolution of the board or in the trust indenture or other instrument securing the bonds or notes. A pledge may reserve the right, under conditions specified in it, to issue additional bonds or notes that will be on a parity with or subordinate to the bonds or notes then being issued.

“(b) A pledge or security instrument made by the authority is valid and binding from the time when it is made. The revenues or money pledged and entrusted and thereafter received by the authority shall immediately be subject to the lien of the pledge or security instrument without any physical delivery of it or further act. The lien of the pledge or security instrument is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or security interest is created need be recorded or filed, and compliance with any provision of any other law is not required in order to perfect the pledge or other security interest.

“Section 19.135. PROVISIONS OF RESOLUTION. A resolution authorizing bonds or notes or a trust indenture under which bonds or notes may be issued may contain provisions, which shall be a part of the agreement with the holders of bonds or notes, as to:

“(1) pledging all or any part of the rentals, rates, fees, and other charges made or received by the authority and other money received or to be received from the planning, financing, ownership, operation, or sale of or otherwise in connection with any project to secure the payment of the bonds or notes or of any issue of the bonds or notes;

“(2) pledging all or any part of the assets of the authority, including any obligation acquired by the authority, to secure the payment of the bonds or notes or any issue of the bonds or notes;



“(3) the use and disposition of rentals, rates, fees, and other charges made or received by the authority;

“(4) pledging to establish, alter, and collect rates and other charges with respect to each property or facility sufficient to produce revenues adequate to pay all expenses necessary to the operation and maintenance of such to be made in respect of any of those bonds or notes payable out of those revenues as the bonds or notes become due and payable, and to fulfill the terms of any agreement made with the holders of the bonds or notes and with any person in their behalf;

“(5) the setting aside of reserves or sinking funds and the regulation and disposition of those reserves and sinking funds;

“(6) limitations on the purpose to which the proceeds from the sale of the bonds may be applied and pledging the proceeds to secure the payment of the bonds, notes, or any issue of the notes or bonds;

“(7) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds or notes;

“(8) the acquisition, construction, improvement, operation, extension, enlargement, maintenance, and repair of any project and the duties of the authority with reference thereto;

“(9) the procedure, if any, by which the terms of any agreement with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which are required to give consent thereto, and the manner in which the consent may be given;

“(10) limitations on the amount of money to be spent by the authority for administrative or other expenses;

“(11) vesting in a trustee or other fiduciary, property, rights, powers, and duties in trust the authority determines, which may include any of the rights, powers, and duties of the trustee appointed by the bondholders or noteholders pursuant to this chapter, and abrogating the right of the bondholders or noteholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;

“(12) placing the management, operation, and control of specified works and facilities of the authority in the hands of a board of trustees to be named in the resolution or trust indenture and specifying the terms of office of the trustees, their powers and duties, the manner of exercising the same, the appointment of successors, and all matters pertaining to their organization and duties; and

“(13) any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes or the bondholders or noteholders.

“Section 19.136. DEFAULT PROVISIONS. The resolution authorizing the issuance of the bonds or notes or the trust indenture or other instrument securing them may provide that in the event of a default or, under the conditions therein stated, a threatened default in the payment of principal or of interest on bonds or notes, any court of competent jurisdiction may, on petition of the holders of outstanding bonds or notes, appoint a receiver with authority to collect and receive pledged income, and those instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds or notes payable from the same source to institute or prosecute any litigation affecting the authority's properties or revenues.

“Section 19.137. **ADDITIONAL SECURITY.** (a) Any bonds or notes, including refunding bonds, authorized by this chapter may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or without the state.

“(b) The bonds or notes, within the discretion of the board, may be additionally secured by a mortgage or a deed of trust lien or security interest on works and facilities of the authority and all real property, franchises, easements, leases, and contracts and all rights appurtenant to those properties, vesting in the trustee power to sell those works and facilities for the payment of the indebtedness and to operate those works and facilities, and all other powers and authority for the further security of the bonds or notes.

“(c) The trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties, may contain any provisions prescribed by the authority for the security of the bonds or notes and the preservation of the trust estate, may make provision for amendment or modification thereof, may condition the right to spend the authority’s money or sell the authority’s works and facilities on approval of a registered professional engineer selected as provided in the trust indenture, and may make any other provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable and proper and not in violation of the law. The trust indenture may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes.

“Section 19.138. **BOND PROCEEDS.** (a) The board may direct the investment of money in the funds created by the resolutions, trust indentures, or other instruments securing the bonds or notes.

“(b) From the proceeds from the sale of the bonds or notes, the board may set aside amounts for payments into the interest and sinking fund until completion of construction and until adequate revenue is available from operations to pay principal and interest and amounts for payments into reserve funds, and provisions for such may be made in the resolution authorizing the bonds, notes, or the trust indenture or other instrument securing the bonds or notes.

“(c) Proceeds from the sale of the bonds or notes shall be used for the payment of all expenses of issuing and selling the bonds or notes.

“(d) The proceeds from the sale of the bonds or notes and money in any funds created in connection with the bonds or notes may be invested in:

“(1) direct or indirect obligations of or obligations unconditionally guaranteed by the United States government or one of its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes; or

“(2) certificates of deposit of any bank or trust company whose deposits are secured by the obligations described in Subdivision (1) of this subsection.

“Section 19.139. **DEPOSITORY.** Any bank or trust company located in this state and incorporated under the laws of the United States or any state in the United States may be designated by resolution to act as depository for the proceeds of bonds, notes, or contract or lease revenues or other revenues of the authority. The bank or trust company shall furnish indemnifying bonds or pledge securities to secure those deposits to the same extent as may be required by general law to secure the deposit of state funds.

“Section 19.140. REFUNDING. (a) The board may provide by resolution for the issuance of refunding bonds or notes to refund outstanding bonds or notes issued under this chapter and their accrued interest.

“(b) The authority may sell these bonds or notes and use the proceeds to retire the outstanding bonds or notes issued under this chapter or the authority may exchange the refunding bonds or notes for the outstanding bonds or notes.

“(c) The issuance of the refunding bonds or notes, their maturity, the rights of the bondholders and the duties of the authority with respect to refunding bonds or notes are governed by the provisions of this chapter relating to original bonds or notes, to the extent that they may be made applicable.

“(d) The authority may also refund any bonds or notes under the provisions of general law.

“Section 19.141. APPROVAL AND REGISTRATION OF BONDS AND NOTES. (a) After bonds and notes, including refunding bonds and notes, are authorized by the board, those bonds and notes and the record relating to their issuance shall be submitted to the attorney general for his examination as to their validity.

“(b) If the bonds and notes recite that they are secured by a pledge of the proceeds of any lease or other contract previously made between the authority and any person, those leases and contracts may also be submitted to the attorney general.

“(c) If those bonds or notes have been validly authorized and if those leases or contracts have been made in accordance with the constitution and laws of the state, the attorney general shall approve the bonds or notes, and the leases or contracts and the bonds or notes shall be registered by the state comptroller.

“(d) The attorney general in approving bonds or notes issued in anticipation of being refunded by other bonds and notes shall not require as a condition of his approval that those bonds or notes being examined have pledged to them sufficient revenues to retire the bonds and notes before the time they will be refunded in accordance with such anticipation.

“Section 19.142. INCONTESTABILITY. After the bonds or notes, and the leases or other contracts, if any, have been approved by the attorney general, and the bonds and notes have been registered by the state comptroller and delivered to the purchasers, those bonds and notes and any underlying leases and contracts are incontestable for any cause.

“Section 19.143 DUTIES ENFORCEABLE BY MANDAMUS. Payment of any bonds and notes according to the term and tenor, performance of agreements with the holders of bonds or notes or any person in their behalf, and performance of official duties prescribed by the provisions of this chapter in connection with any bonds or notes may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

“Section 19.144. BONDS NEGOTIABLE. Bonds issued under the provisions of this chapter and coupons, if any, representing interest on those bonds, shall, when delivered, be deemed and construed to be a ‘security’ within the meaning of Chapter 8 of the Uniform Commercial Code, as amended.

“Section 19.145. BONDS AND NOTES NOT TAXABLE. Bonds and notes issued under the provisions of this chapter, the interest on the bonds and notes, and the profit from the sale of the bonds and notes shall be exempt from taxation, except inheritance taxes, by the state or by any municipal corporation, county, or other political subdivision or taxing district of the state.

“Section 19.146. AUTHORIZED INVESTMENTS. Bonds and notes issued under this chapter are legal and authorized investments for:

- “(1) banks;
- “(2) savings banks;
- “(3) trust companies;
- “(4) building and loan associations;
- “(5) insurance companies;
- “(6) fiduciaries;
- “(7) trustees; and

“(8) sinking funds of the state and of cities, towns, villages, counties, school districts, and all political corporations, subdivisions, and public agencies of the state.

“Section 19.147. SECURITY FOR DEPOSIT OF FUNDS. Bonds and notes issued under the provisions of this chapter, when accompanied by all appurtenant unmatured coupons if any, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political corporation or subdivision of the state, at the par value of the bonds.

“Section 19.148. SOURCE OF REPAYMENT. Bonds and notes issued under the provisions of this chapter together with the interest on the bonds and notes shall be secured by and payable solely from the revenues and receipts of the authority and other money available therefor, including, without limitation, rentals, rates, fees, and other charges made and received by the authority and other money received and to be received from grants and assistance, and other money received and to be received from the planning, financing, ownership, or operation of any works and facilities of the authority, and other money available therefor from proceeds of bonds or notes.

“Section 19.149. STATE CREDIT NOT PLEDGED. (a) The provisions of this chapter shall not be construed to authorize the giving or lending of the credit of the state or to be a pledge of the credit of the state for the payment of any bonds or notes issued under the provisions of this chapter, and the purchasers and successive holders of any bonds or notes shall never have the right to demand payment from any money or revenues of the authority except those pledged to the payment of bonds or notes.

“(b) This chapter shall not be construed as obligating this state to the holders of any of those bonds or notes nor to constitute a contract on the part of this state to make money available for any of the authority’s needs.

“(c) This state, however, pledges and agrees to the holders of any bonds or notes issued under this chapter that it will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof consistent herewith, or in any way impair the rights and remedies of the holders until the bonds and notes, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceedings by or on behalf of the holders, are fully met and discharged. The authority shall include this pledge and agreement of the state in any agreements it makes with the holders of the bonds or notes.”

Sec. 21.003. DEFINITIONS. As used in this chapter:

“(1) ‘Board’ means the Texas Water Quality Board.

“(2) ‘Executive director’ means the executive director of the Texas Water Quality Board.

“(3) ‘Water’ or ‘water in the state’ means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

“(4) ‘Waste’ means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

“(5) ‘Sewage’ means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

“(6) ‘Municipal waste’ means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

“(7) ‘Recreational waste’ means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

“(8) ‘Agricultural waste’ means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation, agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term ‘agricultural waste’ does not include tail water or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

“(9) ‘Industrial waste’ means waterborne liquid, gaseous, or solid substance that results from any process of industry, manufacturing, trade, or business.

“(10) ‘Other waste’ means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

“(11) ‘Pollutant’ means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term ‘pollutant’ does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

“(12) ‘Pollution’ means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

“(13) ‘Sewer system’ means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

NOTE: In S.B. 1139 recodifying Title 2 of the Water Code, Chapter 21 was reserved for expansion and provisions relating to water quality control were assigned to Chap. 26, following. The provisions cited here and on the following page are from H.B. 1560 (Chap. 644) of the same session and will make substantive changes in the code when effective. Section 12 of H.B. 1560 reads as follows:

Sec. 12. This Act shall take effect upon full or partial delegation of NPDES permit authority to the board by the Administrator of the United States Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act but shall not be construed to affect persons discharging wastes or pollutants over which the board does not have such delegated NPDES permit authority. In no event, however, shall this Act become effective prior to October 1, 1977. The provisions of this Act shall be effective only during such periods that the board maintains such NPDES permit authority.

“(14) ‘Treatment facility’ means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

“(15) ‘Disposal system’ means any system for disposing of waste, including sewer systems and treatment facilities.

“(16) ‘Local government’ means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

“(17) ‘Permit’ means an order issued by the board in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water, and specifying the conditions under which the discharge may be made.

“(18) ‘To discharge’ includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

“(19) ‘Point source’ means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

“(20) ‘Identified state supplement to an NPDES permit’ means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board’s duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

“(21) ‘NPDES’ means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in Accordance with Section 402(b) of the Federal Water Pollution Control Act.”

“Sec. 21.079. BOARD MAY ISSUE PERMITS. (a) The board may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The board may refuse to issue a permit when the board finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the board finds that issuance of the permit would interfere with the purpose of this chapter.

“(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the board containing all information reasonably required by the board or the executive director.

“(c) A person may not commence construction of a treatment facility until the board has issued a permit to authorize the discharge of waste from the facility, except with the approval of the board.

“(d) The board may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the board may have with respect to the control of water quality. The board may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.”

"SUBTITLE D. WATER QUALITY CONTROL  
"CHAPTER 26. WATER QUALITY CONTROL  
"SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

"Section 26.001. DEFINITIONS. As used in this chapter:

"(1) 'Board' means the Texas Water Development Board.

"(2) 'Commission' means the Texas Water Commission.

"(3) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(4) 'Department' means the Texas Department of Water Resources.

"(5) 'Water' or 'water in the state' means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

"(6) 'Waste' means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

"(7) 'Sewage' means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

"(8) 'Municipal waste' means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

"(9) 'Recreational waste' means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

"(10) 'Agricultural waste' means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term 'agricultural waste' does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

"(11) 'Industrial waste' means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

"(12) 'Other waste' means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. 'Other waste' also includes tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

"(13) 'Pollution' means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"(14) 'Sewer system' means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

“(15) ‘Treatment facility’ means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

“(16) ‘Disposal system’ means any system for disposing of waste, including sewer systems and treatment facilities.

“(17) ‘Local government’ means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

“(18) ‘Permit’ means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

“(19) ‘To discharge’ includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

“Section 26.027. COMMISSION MAY ISSUE PERMITS.

(a) The commission may issue permits and amendments to permits for the discharge of waste into or adjacent to water in the state.

“(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the department containing all information reasonably required by the department.

“(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

“SUBCHAPTER G. COASTAL OIL AND HAZARDOUS SPILL PREVENTION AND CONTROL

“Section 26.261. SHORT TITLE. This subchapter may be cited as the Texas Oil and Hazardous Substances Spill Prevention and Control Act.

“Section 26.262. POLICY. It is the policy of this state to prevent the spill or discharge of oil and other hazardous substances into the coastal waters of the state and to cause the removal of such discharges without undue delay.

“Section 26.263. DEFINITIONS. As used in this subchapter:

“(1) ‘Coastal land or water’ means any land or water in the coastal area as defined in this section.

“(2) ‘Coastal area’ refers to the geographic area comprising all counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

“(3) ‘Discharge or spill’ means an act or omission by which oil or hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, emptied, or dumped onto or into coastal waters of this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal water in this state. The term ‘discharge’ or ‘spill’ shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state.

“(4) ‘Fund’ means the Texas Coastal Protection Fund.

“(5) ‘Harmful quantity’ means that quantity of oil or hazardous substance the discharge or spill of which is determined to be harmful to the public health or welfare by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.



“(6) ‘Hazardous substance’ means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.

“(7) ‘Oil’ means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil.

“Section 26.264. ADMINISTRATIVE PROVISIONS.

(a) The department shall administer this subchapter. The department shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter.

“(b) The board may issue rules necessary and convenient to carry out the purposes of this subchapter.

“(c) The executive director shall enforce the provisions of this subchapter and any rules given effect pursuant to Subsection (b) of this section.

“(d) The executive director with the approval of the board may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

“(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of oil and hazardous substance spills and discharges.

“(f) The department and the State Department of Highways and Public Transportation, in cooperation with the governor and the United States Coast Guard, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

“(1) the department and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

“(2) personnel, equipment, and materials may be diverted only with the approval of the department and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

“(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

“(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the board.

“(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

“(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the board shall recognize the authority of the predesignated United States Coast Guard on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

“(2) Nothing in this subchapter shall prevent the executive director from acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

“(3) The department shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies.

“(i) The executive director shall after appropriate investigation prepare a report on the discharge or spill, and this report shall provide the following information:

“(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

“(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

“(3) the action taken, and by whom, to contain and clean up the discharge or spill;

“(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

“(5) the estimated cost of cleanup operations and the source of payment of these costs;

“(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

“(7) a description of any legal action being taken to levy penalties or collect damages.

“(j) This subchapter is cumulative of all other powers of the department.

“(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes) to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

“Section 26.265. TEXAS COASTAL PROTECTION FUND. (a) There is hereby created the Texas Coastal Protection Fund. This fund shall not exceed \$5 million, exclusive of fines and penalties received under this subchapter.

“(b) The fund shall consist of money appropriated to it by the legislature and any fines or other reimbursement to the fund provided for under this subchapter. It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:

“(1) direct reimbursement from the federal government as provided by federal law for costs incurred in cleanup operations;

“(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect the actual costs, provided, however, that such recovery may not exceed \$5 million; and

“(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Subdivision (2) of this subsection.

“(c) Money in the fund may be expended only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of beaches and marine resources.

“Section 26.266. REMOVAL OF ACCIDENTAL DISCHARGE. (a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill subject to applicable federal and state requirements.

“(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the department may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

“(c) Any discharge or spill of oil or hazardous substance, the source of which is unknown, occurring in coastal waters or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter coastal water may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board’s approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

“(d) In any activity undertaken pursuant to this section, the department shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended, and with Section 26.264(h) of this code.

“Section 26.267. EXEMPTIONS. (a) No person shall be held liable under this subchapter for any accident resulting from an act of God, act of war, third party negligence, or an act of government.

“(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state except as specifically provided in Section 26.265(b)(2) of this code.

“Section 26.268. PENALTIES. (a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department.

“(b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation.

“(c) Any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill as defined in this subchapter and fails to report said spill or discharge upon discovery thereof shall be guilty of a Class A misdemeanor.

“(d) Any person who knowingly falsifies records or reports concerning the prevention or cleanup of a discharge or spill of oil or hazardous substance as provided for in this subchapter is guilty of a felony of the third degree.

“(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the department.

Sec. 8. (a) On the effective date of this Act, the governor shall appoint the initial members to the Texas Water Commission.

(b) The persons initially appointed to the commission shall be designated to serve by the governor as follows: one member of the commission to serve a two-year term, one member of the commission to serve a four-year term, and one member of the commission to serve a six-year term.

(c) The initial members of the commission shall take office on September 1, 1977.

Sec. 9. (a) The Texas Department of Water Resources and the Texas Water Commission, as provided in Section 1 of this Act, are created effective September 1, 1977, and the existing Texas Water Rights Commission and Texas Water Quality Board are abolished on September 1, 1977.

NOTE: Sec's. 2-7 of S.B. 1139 amended the Solid Waste Disposal Act (Art. 4477-7) and are here omitted.

(b) The department is the successor to the Texas Water Quality Board and Texas Water Rights Commission and incorporates the Texas Water Development Board and shall carry out their respective duties, responsibilities, and functions from the effective date of this Act as provided by law, including acts of this legislature.

(c) The abolishment of the Texas Water Rights Commission shall not affect or impair any act done or obligation, right, license, permit, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

(d) The rights, powers, and duties delegated by law to the Texas Water Rights Commission which are not expressly assigned to the Texas Water Commission are expressly transferred to the Texas Department of Water Resources in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

(e) The abolishment of the Texas Water Quality Board shall not affect or impair any act done or obligation, right, license, permit, water quality criteria, standard or requirement, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, water quality criteria, standard or requirement, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

(f) The rights, powers, and duties delegated by law to the Texas Water Quality Board are expressly transferred to the Texas Department of Water Resources as is provided herein or in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

Sec. 10. The members of the Texas Water Development Board serving as members of the board on the effective date of this Act shall continue in office until the expiration of their respective terms.

NOTE: Sec. 11 related to transfer of personnel, etc.  
Sec. 12 called for cooperation in transition.  
Sec. 13 provides standard emergency clause.

1975 - 64th Legislature  
SENATE BILL 137

AN ACT

TEXAS WATER CODE  
Title 1  
(Chapter 1 amended)

amending the Water Code as follows: declaring as public policy of the state the maintenance of the ecological environment of the bays and estuaries in the conservation and development of the state's natural resources; directing the Texas Water Rights Commission in the consideration of any permit to store, take, or divert water to assess the effects thereof upon the bays and estuaries of Texas; directing the Texas Water Development Board to investigate the effects of fresh water inflows upon bays and estuaries of Texas and to complete comprehensive studies regarding the development of methods of providing and maintaining the ecological environment thereof; directing the Texas Water Rights Commission, the Texas Water Quality Board, the General Land Office, the Parks and Wildlife Department, and the Coastal and Marine Council to assist and cooperate in the conduct of such studies and investigations; repealing laws in conflict; making appropriations; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 1.003 of Chapter 1, Water Code, is amended to read as follows:

"Section 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

"(1) the control, storage, and preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

"(2) the reclamation and irrigation of the state's arid, semi-arid, and other land needing irrigation;

"(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

"(4) the conservation and development of its forest, water, and hydroelectric power;

"(5) the navigation of the state's inland and coastal waters; and

"(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources."

Sec. 5. There is hereby appropriated to the Texas Water Development Board \$250,000 for fiscal year 1976 and any unexpended balances for fiscal year 1977 in addition to funds appropriated to the board in the General Appropriations Act for bay and estuary studies and fresh water inflow needs of those systems.

Sec. 6. Any law in conflict with the provisions of this Act is specifically repealed to the extent the same is in conflict.

Sec. 7. EMERGENCY.

Public Policy

- added in this amendment

Funding for inflow studies

1975 - 64th Legislature  
SENATE BILL 806

AN ACT

amending Sections 60.038, 61.116, and 61.117 of the Texas Water Code, 1971, as last amended by Chapter 237, Acts of the 63rd Legislature, Regular Session, 1973, relating to the acquisition, lease, use and disposition of state owned lands and flats by navigation districts; providing for certain reservations in leases and certain limitations in sale, lease, and use of such lands and flats; requiring certain districts using state owned land to which they have no patent or lease to file a map or drawing with the General Land Office; requiring a draft environmental impact statement in certain cases; providing for venue in Travis County, Texas; repealing laws in conflict; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 60.038 of the Texas Water Code, 1971, as last amended by Chapter 237, Acts of the 63rd Legislature, Regular Session, 1973, is amended to read as follows:

“Section 60.038. Sale or Lease of Land. (a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925, or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

“(b) Land which is sold or leased shall be declared surplus land and shall not be needed for use by the district in connection with the development of a navigation project.

“(c) Sale or lease of land shall be made as provided by Sections 60.039-60.042 of this code.”

Sec. 2. Section 61.116 of the Texas Water Code, 1971, as last amended by Chapter 237, Acts of the 63rd Legislature, Regular Session, 1973, is amended to read as follows:

“Section 61.116. Lease of State Owned Lands and Flats. (a) Any district organized under this chapter or any special law or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words ‘navigation district,’ ‘district,’ or ‘districts’ as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

WATER CODE  
Title 4  
(Chapters 60 & 61 amendments)

Navigation Districts

- sale or lease of land

- surplus

- manner of sale or lease

Lease from state

- cities as districts

“(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term ‘navigation’ as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development

“(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

“(1) a description of the lands or flats sought to be leased;

“(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

“(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act, until such time as the legislature shall impose different requirements; however, a draft environmental impact statement shall not be required if the proposed use requires no dredging, filling, or bulkheading. If the proposed use does require dredging, filling, or bulkheading, \* but the lease shall be processed as provided in Subsections (d), (e), and (f) of this section without the filing of a draft environmental impact statement if the applicant so requests in writing; but in such a case, the School Land Board shall include in the lease provisions requiring (i) that the draft environmental impact statement required by federal law be filed with the School Land Board before the district makes any use of such lands or flats which requires dredging, filling, or bulkheading; (ii) that approval of such use be obtained from the School Land Board after copies of the summary of the draft environmental impact statement and a description of the proposed use are circulated for comment and a hearing held as provided in Subsections (d) and (e) of this section and the School Land Board shall be authorized to give its approval to make such amendments to the lease as may then be deemed necessary by it as a result of information developed in the draft environmental impact statement; and (iii) that the lease shall cease to be effective at a time specifically stated in the lease unless prior to that time accord concerning environmental issues has been reached between the district and the School Land Board;

“(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

“(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the member agencies of the Interagency Council on Natural Resources and the Environment and other appropriate state agencies for review and comment. In addition, the board shall submit for review and comment the proposed terms and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

- limitation

- application

-- description

-- proposed use

-- environmental impact

\* SIC

-- proof of need

-- review & comment

“(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

“(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best serve the interest of the general public. In establishing the consideration to be paid to the state for the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

“(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

“(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district’s original lease. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment, or which requires only insubstantial dredging, filling, or bulkheading, as determined by the board; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

“(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.”

Sec. 3. Section 61.117 of the Texas Water Code, 1971, as last amended by Chapter 237, Acts of the 63rd Legislature, Regular Session, 1973, is amended to read as follows:

“Section 61.117. Limitations on Sales and Use of State Lands and Flats. (a) The State of Texas shall retain its rights in all mines and minerals, including oil, gas, and geothermal resources, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

“(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district..

“(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the

-- hearing

-- determination

-- proceeds

-- district sublease

-- non-compliance

#### Limitations

- mineral rights retained

- prior leases

- navigation uses paramount



State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

“(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured, at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

“(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of granting spoil easements, the Board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

“(f) Districts which, prior to the enactment of this provision, have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925, or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats which were conveyed to them by the State of Texas and may not lease such lands or flats for a use for which districts are not authorized to lease their other lands; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state or exchange them for other lands with the State of Texas. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for lands, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

“(g) Any district, which, prior to the effective date of this Act has maintained, and which at the effective date of this Act is maintaining, any channel, dredged material disposal site, or other navigational aid or improvement on state owned lands to which the district holds no patent or lease from the state shall notify the General Land Office of the boundaries of such submerged land used by furnishing a map or other drawing acceptable to the General Land Office.”

Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas..

Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict.

Sec. 6. EMERGENCY.

- channels protected

- spoil easements

- patents and prior claims

- inventory of lands used without lease

Venue for suits

Repealer

1973 - 63rd Legislature  
HOUSE BILL 935

AN ACT

relating to creation, powers, and duties of underground water conservation districts; amending Sections 52.021, 52.025, 52.101, 52.117, Subsection (a) of Section 52.023, and Subsection (a) of Section 52.108, Water Code; adding Subdivisions (9) and (10) to Section 52.001; containing a severability and repealer clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 52.001, Water Code, is amended by adding Subdivisions (9) and (10) to read as follows:

“(9) ‘Board’ means the Texas Water Development Board.

“(10) ‘Subsidence’ means the lowering in elevation of the land surface caused by withdrawal of groundwater.”

Sec. 2. Section 52.021, Water Code, is amended to read as follows:

“Sec. 52.021. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the underground water of underground water reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water therefrom, consistent with the objective of Article XVI, Section 59, of the Texas Constitution, underground water conservation districts may be created as provided by this chapter.”

Sec. 3. Section 52.025, Water Code, is amended to read as follows:

“Sec. 52.025. FINDINGS. (a) If the commission finds that the district is feasible and practicable, that it would be a benefit to land in the district, and that it would be a public benefit or utility, the commission shall make these findings and grant the petition.

“(b) If the commission finds that the district is not feasible and practicable, that it would not be a benefit to land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission shall refuse to grant the petition.”

Sec. 4. Subsection (a), Section 52.023, Water Code, is amended to read as follows:

“(a) The commission may not consider a petition for the creation of a district unless the proposed boundaries of the district are coterminous with the boundaries of an underground water reservoir or a subdivision of an underground water reservoir, as previously designated by the commission.”

Sec. 5. Section 52.101, Water Code, is amended to read as follows:

“Sec. 52.101. RULE-MAKING POWER. A district may make and enforce rules to provide for conserving, preserving, protecting, recharging, controlling subsidence, and preventing waste of the underground water of an underground water reservoir or its subdivisions.”

TEXAS WATER CODE  
Title 4  
(Chapter 52 amended)

Additional definitions

Subsidence control added as a purpose.

Sec. 6. Subsection (a), Section 52.108, Water Code, is amended to read as follows:

“(a) The district may develop comprehensive plans for the most efficient use of the underground water in the underground water reservoir or its subdivision and for controlling and preventing waste of underground water and for controlling and preventing subsidence.”

Sec. 7. Section 52.117, Water Code, is amended to read as follows:

“Sec. 52.117. REGULATION OF SPACING AND PRODUCTION. In order to minimize as far as practicable the draw-down of the water table or the reduction of artesian pressure, to control subsidence, or to prevent waste, the district may provide for the spacing of water wells and may regulate the production of wells.”

Sec. 8. SEVERABILITY. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

Sec. 9. REPEALER. All laws or parts of laws in conflict with any of the provisions of this Act are repealed to the extent of such conflict.

Sec. 10. EMERGENCY.

AN ACT

relating to the creation, establishment, administration, powers, duties, functions, and financing of the Harris-Galveston Coastal Subsidence District under Article XVI, Section 59, of the Texas Constitution; providing penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. PURPOSE AND INTENT. (a) The purpose of this Act is to provide for the regulation of the withdrawal of groundwater within the boundaries of the district for the purpose of ending subsidence which contributes to or precipitates flooding, inundation, or overflow of any area within the district, including without limitation rising waters resulting from storms or hurricanes.

(b) It is the intent of the legislature that the district shall administer and enforce the terms of this Act and shall exercise its rights, powers, and duties in a manner that will effectively and expeditiously accomplish the purposes of this Act.

Sec. 2. DEFINITIONS. In this Act:

(1) "Person" includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(2) "District" means the Harris-Galveston Coastal Subsidence District.

(3) "Board" means the board of directors of the district.

(4) "Groundwater" means water located beneath the earth's surface within the district but does not include water produced with oil in the production of oil and gas.

(5) "Wells" means any facility, device, or method used to withdraw groundwater from the groundwater supply within the district.

(6) "Groundwater-withdrawal year" means the period beginning January 1 of one year and ending December 31 of that same year.

(7) "Withdraw" means the act of extracting groundwater by pumping or some other method.

(8) "Drill" means drilling, equipping, or completing wells or substantially altering the size of wells or well pumps.

(9) "Subsidence" means the lowering in elevation of the surface of land by the withdrawal of groundwater.

Sec. 3. CREATION. There is created under the authority of Article XVI, Section 59, of the Texas Constitution, a conservation and reclamation district to be known as the Harris-Galveston Coastal Subsidence District which shall be a governmental agency and body politic and corporate of the state. A confirmation election is not necessary.

Sec. 4. BOUNDARIES. (a) The district shall include all of the area located within the boundaries of Harris County and Galveston County.

(b) Except as provided in this subsection, an adjoining county may be added to the district on application of the commissioners court of the adjoining county and by complying with the procedures provided in Sections 55.730-55.744, Water Code, as far as those provisions are applicable. The proposition on the ballots for the elections shall be printed to provide for voting for or against: "Addition of \_\_\_\_\_ County to the Harris-Galveston Coastal Subsidence District." Any county added to the district under the provisions of this subsection shall be subject to the jurisdiction of the board and the provisions of this Act, and two members shall be added to the board. One shall be

HARRIS-GALVESTON COASTAL  
SUBSIDENCE DISTRICT  
(Vernon's Auxiliary Water Laws)

Purpose and intent

Definitions:

person

district

board

groundwater

wells

groundwater-withdrawal year

withdraw

drill

subsidence

Creation of District

Boundaries

- additional counties

chosen by the commissioners court of the county added to the district and one shall be chosen by the mayor of the city in the county that is added which has the largest population according to the last preceding federal census. The two new members shall draw lots to establish staggered terms of office.

Sec. 5. BOARD OF DIRECTORS. (a) The district shall be governed by a board of directors composed of 15 members.

(b) The members of the board shall be chosen as follows:

(1) six members from the city in the district having the largest population of any city in the district, according to the most recent federal census, to be appointed by the mayor of that city, one of these members to be a representative of industry;

(2) one member from the city in the district having the next largest population of any city in the district, according to the most recent federal census, to be appointed by the mayor of that city;

(3) two members from all incorporated cities in Galveston County, appointed by the mayors of those cities;

(4) One member from the city of Baytown, appointed by the mayor of that city;

(5) two members appointed by the Commissioners Court of Harris County, one of these members to be a representative of agriculture and one to be a representative of industry, provided that neither of these members shall be residents of the city in the district having the largest population of any city in the district;

(6) two members appointed by the Commissioners Court of Galveston County; and

(7) one member from Harris County chosen by the mayors of the cities of Deer Park, Galena Park, La Porte, Nassau Bay, and Seabrook and the president of the Clear Lake City Water Authority.

(c) All members of the board shall be residents of and qualified voters in the district.

(d) Within 30 days after the effective date of this Act, the County Judge of Harris County and the County Judge of Galveston County jointly shall set a date, time, and place for a meeting of those persons designated in Subsection (b) of this section to choose members for the board. The county judges shall decide who shall preside at the meeting, and those chosen for the board at the meeting shall assume their positions on the board within five days after being chosen. The county judges shall give notice of the meeting by mail to persons designated to make the choices. Selection of subsequent directors shall be made on the second Monday in January at 11:00 a.m. in the district's main office, and the general manager shall send by mail written notice to each person who is designated in Subsection (b) of this section to make choices in that particular year. All notice given under this subsection shall be mailed not less than 20 days before the meeting for which notice is given.

(e) The terms of office for the initial appointees to the board shall be as follows:

(1) from the date of appointment until January 31, 1976-three members chosen under Subdivision (1) of Subsection (b) of this section, one member chosen under Subdivision (3), one member chosen under Subdivision (5), and one member chosen under Subdivision (6) of Subsection (b) of this section; and

(2) from the date of appointment until January 31, 1977-three members chosen under Subdivision (1) of Subsection (b) of this section and one member chosen under Subdivision (2), one member chosen under Subdivision (3), one member chosen under Subdivision (4), one member chosen under Subdivision (5), one member chosen under Subdivision (6), and one member chosen under Subdivision (7) of Subsection (b) of this section.

## Board of Directors

- composition-qualifications

- residency

- procedure

- terms

(f) Except as provided in Subsection (e) of this section, members of the board shall serve for terms of two years.

(g) The county judges of Harris and Galveston counties, at the time they set the date, time, and place for the selection of directors, shall set the date, time, and place for the initial meeting of the board and give notice of the date, time, and place to each newly appointed member. Such notice shall be given by mail and shall be sent not less than 20 days before the time set for the initial meeting of the board.

(h) At the initial meeting of the board and each year at the first meeting after the new directors take office, the members shall select one of their number to serve as chairman, one to serve as vice-chairman, and one to serve as secretary.

(i) The chairman shall preside over meetings of the board, and in his absence the vice-chairman shall preside.

(j) Each member of the board is entitled receive \$25 a day for each day he is engaged in the exercise of his duties under this Act and necessary travel and other expenses incurred in the exercise of his duties under this Act. No member of the board may receive this compensation and travel and other expenses for more than 120 calendar days in any one calendar year.

(k) If a vacancy occurs on the board, a person representing the same area from which the person who vacates the position is appointed shall be chosen by the person or persons designated in Subsection (b) of this section to serve the unexpired term.

(l) Each member of the board shall take the oath of office prescribed by law for county commissioners and shall execute a bond in the amount of \$5,000, payable to the district, conditioned on the faithful performance of his duties. The district shall pay for the bond.

(m) A majority of the members of the board constitute a quorum for transaction of business of the district, but no official act of the board is valid without the affirmative vote of a majority of the members of the board.

(n) The board shall meet for a regular meeting once each month at a time set by the board and may hold special meetings at the call of the chairman or on the written request of at least three members of the board.

Sec. 6. POWERS AND DUTIES IN GENERAL. The Board shall administer the provisions of this Act as provided in Section 1 of this Act. Withdrawals of groundwater covered by the provisions of this Act are subject to reasonable rules, regulations, and orders adopted by the board, taking into account all factors including availability of surface water, economic impact upon persons and the community, degree and effect of subsidence upon the surface of land, and differing topographical and geophysical characteristics of land areas within the district. The board has the powers and duties specifically described in this Act and all other powers necessary or convenient to carry out its responsibilities and achieve the purpose of the Act.

Sec. 7. GENERAL MANAGER. (a) The board shall employ a general manager who shall be the chief administrative officer of the district and may delegate to him full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) Among the duties of the general manager are:

(1) to administer the orders of the board;

(2) to coordinate with state, federal, and local agencies;

(3) to oversee the development of plans and programs of the district; and

(4) to perform other duties assigned by the board.

(c) The general manager shall execute a bond in the amount determined by the board, payable to the district, conditioned on the faithful performance of his duties. The district shall pay for the bond.

- initial meeting

- officers

- per diem and expenses

- vacancies

- oath and bond

- quorum

- meetings

Powers and Duties

General Manager

- duties

- bond

Sec. 8. EMPLOYEES. (a) The general manager shall employ all persons necessary for the proper handling of the business and operation of the district and may employ attorneys, bookkeepers, engineers and other expert and specialized personnel that are considered necessary. He shall determine compensation to be paid by the district.

(b) The board shall determine the terms of office and employment and the compensation to be paid the general manager, and the general manager may be discharged by a majority vote of the district. The general manager may discharge employees of the district.

(c) The board shall require an employee who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, for a sufficient amount to safeguard the district. The bond shall be conditioned on the faithful performance of his duties and on accounting for all funds and property of the district in his hands. The district shall pay for the bond.

Sec. 9. DISTRICT OFFICE. The board shall maintain a regular office for conducting the business of the district. The office shall be located inside the district.

Sec. 10. MINUTES AND RECORDS OF THE DISTRICT. The board secretary shall keep a true and complete account of all its meetings and proceedings and shall preserve the board's minutes, contracts, records of any kind, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. All minutes, contracts, records of any kind, notices, accounts, receipts, and other materials are the property of the district and subject to public inspection.

Sec. 11. SUITS. The district may sue and be sued in the courts of this state in the name of the district by and through the board. The attorney general shall represent the district in the district and appellate courts of this state and in the courts of the United States. All courts shall take judicial notice of the creation of the district and of its boundaries.

Sec. 12. SEAL. The board shall adopt a seal.

Sec. 13. RULES AND REGULATIONS. (a) After notice and hearing under Section 14 of this Act, the board shall adopt and enforce rules and regulations that are designed to expeditiously and effectively effectuate the provisions of this Act and accomplish its purposes, including rules governing procedures before the board.

(b) The board shall compile its rules and regulations in a book and make them available for use and inspection at the district's principal office. The district shall provide copies of its rules and regulations on payment of the cost to reproduce them.

Sec. 14. HEARINGS. (a) Hearings of the board shall be conducted in the manner provided in this section.

(b) At a regular meeting of the board, the board shall set the dates, times, and locations for any hearings to be held under this Act and shall direct the general manager of the district to give notice.

(c) Written notice of a hearing under this section shall be given to each county and municipal government within the district and to each person that the board believes has an interest in the subject matter to be dealt with at the hearing. The date of delivery or mailing of notice shall not be less than 20 days before the date set for the hearing.

(d) Notice of a hearing under this section shall be published at least once in a newspaper of general circulation in each county within the district. The date of publication shall not be less than 20 days before the date set for the hearing.

(e) A copy of the notice shall be posted at the county courthouse of each county within the district in the place where notices are usually posted. The date of posting shall not be less than 20 days before the date of the hearing.

## Employees

- compensation

- bond

## Office

Records

## Suits

## Rules and Regulations

## Hearings

- notice

- published notice

- posted notice

(f) Any person who desires to appear at a hearing and present testimony, evidence, exhibits, or other information may do so in person, by counsel, or both.

(g) The board may hold hearings at any location within the district.

(h) The board may recess a hearing from day to day.

(i) The board may use hearing examiners to hear any subject set for hearing so long as the decision on that subject is the decision of the board. Procedures for use of hearing examiners shall be provided in the rules and regulations.

Sec. 15. COMPELLING TESTIMONY, SWEARING WITNESSES, AND SUBPOENAS. The board may compel the testimony of any person necessary to carry out the powers, duties, and functions under this Act and may administer oaths to persons compelled to testify before the board or any person designated by the board. Also, the board may issue subpoenas to compel the testimony of any persons and the production of any documents necessary to carry out the powers, duties, and functions under this Act.

Sec. 16. DISTRICT PLAN. (a) Under Section 14 of this Act, the board shall formulate a plan to control and prevent subsidence within the district. The plan shall accomplish this purpose by the reduction of groundwater withdrawals to amounts which will restore and maintain sufficient artesian pressure to control and prevent subsidence.

(b) The plan shall specify in as much detail as practicable the acts, procedures, performance, and avoidance that are necessary to carry out the purposes of this Act.

Sec. 17. PLANNING PROCEDURES. (a) Included in the information to be gathered for formulation of the plan shall be:

(1) a list of all wells in the district which will be subject to regulation under this Act;

(2) an accurate estimate of groundwater production from each well or proposed well in the district;

(3) an accurate estimate of the amount of groundwater which may be produced from each well and each area in the district without causing drawdown of the water table and reduction of artesian pressure that will lead to subsidence within the district;

(4) an accurate estimate of the current and future water needs of each well-owner in the district;

(5) an accurate estimate of the groundwater production capacity of each well in the district;

(6) a list of all available sources of water in the area of the district other than groundwater;

(7) the purpose for which the water is currently used and for which it is proposed to be used in the future;

(8) information relating to formulation of a permit system; and

(9) other necessary information and material to carry out the management of groundwater in the district and to effectively and expeditiously accomplish the purposes of this Act.

(b) the plan shall be formulated within 12 months after the effective date of this Act.

(c) The plan formulated under this Act shall be reviewed by the board and adopted within 60 days after it is formulated.

(d) Before the plan is adopted, the board shall hold a hearing to consider the proposed plan in the manner provided in Section 14 of this Act.

(e) After the hearing, the board shall make any changes it considers necessary based on evidence and material presented at the hearing and shall adopt the plan.

- appearance
- site of hearing
- examiners

## Testimony and Subpoenas

## Plan for control

## Planning procedures:

- list of wells
- production records
- optimum production
- needs
- capacity
- alternate sources
- uses
- permit proposals
- other data
- completion date
- review and adoption
- hearing on plan
- modification



(f) The plan adopted under this section may be amended or repealed and a new plan adopted in the manner provided in this section for the adoption of the original plan. A plan, once adopted, shall remain in effect until the adoption of a new plan.

Sec. 18. TEMPORARY REGULATION. (a) During the period in which the board is formulating and adopting the plan under Section 16 of this Act, the board shall adopt temporary rules and regulations relating to the withdrawal of groundwater that are necessary to control subsidence.

(b) Wells operating or being drilled on the effective date of this Act may operate until a permit is obtained as provided in Section 19 of this Act.

Sec. 19. PERMIT REQUIREMENT. (a) Before a well located within the boundaries of the district which is used or to be used for the purpose of withdrawing groundwater may be operated or drilled for that purpose, the owner of the well must obtain a permit from the board in the manner provided in this Act.

(b) Owners of wells operating or being drilled on the effective date of this Act must apply for a permit before September 30, 1975, and may continue to operate the well without a permit until the application for a permit for the well is acted on by the board.

Sec. 20. TERM OF PERMIT. (a) Permits issued under this Act shall be for a term of one year from the date of their issuance unless a longer term is specified by the board. The board may issue a permit for a term longer than one year, but not to exceed five years, whenever to do so would aid the district in the effective and expeditious performance of its duties and would not impair the ability of the district to control and prevent subsidence within the district.

(b) A permit does not become a vested right in the holder. It may be revoked or suspended, or its terms may be modified or amended after notice and public hearing in the manner provided in Section 14 of this Act, whenever reasonably necessary to accomplish the purposes of this Act.

Sec. 21. RENEWAL OF PERMIT. Permits for wells under Section 19 of this Act may be renewed by the board in the manner provided for obtaining the original permit.

Sec. 22. APPLICATION FOR PERMIT. (a) Any person who desires to obtain a permit under the provisions of this Act shall submit to the board an application.

(b) The application shall state:

- (1) the name of the person requesting the permit;
- (2) the address of the person requesting the permit;
- (3) the location and wellhead elevation of the well or proposed well;
- (4) the amount of water being produced or proposed to be produced; and
- (5) any other information necessary for the board to control and prevent subsidence in the district.

(c) The application shall be accompanied by a reasonable application fee to be used for processing the application, the amount of which shall be set by the board.

Sec. 23. NOTICE AND HEARING ON PERMIT. (a) On receiving an application for a permit, the board shall issue the notice and set a time for a hearing on the application.

- update

Interim regulation

Permit required

Permit term

Permit renewal

Permit application

Permit hearing

(b) Notice of the date, time, and location of the hearing shall be given by the board to the applicant by certified mail, return receipt requested, at least 20 days before the date of the hearing.

(c) Except as provided in this section, the hearing shall be conducted and notice of hearing given in the manner provided in Section 14 of this Act.

(d) The board may consider as many applications for permits as it thinks necessary at any one hearing.

#### Sec. 24. DECISION AND ISSUANCE OF A PERMIT.

(a) Within a reasonable period of time after the hearing, but not later than 35 days after the hearing, the board shall decide whether or not to issue a permit and, if so, shall formulate the terms of the permit.

(b) In deciding whether or not to issue a permit and in setting the terms of the permit, the board shall consider, along with the purpose of this Act and all other relevant factors:

(1) the district plan;

(2) the quality, quantity, and availability of surface water at prices competitive with those charged by suppliers of surface water within the district;

(3) the economic impact on the applicant from grant or denial of the permit, or the terms prescribed by a permit, in relation to the effect on subsidence that would result.

(c) The board shall grant a permit to an applicant whenever it is found upon presentation of adequate proof that there is no other adequate and available substitute or supplemental source of surface waters at prices competitive with those charged by suppliers of surface water within the district and that compliance with any provision of this Act, or any rule or regulation of the district, will result in an arbitrary taking of property or in the practical closing and elimination of any lawful business, occupation, or activity, in either case without sufficient corresponding benefit or advantage to the people.

(d) If the board decides to issue the permit, the permit shall be issued to the applicant stating the terms prescribed by the board.

(e) The permit shall include the following:

(1) the name and address of the person to whom the permit is issued;

(2) the location of the well;

(3) the date the permit is to expire;

(4) conditions and restrictions placed on the withdrawal of groundwater; and

(5) any other terms and conditions necessary to control and prevent subsidence.

(e) The board shall not require a city of less than 100,000, according to the last preceding federal census, to reduce its groundwater withdrawal more than 50 percent in any three-year period if the city or its residents would face a hardship by such reduction. The board shall determine in public hearing whether or not such reduction would constitute a hardship to the city or its residents. A hardship shall mean any reduction in groundwater withdrawal that would:

(1) cause the city to have an inadequate supply of water for its residents; or

(2) cause an increase of 50 percent or more in water rates for the city or its residents.

Sec. 25. PERMIT NOT TRANSFERABLE. No permit issued under this Act is transferable, and any person who becomes the owner of a well for which a permit is required must make application for a permit in the manner provided in this Act.

## Permit issuance

NOTE: This second sub-section "(e)" was added by H.B. 390, sec. 3, Acts of the 65th Leg., 1977, Chapter 557.

## Permit not transferrable

Sec. 26. ANNUAL REPORTS. Before January 31 of each year after the effective date of this Act, each owner of a well who holds a permit under the provisions of this Act shall submit to the board a report stating the following:

- (1) the name of the owner of the well;
- (2) the location of the well;
- (3) the total amount of groundwater produced by the well during the immediately preceding 12-month period;
- (4) the total amount of groundwater produced by the well during each separate month of the immediately preceding 12-month period;
- (5) the purpose for which the groundwater was used;
- (6) the date on which the permit for the well will expire; and
- (7) any other information necessary for the board to control and prevent subsidence within the district.

Sec. 27. BOARD INVESTIGATIONS. At least once each year and at any other time that the board considers necessary, the board shall have its staff and the staff of the Texas Water Development Board, if necessary, make a complete study of the groundwater situation within the district and determine the water level, rates of withdrawal, amounts of withdrawal, and other information relating to the withdrawal of groundwater which may effect the subsidence of land within the district.

Sec. 28. ANNUAL GROUNDWATER-WITHDRAWAL DETERMINATION. (a) Before March 31 of each year, the board shall hold a hearing in the manner provided in Section 14 of this Act to determine the effects of groundwater withdrawal during the preceding groundwater-withdrawal year on the subsidence of land within the district.

(b) At the hearing, the board shall consider information developed under Sections 26 and 27 of this Act in addition to information represented by persons appearing before the board.

(c) After the hearing, the board shall consider all information presented to it and shall make determinations of groundwater withdrawal in the district during the just preceding groundwater-withdrawal year and shall make findings of the effects of groundwater withdrawal during the just preceding groundwater-withdrawal year on the subsidence of land within the district. These findings and determinations shall be included in a report adopted by the board and shall be made available for examination by any interested persons.

Sec. 29. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the draw-down of the water table and the reduction of artesian pressure and to control and prevent subsidence, the board may provide for the spacing of wells and regulate the production of groundwater from the wells, taking into consideration, among other relevant factors, the economic impact on well-owners and the resulting effect on subsidence.

(b) Before issuing any order, rule, or regulation under this section, the board shall set a hearing on the proposed order, rule, or regulation and issue notice of the hearing. Notice shall be given and hearings conducted in the manner provided in Section 14 of this Act.

Sec. 30. REQUIRING WATER-METERING DEVICES. The board may adopt orders after notice and hearing as provided in Section 14 of this Act requiring water-metering devices to be placed on wells.

Sec. 31. ACCESS TO PROPERTY. (a) To carry out technical and other investigations necessary to the implementation of this Act, the board and its agents and employees are entitled to access to all property within the district.

Annual reports

Investigations

Groundwater-Withdrawal  
Determination

Well spacing and production

Metering devices

Access

(b) Before entering property for the purposes stated in Subsection (a) of this section, the person seeking access shall give notice to the owner of the property in the manner provided in the rules and regulations of the district and shall present proper credentials.

(c) The board, and its agents and employees who enter private property, shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection.

Sec. 32. MONITORING AND SUPERVISIONS OF DISTRICT. The District may use subsidence compaction monitors, water-level observation wells, and other materials and equipment to determine the amount of groundwater that may be produced while at the same time allowing the rebound and stabilization of groundwater to a level that will halt subsidence.

Sec. 33. RESEARCH AND STUDIES. The district may conduct any studies and research that the board considers necessary to implement the provisions of this Act. The district may use the services of geologists, hydrologists, registered professional engineers, or other expert personnel to accomplish the purposes of this section.

Sec. 34. COOPERATION WITH AND ASSISTANCE OF OTHER GOVERNMENTAL ENTITIES. The board may cooperate with and request the assistance of the Texas Water Development Board, the United States Geological Survey, local governments, and other agencies of the United States and the State of Texas in implementing the provisions of this Act.

Sec. 35. CONTRACTS. The board may enter into contracts with any person to carry out the provisions of this Act.

Sec. 36. APPEAL OF DISTRICT ACTIONS. (a) Any rule, regulation, order, or other official action of the district under this Act may be appealed to a district court in any county in the district by a person who is adversely affected. For the purposes of this section, "a person who is adversely affected" includes those persons residing in or owning real property in the district whose residence or real property is subsiding. An appeal under this section must be filed within 45 days after the rule, regulation, order, or other official action appealed from is promulgated.

(b) Upon written request of a person residing in or owning real property in the district the board shall make written findings and conclusions with respect to a rule, regulation, order, or other official action of the district and provide certified copies of such findings and conclusions to the requesting person within 35 days after written request therefor.

(c) In appeals taken under this section, the substantial evidence rule shall be used to determine the legal propriety of a rule, regulation, order, or other action of the board.

Sec. 37. PERMIT FEE. (a) At the time of issuance or renewal of a permit, the board shall collect from the permittee a permit fee, established by schedule, based on the term of the permit and the maximum annual amount of groundwater authorized by the board to be withdrawn from the well.

(b) The rate of the fee to be collected by the board under this section shall be determined by the board after a hearing under Section 14 of this Act. In no case shall the rate of the fee exceed 110 percent of the highest rate charged by the City of Houston for surface water supplied to its customers within the district.

Monitoring

Research

Cooperation with Others

Contracts

Appeal to courts

Permit fee

NOTE: Sec. 37 was amended and enlarged by H.B. 390, Sec. 1, Acts of 65th Leg., 1977, Chap. 557

(c) The rate of the permit fee applicable to any well used for the irrigation of agricultural crops shall be the lower of (i) either 70 percent of the rate established under Subsection (b) or (ii) 70 percent of one cent per thousand gallons authorized to be withdrawn; provided that the board may adjust such one cent per thousand gallons each year after 1977 to account for increases, if any in the most recently published Consumer Price Index - Houston, Texas, Average (1967 = 100), as determined by the United States Department of Labor, Bureau of Labor Statistics for 'All Items,' (the 1976 Annual Average Consumer Price Index is 177.4 and such Index shall be the base for computations hereunder.), or (iii) the rate established in accordance with the following:

Without delay following the effective date of this Act, the board shall request the United States Geological Survey to furnish reliable scientific data relating to the difference between water wells pumped for the irrigation of agricultural crops and water wells pumped for other purposes in terms of their relative contribution to subsidence, expressed as a percentage. On the basis of such information, which shall be deemed presumptively correct, the board, at a hearing held in accordance with Section 14, shall calculate and determine the difference between water wells pumped for irrigation of agricultural crops and water wells pumped for other purposes in terms of their relative contribution to subsidence, expressed as a percentage. The rate of the fee for wells used for irrigation of agricultural crops shall be sufficient for the total of such fees to contribute to the fee revenue of the district the same percentage as such agricultural use contributes to subsidence.

(d) The funds obtained from the permit fees collected under this section shall be used to cover the costs of the board in issuing permits and performing other regulatory functions of the district.

Sec. 38. SPECIAL ASSISTANCE. The board may accept on behalf of the district any gifts, grants, loans, or other distributions of money for use in carrying out the provisions of this Act.

Sec. 39. GRANTS, PURCHASES, GIFTS, LEASES, ETC. (a) The district may purchase, lease, own, convey, and dispose of property both inside and outside of the district necessary or convenient to the exercise of the powers, duties, and functions under this Act.

(b) The district may accept grants, gifts, and devise of property.

(c) The district may construct, purchase, lease, or acquire in some other manner any material or property necessary to carry out the provisions of this Act.

Sec. 40. OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of land and his lessees and assigns in groundwater are recognized, and nothing in this Act shall be construed as depriving or divesting the owner or his lessees and assigns of the ownership or rights, subject to rules and regulations and orders and other official actions of the district.

Sec. 41. SURFACE-WATER LAWS NOT APPLICABLE. The laws and administrative rules relating to the use of surface water do not apply to groundwater.

Sec. 42. SALE AND DISTRIBUTION OF WATER PROHIBITED. The district may not sell or distribute surface water or groundwater for any purpose.

Sec. 43. EXCLUSIONS. The provisions of this Act do not apply to:

May accept gifts, grants,  
etc. of money.

May buy, sell, accept,  
etc. property

Ownership of water not  
affected

Surface water laws do  
not apply

District may not sell water

Exclusions

(1) wells regulated under the provisions of Chapter 22, Water Code;

(2) shallow wells, commonly known as relief wells, producing water solely to prevent hazardous sand boils, dewater surface construction sites, or relieve hydrostatic uplift on permanent structures and not used to provide a water supply for human consumption, agricultural use, manufacturing or industrial use, or water injection;

(3) those persons owning only one well within the district, which well has a casing diameter of five inches or less; and

(4) such other wells with a casing diameter of five inches or less which serve a single-family dwelling and which have a negligible effect upon subsidence within the district, provided that an exemption under this subdivision shall be allowed only upon application therefor in the manner and according to the form prescribed by the board for applications.

Sec. 44. DISBURSEMENT OF FUNDS. The district's money may be disbursed only by check, draft, order, or other instruments, signed by the person or persons authorized to do so in the board's bylaws, or by resolution of the board.

Sec. 45. ACCOUNTS AND INDEPENDENT AUDIT. (a) The district shall keep a complete system of accounts and shall have its affairs audited each year by an independent certified public accountant, or a firm of independent certified public accountants, of recognized integrity and ability selected by the board. The cost of the audit shall be paid by the district.

(b) The district shall file copies of the audit with the commissioners court of each county in the district, and the board shall keep at least one copy of the audit at the office of the district open to inspection by any interested person during normal office hours.

Sec. 46. DEPOSITORY BANKS. (a) The board shall designate one or more banks within the district to serve as depository for the funds of the district. All funds of the district shall be deposited in the depository bank or banks except that bond proceeds and funds pledged to pay bonds may, to the extent provided in a trust indenture, be deposited with the trustee bank named in the trust indenture and shall be remitted to the bank of payment for the payment of principal of and interest on bonds. To the extent that funds in the depository banks or a trustee bank are not invested or insured by the F.D.I.C., they shall be secured in the manner provided by law for the security of county funds.

(b) Before designating a depository bank or banks, the board shall issue a notice stating the time and place when and where the board will meet for such purpose and inviting the banks in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. The notice shall be published one time in a newspaper of general circulation in the district and specified by the board, or, in lieu of the publication, a copy of the notice may be mailed to each bank in the district.

Consider the applications and the management and condition of the banks filing them and shall designate as depositories the bank or banks which offer the most favorable terms and conditions for the handling of the funds of the district and which the board finds have proper management and are in condition to warrant handling of district funds. Membership on the board of an officer or director of a bank shall not disqualify the bank from being designated as depository.

Use of funds

Fiscal records and audit

Depository

(d) If no applications are received by the time stated in the notice, the board shall designate some bank or banks within or outside the district upon the terms and conditions as it may find advantageous to the district.

Sec. 47. PENALTIES. (a) If it appears that a person has violated or is violating or threatening to violate any provision of this Act or any rule, regulation, permit, or other order of the district, the district may have a civil suit instituted in a district court within the district for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$5,000 for each violation and for each day of violation or for both injunctive relief and civil penalties.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provisions of this Act or any rule, permit, or other order of the district, the district court shall grant any injunctive relief as the facts may warrant.

(c) At the request of the district, or the general manager authorized by the board, the attorney general shall institute and conduct a suit in the name of the district for injunctive relief or to recover a civil penalty or for both injunctive relief and penalty as authorized by Subsection (a) of this section.

(d) The board is not required to post bond or other security with the court under this section.

Sec. 48. CONSTITUTIONAL FINDINGS. The legislature specifically finds and declares that the requirements of Article XVI, Section 59(d), and of Article XVI, Section 59(e), of the Texas Constitution have been performed and accomplished in due course in time and order and that the legislature has the power and authority to enact this Act.

Sec. 49. EMERGENCY.

Sec. 2. The provisions of this remedial Act set forth in Section 37(c)(i) shall apply to each of the years for which the Harris-Galveston Coastal Subsidence District has charged a permit fee including both 1976 and 1977. Such district shall immediately refund any permit fee collected in excess of the fees due under Section 37(c)(i) and shall refund any additional excess fees collected in the event an additional reduction is indicated under Section 37(c)(iii).

## Penalties for violation

- fine
- injunctive relief

## Constitutional findings

NOTE: This provision was a part (Sec. 2) of H.B. 390, Acts of 65th Leg., 1977, Chap. 577 which amended sections 24 and 37 above

1975 - 64th Legislature  
SENATE BILL 1054

AN ACT

amending Chapter 409, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 7621d-2, Vernon's Texas Civil Statutes), authorizing the Gulf Coast Waste Disposal Authority to contract for and perform the first phase of a subsidence control program in Harris and Galveston Counties; containing provisions as to what money may be spent; providing for other matters relating to the subject; providing for severability; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Chapter 409, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 7621d-2, Vernon's Texas Civil Statutes), is hereby amended by repealing Section 3.25 and adding a new Section 3.25 to read as follows:

"Section 3.25. The authority is hereby authorized to work in cooperation with, and lend assistance to, any permanent standing committee or interim study committee authorized by the Legislature of the State of Texas, or the Coastal and Marine Affairs Council, and to expend any money specifically appropriated by the legislature to the authority, or money appropriated specifically to the Texas Water Quality Board or any other state agency for a contractual arrangement between such state agency and the authority, for the first phase of a subsidence control program for Harris and Galveston Counties. Such program is intended to develop regional information relating to water demand, present and future, surface water supply sources, present and future, and groundwater pumping zones, and to prepare methods to redistribute water in the future. The authority is specifically authorized to cooperate with and contract with the United States Geological Survey and any other federal or state agencies concerning the results of such program. It is specifically provided that the authority shall not be required to expend any of its funds for the purpose specified in this section unless such funds are specifically appropriated by the legislature or specifically designated for such purpose from contractual arrangements."

Sec. 2. Nothing in this Act shall be construed to violate any provision of the Constitution of the United States of America or the Constitution of the State of Texas, and all acts done hereunder shall be done in such manner as may conform thereto. If any word, phrase, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances is held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provisions. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

Sec. 3. EMERGENCY.

GULF COAST WASTE  
DISPOSAL AUTHORITY  
(amendment)

Authority to cooperate and  
contract for first phase  
subsidence study in Harris  
and Galveston counties

Constitutionality

Emergency



AN ACT

relating to a program for the prevention of, preparation for, response to, and relief or recovery from disasters as defined in this Act; establishing a Division of Disaster Emergency Services; creating a Disaster Contingency Fund and a Disaster Emergency Funding Board; authorizing the maintenance of local, county, or interjurisdictional disaster agencies and certain municipal agencies; prescribing the functions, powers, and duties of the governor, the legislature, the agencies created or authorized by this Act, and existing state agencies, boards, and commissions, governing bodies of political subdivisions of the state, and local and interjurisdictional agencies; providing for coordination of all plans and facilities, including interstate cooperation and cooperation with the federal government; making certain rules as to compensation of persons for services rendered or property used, damaged, lost, or destroyed during a disaster; repealing the Texas Disaster Act of 1973, as amended (Article 6889-6, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. SHORT TITLE. This Act may be cited as the Texas Disaster Act of 1975.

Sec. 2. PURPOSES. The purposes of this Act are to:

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response; and

(8) assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.

Sec. 3. LIMITATIONS. Nothing in this Act may be construed to

(1) interfere with the course or conduct of a labor dispute except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

TEXAS DISASTER ACT OF 1975

Title

Purposes

- reduce vulnerability
- prepare for response
- aid restoration
- clarify governmental roles
- provide cooperation
- provide coordination
- provide system
- provide plan

Limitations as to:

- labor disputes

(2) interfere with dissemination of news or comment on public affairs, but any communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

(3) affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any of their personnel when on active duty, but state, local and interjurisdictional disaster emergency plans shall place reliance on the forces available for performance of functions related to disaster emergencies; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or laws of this state independent of or in conjunction with any provisions of this Act.

#### Sec. 4. DEFINITIONS. In this Act

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action.

(2) "Political subdivision" means a county or incorporated city.

(3) "Organized volunteer groups" means organizations such as the American National Red Cross, the Salvation Army, Civil Air Patrol, Radio Amateur Civil Emergency Services, and other similar organizations recognized by federal or state statute, regulation, or memorandum.

(4) "Temporary housing" means temporary housing as defined in the Federal Disaster Relief Act of 1974 (PL 93-288, 88 Stat. 143).

(5) "Interjurisdictional agency" means a county government and the government of the city which is the county seat, the governments of a group of municipalities within a single county, or the government of a single county and the governments of all or any number of municipalities in that county.

Sec. 5. THE GOVERNOR AND DISASTER EMERGENCIES. (a) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(b) Under this Act, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) The governor may establish by executive order a Disaster Emergency Services Council to advise and assist him in all matters relating to disaster preparedness, emergency services, and disaster recovery. The Disaster Emergency Services Council is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups.

(d) A disaster emergency may be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat of disaster is imminent. The state of disaster emergency continues until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order, but no state of disaster

- communications

- several jurisdictions

- governor's powers

#### Definitions

- disaster

- political subdivision

- organized volunteer groups

- temporary housing

- interjurisdictional agency

#### Governor

- responsibility  
- authority

- DES council

- may declare emergency

emergency may continue for longer than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster emergency at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant on the disaster prevent or impede, promptly filed with the State Division of Disaster Emergency Services, the secretary of state and the county clerk or city secretary in the area or areas to which it applies.

(e) An executive order or proclamation setting forth a state of disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and is authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency and the pursuant recovery period, the governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but nothing in this Act restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred on the governor by law, he may

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule or, regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the state government and of each political subdivision of the state which are reasonably necessary to cope with the disaster emergency;

(3) temporarily reassign direction, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13 of this Act, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency.

(5) recommend the evacuation of all or part of the population from any stricken or threatened area in the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

- response

- delegation of authority

- additional powers

- suspend laws

- utilize all resources

- utilize personnel

- utilize private property

- recommend evacuation

- prescribe methods

(7) control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) enter into purchase, lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims and to make units available to any political subdivision of the state;

(10) assist any political subdivision which is the locus of temporary housing for disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source; "passing through" funds made available by any agency, public or private; or becoming a co-partner with the political subdivision for the execution and performance of any temporary housing for disaster victims project;

(11) under such regulations as he shall prescribe, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, transportation within or across the state, or other requirement of law or regulation within this state when by proclamation he deems the suspension or modification essential to provide temporary housing for disaster victims;

(12) on his determination that a local government of the state has or will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, certify that to the federal government provided that no application amount may exceed 25 percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs, and recommend to the federal government, based on his review, the cancellation of all or any part of repayment when in the first three full fiscal-year periods following the major disaster the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character;

(13) through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly or privately owned land or water, debris and wreckage that may threaten public health or safety or public or private property in any disaster emergency declared by the governor or major disaster as declared by the President of the United States;

(14) accept funds from the federal government and utilize the funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water;

(15) on his determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund financial assistance, subject to terms and conditions as may be imposed on the grant, and

- control access

- suspend sales

- make agreements for housing

- assist local authorities

- prescribe regulations

- apply for federal loans

- clear debris

- accept federal funds

- accept grants

enter into an agreement with the federal government or any officer or agency of the United States pledging the state to participate in funding not more than 25 percent of the financial assistance authorized in this subsection;

(16) make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed an aggregate amount in excess of that established by federal statute to an individual or family in any single major disaster declared by the President of the United States; and

(17) make rules and regulations as are necessary for carrying out the purposes of this Act, including standards of eligibility for persons applying for benefits, procedures for applying and administration, methods of investigation, filing, and approving applications, and formation of local or state-wide boards to pass on applications and procedures for appeals.

(h) The governor may designate the Texas Department of Public Welfare or other state agency to carry out the functions of providing financial aid to individuals or families qualified for disaster relief. The governor may allocate funds appropriated under this Act to implement the purposes of this Act.

(i) Nothing in this Act may be construed to limit the governor's authority to apply for, administer, or expend any grant, gift, or payment in aid of disaster prevention, preparedness, response, or recovery.

(j) No debris or wreckage from public or private property may be removed until the affected local government, corporation, organization, or individual presents an unconditional authorization for removal to the governor. No debris or wreckage may be removed from private property until the state is indemnified against any claim arising from removal. Whenever the governor provides for clearance of debris or wreckage under the provisions of this Act, state employees or other individuals acting by authority of the governor may enter on private land or water to perform tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence, or bad faith, a state employee or agent performing his duties while complying with orders of the governor issued under the provisions of this Act shall not be liable for the death of or injury to persons or damage to property.

(k) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip the sites to utilize the housing units.

Sec. 6. STATE DIVISION OF DISASTER EMERGENCY SERVICES. (a) A Division of Disaster Emergency Services is established in the office of the governor. The division shall have a director appointed by and shall serve at the pleasure of the governor. The division shall have coordinating and planning officers and other professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) The Division of Disaster Emergency Services shall prepare and maintain a comprehensive state disaster plan and keep it current. The plan may include

(1) provisions for prevention and minimization of injury and damage caused by disaster;

(2) provisions for prompt and effective response to disaster;

- make grants

- make rules and regulations

- may delegate aid responsibilities

- other authorities not limited

- consent prior to debris removal

Temporary housing

Division of Disaster  
Emergency Services

- planning responsibility

(3) provisions for emergency relief;

(4) identification of areas particularly vulnerable to disasters;

(5) recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) provisions for assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(8) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(9) organization of manpower and channels of assistance;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state disaster plan with the disaster plans of the federal government; and

(12) other necessary matters relating to disasters.

(c) The Division of Disaster Emergency Services shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under Section 8 of this Act. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest revisions.

(d) In preparing and revising the state disaster plan, the Division of Disaster Emergency Services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the Division of Disaster Emergency Services shall encourage them also to seek advice from these sources.

(e) The state disaster plan or any part of it may be incorporated in regulations of the Division of Disaster Emergency Services or executive orders which have the force and effect of law.

(f) The Division of Disaster Emergency Services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) promulgate standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate training programs and programs of public information;

(7) make surveys of public and private industries, resources, and facilities in the state which are necessary to carry out the purposes of this Act;

- assistance in planning

- coordination of plan

- regulations

Duties of Division

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

Sec. 7. FINANCING. (a) It is the intent of the legislature and declared to be the policy of the state that funds to meet disaster emergencies always be available.

(b) The Disaster Emergency Funding Board, which is composed of the governor, the lieutenant governor, the chairman of the State Board of Insurance, the commissioner of the State Department of Public Welfare, and the director of the Division of Disaster Emergency Services, is established.

(c) A disaster contingency fund is established which shall receive money appropriated by the legislature.

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed on these funds in coping with a particular disaster are unreasonably great, he may with the concurrence of the Disaster Emergency Funding Board make funds available from the Disaster Contingency Fund.

(e) Whenever the federal government or any other public or private agency or individual offers to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds as gifts, grants, or loans for purposes of emergency services or disaster recovery, the governor, if required by the donor, and the political subdivision through its executive officer or governing body may accept the offer in behalf of the state or its political subdivision. The governor or his designated agent is authorized to determine when a public calamity or disaster has occurred. Where any gift, grant, or loan is accepted by the state, the governor or on his designation the State Disaster Emergency Services Council or the State Coordinator of Disaster Emergency Services may dispense the gift, grant, or loan directly to accomplish the purpose for which it was made or allocate and transfer to any political subdivision of this state, services, equipment, supplies, materials, or funds in the amount he or his designated agent may determine. All these funds received by the state shall be placed in a special fund or funds and shall be disbursed by warrants issued by the comptroller of public accounts on order of the governor or his designated agent, who may be named by him either in a written agreement accepting the funds or in a written authorization filed with the secretary of state. Where the funds are to be used for the purchase of equipment, supplies, or commodities of any kind, it is not necessary that bids be obtained or that the purchases be approved by any other agency. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay. Political subdivisions are authorized to accept and utilize all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or by the political subdivision.

## Financing

- funding board created

- contingency fund

- regular appropriations to be used before contingency fund

- other assistance

Sec. 8. LOCAL AND INTERJURISDICTIONAL DISASTER AGENCIES AND SERVICES. (a) each political subdivision within this state is within the jurisdiction of and served by the Division of Disaster Emergency Services and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county or interjurisdictional area.

(c) The governor shall determine which municipal corporations need disaster agencies of their own and shall recommend that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its borders but shall not have jurisdiction in a municipality having its own disaster agency. The Division of Disaster Emergency Services shall publish and keep current a list of municipalities required to have disaster agencies under this subsection. Nothing in this subsection may be construed as limiting the constitutional and statutory powers of local governments.

(d) The governor may recommend that a political subdivision establish and maintain a disaster agency jointly with one or more contiguous political subdivisions if he finds that the establishment and maintenance of any agency or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each political subdivision which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have a liaison officer designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(f) The mayor, county judge, or other principal executive officer of each political subdivision in the state shall notify the Division of Disaster Emergency Services of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the service is obtained, and furnish additional pertinent information that the division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(h) The local or interjurisdictional disaster agency shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster channels of assistance.

(i) A political subdivision may make appropriations for disaster emergency services as provided by law for making appropriations for ordinary expenses of the political subdivisions and may enter into agreements for the purpose of organizing disaster emergency service divisions, provide for a mutual method of financing the organization of units on a basis satisfactory to the political subdivisions, and render aid to other subdivisions under mutual aid agreements provided that the functioning of said units shall be coordinated by the State Disaster Emergency Services Council. For the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out the provisions of this Act, counties and incorporated cities and towns may issue time warrants. These time warrants shall be issued in accordance with the provisions of Chapter 163, General

## Local disaster agencies

- counties

- cities

- joint agencies

- liaison

- notice to DDES

- local plans

- responsibilities

- financing



Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). Time warrants shall not be issued for financing permanent construction or improvements for disaster emergency services purposes except on the right of a referendum vote as provided in Section 4, Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes).

Sec. 9. ESTABLISHMENT OF INTERJURISDICTIONAL DISASTER PLANNING AND SERVICE AREAS.

(a) If the governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services. A finding of the governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, such as

- (1) small or sparse population;
- (2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;
- (3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;
- (4) the interrelated character of the counties in a multi-county area; or
- (5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within this state and includes territory in another state or states or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship, mutual aid, or an area organization for disaster, he shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes), any resulting agreement or agreements may be considered supplemental agreements pursuant to Article 6 of that compact.

(c) If the other jurisdiction with which the governor proposes to cooperate pursuant to Subsection (b) of this section has not enacted that compact, he may negotiate special agreements with the jurisdiction. Any agreement, if sufficient authority for its making does not otherwise exist, becomes effective only after its text has been communicated to the legislature and provided that neither house of the legislature has disapproved it by adjournment of the next ensuing session competent to consider it or within 30 days of its submission, whichever is longer.

Sec. 10. INTERGOVERNMENTAL ARRANGEMENTS.

(a) This state has enacted into law and enters into the Interstate Civil Defense and Disaster Compact (Article 6889-5, Vernon's Texas Civil Statutes) with all states, as defined in that Act, bordering this state which have enacted or may enact the compact in the form substantially contained in Chapter 312, Acts of the 52nd Legislature, 1951, (Article 6889-5, Vernon's Texas Civil Statutes).

(b) The governor may enter into the compact with any state which does not border this state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

Interjurisdictional planning and service areas

- governor to designate

- interstate agreements

- special agreements

Interstate Civil Defense and Disaster Compact

- additional states

(c) Nothing in Subsections (a) and (b) of this section may be construed to limit previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states.

(d) If any person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving the skill in this state to meet an emergency or disaster, and this state shall give due consideration to the license, certificate, or other permit.

Sec. 11. LOCAL DISASTER EMERGENCIES. (a) A local disaster emergency may be declared only by the governing body of a political subdivision. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk as applicable.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under the declaration.

(c) No interjurisdictional agency or its official may declare a local disaster emergency unless expressly authorized to do so by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

Sec. 12. DISASTER PREVENTION. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction and pursuant to any other authority and competence they have, state agencies including but not limited to those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards shall make studies of disaster-prevention-related matters. The governor from time to time shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The Water Development Board and other state agencies in conjunction with the Division of Disaster Emergency Services shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies undertaken under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the Division of Disaster Emergency Services believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor on review of the recommendations finds after public hearing that the changes are essential, he shall make appropriate recom-

- reciprocal licensing

Local emergencies

Disaster Prevention

- state activities

- continuing studies

- recommendations for legislation

mendations to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the governor, he shall so inform the legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The governor, at the same time that he makes his recommendations pursuant to Subsection (c) of this section, may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislature or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

Sec. 13. COMPENSATION. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this Act are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of the state except pursuant to statute or ordinance.

(c) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this Act shall file a claim for compensation with the Division of Disaster Emergency Services in the form and manner the Division of Disaster Emergency Services provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the Division of Disaster Emergency Services, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or to the release of water or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood, or contravention of Article I, Section 17, of the Texas Constitution, or statutes pertaining to that section.

Sec. 14. COMMUNICATIONS. The Division of Disaster Emergency Services shall ascertain in cooperation with the Criminal Justice Council or its successor agency what means exist for rapid and efficient communication in times of disaster emergencies. The division shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunication or other

## Interim actions

## Compensation

## Communications study

communication system or network. In studying the character or feasibility of any system or its several parts, the division shall evaluate the possibility of their multipurpose use for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

Sec. 15. MUTUAL AID. (a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the Division of Disaster Emergency Services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In reviewing local disaster plans, the governor or his agent shall consider whether they obtain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor or his agent to require an interjurisdictional agreement or arrangement pursuant to Section 9 of this Act that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid, but in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

Sec. 16. WEATHER MODIFICATION. The Division of Disaster Emergency Services shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request in the name of the governor that the officer or agency empowered to issue permits for weather modification operations suspend the issuance of the permits. On the governor's request, no permits may be issued until the division informs the officer or agency that the danger has passed.

"Sec. 17. Property damage insurance covering state facilities may be purchased by agencies of the state when necessary to qualify for federal disaster assistance funds. If sufficient funds are not available for the required insurance, then the agency may petition the Disaster Emergency Funding Board to purchase the insurance in the agency's behalf. The board may expend money from the Disaster Contingency Fund to purchase the required insurance."

Sec. 18. SEVERABILITY. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Act, and to this end the provisions of this Act are held to be severable. All plans, regulations, and executive orders and proclamations not in conflict herewith are continued in full force and effect.

Sec. 19. REPEALER. The Texas Disaster Act of 1973 (Article 6889-6, Vernon's Texas Civil Statutes) is repealed.

Sec. 20. EMERGENCY.

## Mutual Aid

## Weather Modification

## Insurance

## Severability

## Repealer

## Emergency

NOTE: Sec. 17 was substituted by S.B. 638 (Chap. 443) Acts of 65th Leg., Reg. Ses. 1977

TEXAS INSURANCE CODE  
ARTICLE 21.49.  
CATASTROPHE PROPERTY  
INSURANCE POOL ACT

Section 1. It is hereby declared by the Legislature that an adequate market for windstorm, hail and fire insurance is necessary to the economic welfare of the State of Texas and that without such insurance the orderly growth and development of the State of Texas would be severely impeded. It is therefore the purpose of this Act to provide a method whereby adequate windstorm, hail and fire insurance may be obtained in certain designated portions of the State of Texas.

Sec. 2. This Act shall be known as the "Texas Catastrophe Property Insurance Pool Act."

Sec. 3. In this Act, unless the context clearly dictates to the contrary:

(a) "Board" means the State Board of Insurance of the State of Texas.

(b) "Association" means the Texas Catastrophe Property Insurance Association as established pursuant to the provisions of this Act.

(c) "Plan of Operation" means the plan for providing Texas windstorm and hail insurance in a catastrophe area and Texas fire and explosion insurance in an inadequate fire insurance area which plan has been approved by the Board for operation by the Association pursuant to the provisions of this Act, which plan may, among other things, provide for limits of liability for each structure insured, and/or the corporeal movable property located therein.

(d) "Texas Windstorm and Hail Insurance" means deductible insurance against direct loss to insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(e) "Texas Fire and Explosion Insurance" means insurance against direct loss to insurable property as a result of fire and explosion as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within the seacoast territory as defined by the State Board of Insurance in the General Basis Schedule, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under the terms of this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. When repair of damage to a

CAT POOL

Purpose

Title

Definitions

- board
- association
- plan of operation
  
- Texas Windstorm and Hail Insurance
- Texas Fire and Explosion Insurance
- Insurable Property

structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation.

(g) "Net Direct Premiums" means gross direct written premiums less return premiums upon canceled contracts (irrespective of reinsurance assumed or ceded) written on property in this State as defined by the Board of Directors of the Association.

(h) "Catastrophe Area" means a city or county in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within such city or county, due to such insurable property being located within a city or county subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Such designation shall be revoked by the Board if it determines, after notice of not less than 10 days and a hearing, that windstorm and hail insurance in such catastrophe area is no longer reasonably unavailable to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that windstorm and hail insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated catastrophe area or areas, then the Association may request in writing that the Board revoke the designation of any or all of such catastrophe areas and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request be approved, revoke such designation or designations.

(i) "Inadequate Fire Insurance Area" means a city or county which is, or is within an area, designated as a catastrophe area, as defined in Paragraph (h), above, and in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that fire and explosion insurance is not reasonably available to a substantial number of owners of insurable property within such city or county. Such designation shall be revoked by the Board if it determines, after 10 days' notice and a hearing, that fire and explosion insurance in such inadequate fire insurance area is no longer reasonably unavailable to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that fire and explosion insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated inadequate fire insurance area or areas, then the Association may request in writing that the Board revoke the designation of any or all such inadequate fire insurance areas, and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request is approved, revoke such designation or designations.

(j) "Insurance" as hereinafter used in this Act shall mean the types of insurance described in Paragraphs (d) and (e) of this Section 3.

(k) "Insurers" means all property insurers authorized to transact property insurance in this State and specifically includes and makes this Act applicable to county mutual companies, Lloyds and reciprocal or interinsurance exchanges, but shall not include (a) farm mutual insurance companies as authorized in Chapter 16 of this Code; (b) county mutual fire insurance com-

- net direct premiums

- catastrophe area

- inadequate fire insurance area

- insurance

- insurers

panies which are writing exclusively industrial fire insurance policies as defined in Article 17.02 of this Code; and (c) any companies now operating under Chapters 12 and 13 of Title 78 of the Revised Civil Statutes of Texas, 1925, as amended, which have heretofore been repealed.

Sec. 4. (a) The Association which is hereby created shall consist of all property insurers authorized to transact property insurance in this State, except those companies that are prevented by law from writing coverages available through the pool on a Statewide basis. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence, as a condition of its authority to transact the business of insurance in this State. Any insurer which ceases to be a member of the Association shall remain liable on contracts of insurance entered into during its membership in the Association to the same extent and effect as if its membership in the Association had not been terminated.

(b) The organizational plan of certain types of insurers precludes such insurers from writing insurance coverage for the State of Texas, any city, political subdivision or agency of the State. When insuring property of the State of Texas, any city, political subdivision or agency of the State, the Association shall not cause such policies to be issued in such companies, nor shall such companies be included as reinsurers for any policies of insurance in this category.

Sec. 5. (a) The Association shall, pursuant to the provisions of this Act and the plan of operation, and with respect to insurance on insurable property, have the power on behalf of its members to cause to be issued policies of insurance to applicants, to assume reinsurance from its members, and to cede reinsurance to its members and to purchase reinsurance on behalf of its members.

(b) On or before 10 days after the effective date of this Act the Board shall appoint a temporary board of directors of the Association which shall consist of seven representatives of members of the Association, selected so as to fairly represent various classes of member insurers. Such temporary board of directors shall prepare and submit a plan of operation and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

(c) All members of the Association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of such member written in this State during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the Association, as furnished to the Association by the Board after review of annual statements, other reports and other statistics the Board shall deem necessary to provide the information herein required and which the Board is hereby authorized and empowered to obtain from any member of the Association, provided, however, that a member shall, in accordance with the plan of operation, be entitled to receive credit for similar insurance voluntarily written in the area designated by the Board and its participation in the writings in the Association shall be reduced in accordance with the provisions of the plan of operation. Each member's participation in the Association shall be determined annually in the same manner as the initial determination. For purposes of determining participation in the Association, two or more members having a common ownership or operating in this State under common management or control shall be treated as if they constituted a single member. Any insurer authorized to write and engaged in writing any insurance, the writing of which required such insurer to be a member of the Association, who becomes authorized to engage in writing such insurance after the effective date of this Act shall become a member of the Association on

## Composition of Association

- exclusions

## Association to issue policies

- temporary directors

- participation in association

the 1st day of January immediately following such authorization and the determination of such insurer's participation in the Association shall be made as of the date of such membership in the same manner as for all other members of the Association.

(d) On or before 45 days after the effective date of this Act, the temporary board of directors of the Association shall submit to the Board for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors and shall provide for the efficient, economical, fair, and nondiscriminatory administration of the Association. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the Association, plan for assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amount of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the board of directors and the Board to carry out the purposes of this Act. The proposed plan shall be reviewed by the Board and approved, unless it finds that such plan does not properly fulfill the purposes of this Act. In the review of the proposed plan the Board may, in its discretion, consult with the directors of the Association and may seek any further information which it deems necessary for a decision. If the Board approves the proposed plan, it shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Board disapproves all or any part of the proposed plan of operation, it shall return the same to the directors with its written statement setting forth the reasons for the disapproval and any recommendations it may wish to make. The directors may alter the plan in accordance with the recommendations of the Board or shall, within 15 days from the date of disapproval, return a new plan to the Board. In the event the Association has not proposed a plan satisfactory to the Board on or before the 14th day of May, 1971, the Board shall certify and adopt a plan under which the Association shall operate.

The Directors of the Association may, subject to the approval of the Board, amend the plan of operation at any time.

In the absence of an appeal, the Association shall adopt amendments to the plan proposed by the Board within 30 days.

Sec. 5A. (a) After notice and a hearing as provided in Subsection (b) of this section, the Board may issue any orders which it considers necessary to carry out the purposes of this Act including, but not limited to, maximum rates, competitive rates, and policy forms.

(b) Before an order is adopted by the Board, it shall post notice of a hearing on the order at the Secretary of State's office in the State Capitol and shall hold a hearing to consider the proposed order. Any person may appear and testify for or against the adoption of the order.

Sec. 6. (a) Any person having an insurable interest in insurable property located in an area designated by the Board shall be entitled to apply to the Association for insurance provided for under the plan of operation and for an inspection of the property under such rules and regulations, including an inspection fee, if any, as determined by the Board of Directors of the Association and approved by the State Board of Insurance. The term "insurable interest" as used in this subsection shall be deemed to

- plan of operation

Board to prescribe rates and forms

- notice and hearing

Application for insurance



include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage. Application shall be made on behalf of the application by a Local Recording Agent and shall be submitted on forms prescribed by the Association. The application shall contain a statement as to whether or not the applicant has or will submit the premium in full from personal funds, or if not, to whom a balance is or will be due.

(b) If the Association determines that the property is insurable, the Association, upon payment of the premium, shall cause to be issued a policy of insurance as may be provided in the plan for a term of one year.

In the event an agent or some other person, firm, or corporation shall finance the payment of all or a portion of the premium and there is a balance due for the financing of such premium and such balance, or any installment thereof, is not paid within 10 days after the due date, the agent or other person, firm, or corporation to whom such balance is due may request cancellation of the insurance by returning the policy, with proof that the insured was notified of such return, or by requesting the Association to cancel such insurance by notice mailed to the insured and any others shown in the policy as having an insurable interest in the property. Upon completion of cancellation, the Association shall refund the unearned premium, less any minimum retained premium set forth in the plan of operation, to the person, firm, or corporation to whom the unpaid balance is due. In the event an insured requests cancellation of insurance, the Association shall make refund of such unearned premium payable to the insured and the holder of an unpaid balance. The Local Recording Agent, who submitted the application, shall refund the commission on any unearned premium in the same manner.

(c) Any policy issued pursuant to the provisions of this Act may be renewed annually, upon application therefor, so long as the property continues to meet the definition of "insurable property" set forth in Section 3 of this Act.

(d) Deleted by Acts 1973, 63rd Leg., p. 1043, ch. 406, sec. 4.

Sec. 7. The Board shall prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Association and shall promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms.

Sec. 8. (a) The Association shall file with the Board every manual of classifications, rules, rates which shall include condition charges, every rating plan, and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the character and the extent of the coverage contemplated and shall be accompanied by the policies and endorsements forms proposed to be used, which said forms and endorsements may be designed specifically for use by the Association and without regard to other forms filed with, approved by, or promulgated by the Board for use in this State.

(b) For the purpose of making such filing the Association may utilize filings made by licensed rating organizations and it may utilize the loss or expense statistics or recommendations collected and furnished to the Board by an advisory organization authorized under Article 5.73, Insurance Code of Texas.

(c) Any filing made by the Association pursuant hereto shall be submitted to the Board and as soon as reasonably possible after the filing has been made the Board shall, in writing, approve, modify, or disapprove the same; provided that any filing shall be determined approved unless modified or disapproved within 30 days after date of filing.

- policy issuance

- policy renewal

- coverage deletions

Association report to Board

- data source

- Board decision

(d) If at any time the Board finds that a filing so approved no longer meets the requirements of this Act, it may, after a hearing held on not less than 20 days' notice to the Association specifying the matters to be considered at such hearing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this Act and shall be effective not less than 30 days after its issuance.

(e) All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to the past and prospective loss experience within and outside the State of hazards for which insurance is made available through the plan of operation, if any, to expenses of operation including acquisition costs, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph. Such rates may include rules for classification of risks insured hereunder and rate modifications thereof. All such provisions, however, as respects rates, classifications, standards and premiums shall be without prejudice to or prohibition of provision by the Association for consent rates on individual risks if the rate and risk are acceptable to the Association and as is similarly provided for, or as is provided for, in Article 5.26(a), Texas Insurance Code, and this provision or exception on consent rates is irrespective of whether or not any such risk would otherwise be subject to or the subject of a provision of rate classification or eligibility.

(3) Rates shall be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.

(4) Commissions paid to agents shall be reasonable, adequate, not unfairly discriminatory and nonconfiscatory.

(f) For the purpose of this Act the applicant under Section 6(a) hereof shall be considered to have consented to the appropriate rates and classifications authorized by this Act irrespective of any and all other rates or classifications.

(g) All premiums written and losses paid under this Act as appropriate shall be included in applicable classifications for general rate making purposes.

(h) Except as the State Board of Insurance shall determine to be necessary after a hearing thereon, or except as provided in "consent to rate" statutes, any rates established under the provisions of the Insurance Code covering any risks or classes of risks which are located inland of the Intracoastal Canal on the Texas coastline (or inward of the boundary here authorized to be established by the State Board of Insurance amending such Intracoastal Canal boundary), may not be more than the maximum rates set by the Board under Subchapter C, Chapter 5, Texas Insurance Code, for similar risks or classes of risks under the same lines and kinds of insurance. The maximum rates applicable to risks and classes of risks located inland of the Intracoastal Canal on the Texas coastline shall apply also to similar risks and classes of risks located seaward of the Intracoastal Canal if the property is protected by a sea wall constructed by the Corps of Engineers, or if it is determined by the Board that the property or risk is protected by other adequate structure or by any natural physical feature of the terrain that provides protection, and the State Board of Insurance may adjust rates to take into account the degree of such protection.

If valid flood or rising water insurance coverage exists and is maintained on any risk being insured in the pool the State

- may withdraw approval

- rate requirements

- consent to rates

- classifications

- coastal rates

Board of Insurance may provide for a rate and reduction in rate of premium as may be appropriate.

The State Board of Insurance may make provision by rule and regulation requiring catastrophe reserves in respect of the premium received on risks or classes of risks located seaward of the boundary of the Intracoastal Canal and may require catastrophe reserves on risks or classes of risks located inland of the boundary of the Intracoastal Canal and as such boundary may be amended. The amount required to be reserved for catastrophes (as such catastrophes are defined by the Board) shall be that portion of the pure premium as is actuarially made attributable, as ascertained by the Board, to prospective catastrophic loss. The portion of the pure premium attributable to prospective catastrophic loss shall not be income and shall be unearned until the occurrence of an applicable catastrophe as defined and shall be held in trust by the pool or trustee of the pool until losses are paid therefrom under such reasonable rules and regulations as the State Board of Insurance shall prescribe or approve.

Sec. 9. Any person insured pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling or decision of the Association, may, within 30 days after such act, ruling or decision, appeal to the Board. In the event the Association is aggrieved by the action of the Board with respect to any ruling, order, or determination of the Board, it may, within 30 days after such action, make a written request to the Board for a hearing thereon. The Board shall hear the Association, or the appeal from an act, ruling or decision of the Association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the Association making such request or the person, or his duly authorized representative, appealing from the act, ruling or decision of the Association. Within 30 days after such hearing, the Board shall affirm, reverse or modify its previous action or the act, ruling or decision appealed to the Board. Pending such hearing and decision thereon, the Board may suspend or postpone the effective date of its previous rule or of the act, ruling or decision appealed to the Board. The Association, or the person aggrieved by any order or decision of the Board may thereafter appeal to the District Court of Travis County, Texas, and not elsewhere, in accordance with Article 1.04(f) of the Insurance Code of Texas.

Sec. 10. There shall be no liability on the part of and no cause of action of any nature shall arise against the Board or any of its staff, the Association or its agents or employees, or against any participating insurer or its agents or employees, for any inspections made under the plan of operation or any statements made in good faith by them in any reports or communications concerning risks submitted to the Association, or at any administrative hearings conducted in connection therewith under the provisions of this Act.

Sec. 11. Each person serving as a director of the Association, each member of the Association, and each officer and employee of the Association shall be indemnified by the Association against all costs and expenses actually and necessarily incurred by him or it in connection with the defense of any action, suit, or proceeding in which he or it is made a party by reason of his or its being or having been a director or member of the Association, or an officer or employee of the Association except in relation to matters as to which he or it has been judged in such action, suit or proceeding to be liable by reason of misconduct in the performance of his or its duties as a director of the Association or a member or officer or employee of the Association, provided, however, that this indemnification shall in no way indemnify a member of the Association from participating in the writings, expenses, profits, and losses of the Association in the manner

Board to hear appeals

No liability for good faith statements

Association indemnity

set out in this Act. Indemnification hereunder shall not be exclusive of other rights to which such member or officer may be entitled as a matter of law.

Sec. 12. The Association shall file in the office of the Board annually a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year at such times and covering such periods as may be designated by the Board. Such statement shall contain such matters and information as are prescribed by the Board and shall be in such form as is required by it.

Sec. 13. This Act shall become effective from and after passage.

Sec. 14. All laws or parts of laws in conflict herewith are hereby repealed to the extent necessary to accomplish the purposes of this Act.

Sec. 15. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 16. [Emergency provision].

Sec. 17. This Act is hereby codified as Article 21.49 of the Texas Insurance Code.

Sec. 18. This Act does not apply to farm mutual insurance companies, as defined in Article 16.01 of the Insurance Code, nor does it apply to any existing company chartered under old Chapter 12, Title 78, Revised Civil Statutes of Texas, 1925, repealed by Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, Chapter 40.

Annual statement

Effective date

Repealer

Severability

Emergency

Codification

Exclusions

## PARKS AND WILDLIFE CODE

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### TITLE 1. GENERAL PROVISIONS

#### CHAPTER 1. GENERAL PROVISIONS

##### SUBCHAPTER A. PURPOSE AND POLICY

###### § 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 488, Acts of the 58th Legislature, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent parks and wildlife law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

##### SUBCHAPTER B. PROPERTY OF THE STATE

###### § 1.011. Property of the State

(a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

(d) The Parks and Wildlife Department shall reg-

ulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

##### SUBCHAPTER C. DEFINITIONS

###### § 1.101. Hunt and Catch Defined

In this code:

(1) "Hunt" means seek or pursue with intent to take or kill and includes take, kill, and an attempt to take or kill.

(2) "Catch" means take or kill and includes an attempt to take or kill.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### TITLE 2. PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 11. PARKS AND WILDLIFE DEPARTMENT

##### SUBCHAPTER A. GENERAL PROVISIONS

###### § 11.001. Definitions

In this code:

(1) "Commission" means the Parks and Wildlife Commission.

(2) "Department" means the Parks and Wildlife Department.

(3) "Director" means the executive director of the Parks and Wildlife Department.

(4) "Chairman" means the chairman of the Parks and Wildlife Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 11.002 to 11.010 reserved for expansion]

##### SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

###### § 11.011. Parks and Wildlife Department

The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission. [Acts 1975, 64th Leg., p. 1405, ch. 541, § 1, eff. Sept. 1, 1975.]

\* \* \*

###### § 11.012. Commission

(a) The commission consists of six members appointed by the governor with the advice and consent of two-thirds of the members of the senate present and voting.

(b) If the senate is not in session, the governor shall appoint the members and issue commissions to them as provided by law, and their appointment shall be submitted to the next session of the senate for its advice and consent in the manner that ap-

pointments to fill vacancies under the constitution are submitted to the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 11.017. Executive Director

The commission may appoint an executive director who is the chief executive officer of the department and performs its administrative duties. The director serves at the will of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 11.018. Employees

The director may appoint heads of divisions, game management officers, park managers, and other employees authorized by appropriations and necessary for administering the duties and services of the department. These employees serve at the will of the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 11.031. Game, Fish, and Water Safety Fund

There is in the state treasury a special fund called the 'game, fish, and water safety fund'.

#### § 11.032. Game, Fish, and Water Safety Fund: Sources

The department shall deposit to the credit of the game, fish, and water safety fund all revenue, less allowable costs, from the following sources:

- (1) all types of fishing and shrimping licenses;
- (2) all types of hunting licenses and stamps;
- (3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;
- (4) sale of marl, sand, gravel, shell, and mudshell;
- (5) oyster bed rentals and permits;
- (6) federal funds received for research and development of commercial fisheries and state funds appropriated for this purpose;
- (7) sale of property, less advertising costs, purchased from this fund or a special fund that is now part of this fund;
- (8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, and any other wildlife resources of this state;
- (9) sale of rough fish by the department;
- (10) fees for importation permits;
- (11) fish farm licenses;
- (12) fees from supplying fish for or placing fish in water located on private property;
- (13) sale of seized pelts;
- (14) sale or lease of grazing rights to and the products from game preserves, sanctuaries, and management areas;
- (15) contracts for the removal of fur-bearing animals and reptiles from wildlife management areas;
- (16) motorboat registration fees;
- (17) motorboat manufacturer or dealer registration fees;
- (18) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code; and

(19) any other source provided by law.

#### § 11.033. Use of Game, Fish, and Water Safety Fund

The game, fish, and water safety fund may be used for the following purposes only:

- (1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;
- (2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;
- (3) scientific investigation and survey of marine life for the better protection and conservation of marine life;
- (4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, game preserves, wildlife management areas, and public hunting grounds;
- (5) propagation and distribution of marine life, game animals, and wild birds;
- (6) protection of wild birds, fish, and game;
- (7) purchase, repair, and operation of boats and dredges;
- (8) research and management of the fish and game resources of this state;
- (9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, and sand, shell, and gravel;
- (10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;
- (11) removing rough fish from public water;
- (12) construction and maintenance of artificial reefs under Section 12.016 of this code;
- (13) administration of the water safety laws as set out in Chapter 31 of this code;
- (14) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;
- (15) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31 of this code; and
- (16) any other use provided by law.

\* \* \*

## CHAPTER 12. POWERS AND DUTIES CONCERNING WILDLIFE

### SUBCHAPTER A. GENERAL POWERS AND DUTIES

#### § 12.001. General Duties.

- (a) The department shall administer the laws relating to game, fish, oysters, and marine life, as set out in this code.
- (b) The department may:
  - (1) collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department;
  - (2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;
  - (3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;

(4) manage the propagation and distribution of fish in state fish hatcheries; and

(5) manage the propagation and distribution of birds and game in state reservations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 12.009. Seafood Consumption Program

(a) The department shall develop and administer a market promotion program to foster and expand the sale and consumption of seafood by the public. The department may use its own personnel or contract for personnel and use only state funds or state funds in conjunction with federal or private funds.

(b) Forty percent of the funds collected from commercial fisherman's license fees, 20 percent of wholesale fish dealers' license fees and wholesale truck dealers' fish license fees, and 50 percent of shrimp house operators' license fees shall be used by the department in carrying out the program required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 12.013. Power to Take Wildlife

The department may take, transport, release, and manage any of the wildlife and fish in this state for investigation, propagation, distribution, or scientific purposes. It is a defense in any prosecution of an employee of the department for a violation of any law for the protection of wildlife or fish that the employee was acting within the scope of this authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 12.016. Artificial Reefs

The department may construct or contract for the construction of artificial reefs in the coastal water of this state or in international or United States water adjacent to the coastal water of this state. The department may also accept any such reefs which have previously been constructed by the Texas Coastal and Marine Council and marked with buoys and agree to maintain such buoys and other location navigation markers in the future as may be necessary. The department may acquire any acceptable materials including surplus vessels under the provisions of federal law for use in developing future new reefs or adding to existing reefs.

#### § 12.017. Damaging Markers

(a) No person may damage, deface, destroy, or remove, tie up a boat to, or in any way render inoperative or ineffective a marker, buoy, light or sound signal, radar reflector, or daymark or any part of these devices, including the attachment intended to hold the device in place.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction of a violation of Subsection (a) of this section, the person shall be punished by a fine of not less than \$200 nor more than \$500.

(c) The fact that a device or part of a device specified in Subsection (a) of this section may have been established by the state in water adjacent to but outside the territorial water of the state is not a defense against a prosecution for damaging state property.

[Added by Acts 1977, 65th Leg., p. 1126, ch. 421, § 2, eff. Aug. 29, 1977.]

[Sections 12.018 to 12.100 reserved for expansion]

#### SUBCHAPTER B. ENFORCEMENT POWERS

##### § 12.101. Duty to Enforce Law

The department shall enforce all state laws relating to the protection and preservation of wild game, wild birds, and fish and other marine life.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 12.102. Power to Arrest

(a) An authorized employee of the department has the same authority as a sheriff to arrest, serve criminal process, and require aid in serving criminal process in connection with violations of the laws relating to game, fish, and birds. The department may receive the same fees as are provided by law for sheriffs in misdemeanor cases.

(b) An authorized employee of the department may arrest without a warrant any person found in the act of violating any law relating to game, birds, or fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 12.103. Entering Land

To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 12.104. Right to Search

An authorized employee of the department may search a game bag, vehicle, or other receptacle if he has reason to believe that the game bag, vehicle, or receptacle contains game unlawfully killed or taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 12.105. Suits

(a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 12.106. Notice to Appear

(a) Any peace officer of this state or a political subdivision of this state or an authorized employee

of the department who arrests a person for a violation of a game, fish, or park law of this state or of a regulation of the commission may deliver to the alleged violator a written notice to appear before the justice court having jurisdiction of the offense not later than 15 days after the date of the alleged violation.

(b) On signing the written notice to appear and thereby promising to appear as provided in the notice, the alleged violator shall be released.

(c) Failure to appear within the time specified in the written notice is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200, and a warrant for the arrest of the alleged violator may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

#### § 12.109. Confiscated Marine Life

(a) When an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other marine life, he shall seize and sell the marine life and dispose of the proceeds as provided in this section. If the person is in possession of a greater quantity of marine life than is authorized by law, all such marine life shall be deemed to have been taken in contravention of the law and shall be seized by the arresting officer. The officer shall give to the person a receipt for all marine life seized.

(b) The confiscated marine life shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund No. 900 pending the outcome of the action taken against the person charged with illegal possession.

(c) Unless the person is found guilty, all the proceeds shall be paid to the owner of the marine life. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(k), eff. Sept. 1, 1975.]

\* \* \*

#### § 12.1105. Seizure and Disposition of Unlawful Nets; Inside Water

(a) When a game warden or authorized employee of the department finds in the inside water of the state a seine, net, trawl, trap, or other device that is in the water in violation of a provision of this code or in violation of a lawful regulation of the commission or is aboard a vessel in violation of a provision of this code or a lawful regulation of the commission, the warden or employee shall seize without a warrant the seine, net, trawl, trap, or device.

(b) When an alleged violator is charged with an offense in connection with the unlawful use or possession of the seine, net, trawl, trap, or device seized by the warden or employee, the warden or employee shall hold the seine, net, trawl, trap, or device as evidence. Except as provided in Subsection (f) of this section, on a final conviction for the offense of the alleged violator, including a final judgment arising from a plea of nolo contendere, the warden or employee shall destroy the seine, net, trawl, trap, or device. If the alleged violator is not guilty of the offense or if the charge is not prosecuted and dismissed, the seine, net, trawl, trap, or device shall be returned to the owner.

(c) If no person is charged with an offense in connection with the seizure of a seine, net, trawl,

trap, or other device under this section, and no person is found in possession of the seine, net, trawl, trap, or device, the warden or employee shall give notice of the seizure to the county judge or a judge of a county court at law of the county where the seizure occurred. The notice must include a description of the items seized and the location of the seizure. The court shall then direct the sheriff or a constable to post a copy of the notice in the county courthouse for not less than 10 days. At the expiration of 10 days, the court shall hold a hearing to determine if the seine, net, trawl, trap, or device was used or possessed in violation of a provision of this code or of a lawful regulation of the commission. Except as provided in Subsection (f) of this section, if the use or possession was unlawful, the warden or employee shall destroy the seine, net, trawl, trap, or device.

(d) A game warden or authorized employee of the department who seizes items under this section is immune from liability and from suit for a seizure or destruction of a net as authorized by this section.

(e) This section does not apply to shrimp trawls used for catching shrimp or on board a licensed shrimp boat.

(f) The Parks and Wildlife Department, when requested by authorized representatives of units of The University of Texas System, The Texas A & M University System, the Texas A & I University System, Pan American University, the Lamar University System, and Southwest Texas State University, engaged in teaching and research related to marine science and oceanography, may transfer to such units of said universities and university systems nets, seines, and other marine equipment, which have been seized under this section, to be used in carrying out the teaching and research programs within said institutions.

[Added by Acts 1977, 65th Leg., p. 381, ch. 190, § 3, eff. May 20, 1977.]

\* \* \*

#### § 13.313. Fish and Wildlife Restoration Projects

The department may conduct and establish cooperative fish and wildlife restoration projects under the provisions of Public Law No. 415, Acts of the 75th Congress, and Public Law No. 681, Acts of the 81st Congress, as amended.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 13.314. Compliance in Fishery Management

The department may cooperate and contract with the Gulf of Mexico Fishery Management Council or the National Marine Fisheries Service for conduct of such work as may be necessary in complying with requirements of the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).

[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 1, eff. June 15, 1977.]



## CHAPTER 46. FISHING LICENSES

### SUBCHAPTER A. GENERAL FISHING LICENSE

#### § 46.001. Prohibited Acts

Except as provided in this chapter, no person may fish in the water of this state unless he has obtained a fishing license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 46.0011. Resident, Nonresident, and Alien Defined

For this chapter, resident, nonresident, and alien are defined in Section 42.001 of this code.

[Added by Acts 1977, 65th Leg., p. 1110, ch. 409, § 1, eff. Aug. 29, 1977.]

#### § 46.002. Exemptions

(a) A license issued under this chapter is not required of a resident:

(1) under 17 years old or 65 years old or older;

(2) fishing on property that he owns or on which he resides;

(3) fishing on property that a member of his immediate family owns or on which the family resides;

(4) fishing in the county of his residence with a trotline, throw line, or ordinary pole and line without a reel or other winding device;

(5) having a commercial fishing license of this state; or

(6) who is a member of a group of 25 or more persons who are visiting as tourists and do their fishing as a group; or

(7) who is a resident of a hospital or state school, who is engaging in recreational fishing as a part of medically approved therapy, and who is fishing under the immediate supervision of personnel approved or employed by the hospital or state school.

(b) A license issued under this chapter is not required of a resident of the Republic of Mexico who is traveling in this country on a visa granted by the United States and who is fishing in coastal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 115, ch. 56, § 1, eff. April 13, 1977; Acts 1977, 65th Leg., p. 1110, ch. 409, § 5, eff. Aug. 29, 1977.]

#### § 46.003. Exception for Blind and Disabled Veterans

(a) The following persons are entitled to receive a special fishing license on proof of eligibility and on the payment of a fee of \$1.25, 25 cents of which may be retained as a collection fee:

(1) a blind person as defined by Section 1, Chapter 227, Acts of the 59th Legislature, Regular Session, 1965;<sup>1</sup> and

(2) a disabled veteran of the armed forces of the United States who has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more, and who is receiving compensation from the United States for the disability.

(b) The department may make regulations concerning proof of eligibility under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 132, ch. 61, § 1, eff. Aug. 29, 1977.]

<sup>1</sup> Civil Statutes, art. 678d.1.

#### § 46.004. License Fees

(a) The resident fishing license fee is \$4.50.

(b) The nonresident or alien fishing license fee is an amount set by the commission but not less than \$10.50.

(c) The license deputy issuing the license may retain 50 cents as a fee for collecting the license fee and issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1110, ch. 409, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1475, ch. 599, § 1, eff. Sept. 1, 1977.]

#### § 46.005. Temporary Saltwater Sportfishing License

(a) Any person is entitled to receive from the department a license allowing fishing for sporting purposes in salt water for a period of three days.

(b) The fee for the temporary saltwater sportfishing license is \$1.25 of which fee 25 cents may be retained as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 46.0051. Temporary Nonresident License

(a) A nonresident or alien is entitled to receive from the department a license allowing fishing for sporting purposes in public water for a period of five days.

(b) The license fee is an amount set by the commission but not less than \$4.50, of which fee 50 cents may be retained as a collection fee.

#### § 46.006. Duplicate License

(a) If a license issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate license on application of the license holder and receipt of a 50-cent duplicate license fee.

(b) The application for a duplicate license must be an affidavit containing:

(1) the facts concerning the loss or destruction of the license; and

(2) the serial number of the lost or destroyed license.

(c) The license deputy issuing the license may retain 25 cents as a fee for issuing the duplicate license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 46.007. Expiration of Licenses

(a) A license required or authorized by this subchapter is valid only during the yearly period for which it is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 of a year and extends through August 31 of the next year.

(b) A duplicate license is valid for the period of validity of the original license only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1110, ch. 409, § 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1536, ch. 626, § 1, eff. Aug. 29, 1977.]

Sections 3 and 4 of ch. 626 provided:

"Sec. 3. (a) Subsection (a) of Section 46.007, Parks and Wildlife Code, applies to annual licenses required or authorized by Subchapter A of Chapter 46, Parks and Wildlife Code, and issued after August 31, 1977. Those licenses issued before June 1, 1977, expire one year after the date on which they were issued. Those licenses issued after May 31, 1977, and before September 1, 1977, expire on August 31, 1978.

(b) This section expires on August 31, 1978.

"Sec. 4. This Act takes effect June 1, 1977."

#### § 46.008. License Form

A license issued under this subchapter must contain:

(1) the year for which the license is issued (printed across the face of the license);

(2) the name, address, and residence of the

licensee;

(3) an approximate weight, height, age, and color of hair and eyes of the licensee for identification in the field; and

(4) the statement: "This license does not entitle the holder to fish on the enclosed and posted lands of another without the consent of the owner or his agent."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 599, § 2, eff. Sept. 1, 1977.]

\* \* \*

#### § 46.013. Issuance or Acceptance of License

No person may issue or accept a license required by this subchapter except on a form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 46.014. Fishing Under the License of Another

No person may fish under a license issued to another or allow another person to fish under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 46.015. Penalty

A person who violates a provision of this subchapter or who fails or refuses to show an officer his license on the request of the officer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 46.016-46.100 reserved for expansion]

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### CHAPTER 47. COMMERCIAL FISHING LICENSES

#### SUBCHAPTER A. LICENSES

##### § 47.001. Definitions

In this chapter:

(1) 'Commercial fisherman' means a person who catches fish, oysters, or other edible aquatic products from the water of this state for pay or for the purpose of sale, barter, or exchange.

(2) 'Commercial finfish fisherman' means a person who catches only finfish from the waters of this state for pay or for the purpose of sale, barter, or exchange.

(3) "Wholesale fish dealer" means a person engaged in the business of buying for the purpose of selling, canning, preserving, processing, or handling for shipments or sale fish, oysters, shrimp, or other commercial edible aquatic products to retail fish dealers, hotels, restaurants, cafes, or consumers.

(4) "Retail fish dealer" means a person engaged in the business of buying for the purpose of sale to a consumer fresh or frozen edible aquatic products.

(5) "Bait dealer" means a person who catches or transports for sale, or who is engaged in the business of selling minnows, fish, shrimp, or other aquatic products for fish bait.

(6) "Fish guide" means a person who operates a boat for compensation to accompany or to transport a person engaged in fishing in the water of this state.

(7) "Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

(8) "Nontidal water" means all the water of this state excluding tidal water.

(9) "Place of business" means the place where orders for aquatic products are received or where aquatic products are sold, including a vehicle if aquatic products are sold from the vehicle, but does not include a public cold-storage vault, temporary receiving station, or vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.

(10) "Menhaden fish plant" means a fixed installation on land designed, equipped, and used to process fish and the by-products of fish by the application of pressure, heat, or chemicals or a combination of pressure, heat, and chemicals to raw fish to convert the raw fish into fish oil, fish solubles, fish scraps, or other products.

(11) "Red drum" means the species *Sciaenops ocellata*, commonly called "redfish."

(12) 'Resident' means an individual, other than an alien, who has been a resident of this state for more than six months immediately before applying for a license from the department.

(13) 'Nonresident' means an individual who is not a resident.

(14) 'Finfish' means those living natural resources having either cartilaginous or bony skeletons (*Chondrichthyes* and *Osteichthyes*).

##### § 47.002. General Commercial Fisherman's License

(a) No person may engage in business as a commercial fisherman unless he has obtained a general commercial fisherman's license.

(b) The license fee for a general commercial fisherman's license is \$10. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(c) The license fee for a nonresident general commercial fisherman's license is the amount that a Texas resident is charged in the state in which the nonresident is residing for a similar license or \$20, whichever amount is the larger. The department shall publish a list of nonresident fees according to the fees of each state and may alter the fee amounts in the list before September 1 of each year for the remainder of that license year. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

##### § 47.003. Commercial Finfish Fisherman's License

(a) No person may engage in business as a commercial finfish fisherman unless he has obtained a commercial finfish fisherman's license.

(b) The license fee for a resident commercial finfish fisherman's license is \$50. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(c) The license fee for a nonresident commercial finfish fisherman's license is the amount that a Texas resi-

dent is charged in the state in which the nonresident is residing for a similar license or \$100, whichever amount is larger. The department shall publish a list of nonresident fees according to the fees of each state and may alter the fee amounts in the list before September 1 of each year for the remainder of that license year. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

(d) No person may be issued a commercial finfish fisherman's license unless the person files with the department at the time he applies for the license an affidavit containing statements that:

(1) not less than 50 percent of the applicant's gainful employment is devoted to commercial fishing;

(2) the applicant is not employed at any full-time occupation other than commercial fishing; and

(3) during the period of validity of the commercial finfish fisherman's license the applicant does not intend to engage in any full-time occupation other than commercial fishing.

(e) The department shall revoke a commercial finfish fisherman's license if:

(1) the holder engages in any full-time employment other than commercial fishing;

(2) the affidavit required by this section contains a false statement; or

(3) the holder violates any law or regulation of the commission more than one time providing for the conservation and protection of finfish and the holder is convicted of the violations by a proper court within a period of two years.

(f) If any person executes and files with the department an affidavit under this section that contains a false statement knowingly made by the person, the department shall revoke each fishing license held by the person at the time the determination is made.

#### § 47.004. Fish Guide License

(a) No person may engage in business as a fish guide unless he has obtained a fish guide license.

(b) The license fee for a fish guide license is \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.005. Fish Boat License

(a) A boat equipped with a motor of any kind or sails may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a fish boat license.

(b) The license fee for a fish boat license is \$3. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.006. Skiff License

(a) A boat propelled by oars or poles may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a skiff license and has firmly attached the skiff license to the boat.

(b) The license fee for a skiff license is \$1. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.007. Commercial Fishing Boat License

(a) No person may use a boat required to be numbered or registered under the laws of this state

or the United States for the purpose of catching or assisting in catching fish, oysters, or any other edible aquatic life, except shrimp and menhaden, from tidal water for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a commercial fishing boat license.

(b) The license fee for a commercial fishing boat license is \$6. Twenty-five cents of the fee may be retained by the issuing officer, except an employee of the department.

(c) A licensee under this section whose boat is destroyed, lost, or put to another use is not required to obtain another license if another boat is used to replace the previous one.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.008. Menhaden Boat License

(a) A boat may not be used for the purpose of catching menhaden in tidal water unless the owner of the boat has acquired a menhaden boat license.

(b) The license fee for each boat is \$200 a year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.009. Wholesale Fish Dealer's License

(a) No person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(b) The license fee for a wholesale fish dealer's license is \$250 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.010. Wholesale Truck Dealer's Fish License

The license fee for a wholesale truck dealer's fish license is \$125 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.011. Retail Fish Dealer's License

(a) No person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(b) The license fee for a retail fish dealer's license is:

(1) \$6 for each place of business in a city or town of less than 7,500 population according to the last preceding federal census;

(2) \$15 for each place of business in a city or town of not less than 7,500 nor more than 40,000 population according to the last preceding federal census; and

(3) \$20 for each place of business in a city or town of more than 40,000 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 47.012. Retail Oyster Dealer's License

(a) A retail fish dealer may engage in the business of buying only fresh or frozen oysters for the purpose of sale to the consumer if he obtains a retail oyster dealer's license.

(b) The license fee for a retail oyster dealer's license is \$5 for each place of business in a city or town of more than 7,500 population according to the last preceding federal census.

**§ 47.013. Retail Dealer's Truck License**

(a) A person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(b) The license fee for a retail dealer's truck license is \$25 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.014. Bait Dealer's License**

(a) No person may act as a bait dealer unless he has obtained a bait dealer's license.

(b) The license fee for a bait dealer's license is \$10 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 3, eff. Sept. 1, 1977.]

**§ 47.015. Seine or Net License**

(a) No person may use a seine or net for the purpose of catching edible aquatic life in the water of this state for pay or sale unless he has acquired a seine or net license.

(b) The license fee for a seine or net is \$1 for each 100 feet or fraction of 100 feet of the length of the seine or net.

(c) The seine or net license shall be metal and must be firmly attached to each 100 feet or fraction of 100 feet of the length of the seine or net.

(d) A seine or net license may not be issued for any seine or net that is longer than 1,800 feet or whose meshes are less than one and one-half inches from knot to knot.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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**§ 47.018. Interstate Transportation**

(a) No person may bring into this state aquatic products for the purpose of offering them for sale unless he has obtained a license issued under this subchapter. Aquatic products caught in another state may not be sold under a general commercial fisherman's license, commercial finfish fisherman's license, or a commercial red drum license.

(b) Aquatic products lawfully taken from the waters of another state may be sold within this state by licensed dealers without regard to size limitations imposed on such products taken within this state. A record of the source and disposition of such undersize or oversize products shall be maintained by the dealer for as long as the undersize or oversize products are retained and for at least 30 days thereafter.

**§ 47.019. Commercial Red Drum License**

(a) No person may catch or transport for the purpose of sale or may sell red drum taken from the tidal water of this state unless he has obtained from the department and possesses a valid commercial red drum license.

(b) The commercial red drum license fee is \$50.

(c) The department may issue red drum licenses, and a person may obtain a red drum license only during September of each year.

(d) No holder of a commercial red drum license may catch red drum at any time for any purpose other than sale.

(e) A commercial red drum license is valid from October 1 of the year for which it is issued through

September 30 of the next year and when catching red drum is permitted during that period.

(f) A person licensed under this chapter as a fish dealer is not required to have a commercial red drum license unless the person catches red drum from the water of this state for sale.

[Added by Acts 1977, 65th Leg., p. 720, ch. 270, § 2, eff. Sept. 1, 1977.]

Sections 15 to 17 of the 1977 Act provided:

"Sec. 15. (a) No person may purchase more than 200 pounds of whole red drum in one day from any one holder of a commercial red drum license or other holder of a commercial fishing license.

"(b) No holder of a commercial red drum license may catch and retain in one day more than 200 pounds of whole red drum. No holder of a commercial red drum license or two or more holders of commercial red drum licenses may possess in a single boat or conveyance more than 200 pounds of whole red drum at any time.

"(c) For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds.

"(d) Except as provided in this subsection, a person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200, and on a second or subsequent conviction is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which he is fishing. A person who violates Subsection (b) of this section, whether a first, second, or subsequent conviction, by catching and retaining 300 or more pounds of red drum in a day is guilty of a misdemeanor and is punishable by a fine of not less than \$200 nor more than \$1,000, by forfeiture of the license under which he is fishing, and by the confiscation of the red drum, nets, and trotlines in his possession.

"(e) Subsections (a) and (b) of this section expire on October 1, 1978.

"Sec. 16. This Act takes effect on September 1, 1977; except that Sections 8, 9, 10, 12, and 14 of this Act take effect on October 1, 1978.

"Sec. 17. Nothing in this Act shall be construed as conferring upon the Parks and Wildlife Department any additional authority not specifically set forth in this Act or not already in existence for opening or closing bay areas to the use of trawls, nets, and saltwater trotlines."

**§ 47.020. Commercial Red Drum License: Issuance and Revocation**

(a) No person may be issued a red drum license unless the person files with the department at the time he applies for the license an affidavit containing statements that:

(1) not less than 50 percent of the applicant's gainful employment is devoted to commercial fishing;

(2) the applicant is not employed at any full-time occupation other than commercial fishing;

(3) during the period of validity of the commercial red drum license the applicant does not intend to engage in any full-time occupation other than commercial fishing; and

(4) the applicant possesses a commercial fishing license issued by the department under this chapter.

(b) The department shall revoke a commercial red drum fishing license if:

(1) the holder engages in any full-time employment other than commercial fishing;

(2) the holder does not possess a valid commercial fishing license, other than the commercial red drum license;

(3) the affidavit required by this section contains a false statement; or

(4) the holder violates any law or regulation of the commission more than one time providing for the conservation and protection of red drum.

(c) If any person executes and files with the department an affidavit under this section that contains a false statement knowingly made by the person, the department shall revoke each commercial fishing license held by the person at the time the determination is made.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 3, eff. Sept. 1, 1977.]

[Sections 47.021 to 47.030 reserved for expansion]

**SUBCHAPTER B. PROVISIONS GENERALLY  
APPLICABLE TO COMMERCIAL  
FISHING LICENSES**

**§ 47.031. Expiration of Licenses**

(a) Except as provided in Subsections (b) and (c) of this section, all licenses issued under this chapter expire August 31 following the date of issuance.

(b) A menhaden boat license expires one year from the date of issuance.

(c) A menhaden fish plant license expires one year from the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.032. Refusal of License**

(a) Except as provided in Subsection (b) of this section, no person owing the state any amount for a license or fee under a final judgment of a court may receive a license under this chapter until the indebtedness is satisfied by payment to the department.

(b) Subsection (a) of this section does not apply to applicants for a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, or menhaden fish plant license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.033. Display of License**

All licenses, except a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, and menhaden fish plant license, must be publicly displayed at all times in the place of business of the licensee. Licenses required for vehicles transporting aquatic products for sale must be displayed in the vehicle.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.034. Fish Size**

(a) No person engaged in business as a commercial fisherman or wholesale or retail fish dealer may possess in his place of business or on a boat or vehicle for the purpose of sale these species of fish of greater or lesser length than set out in Subsection (c) of this section.

(b) No person may buy, sell, or offer for sale these species of fish of greater or lesser length than set out in Subsection (c) of this section.

(c) The maximum and minimum length of fish are as follows:

Fish	Maximum Length	Minimum Length
Redfish or channel bass	35 inches	14 inches
Flounder and speckled sea trout	None	12 inches
Sheephead and pompano	None	9 inches
Mackerel	None	14 inches
Gaff topsail	None	11 inches

(d) This section does not prohibit the processing and selling of lawful fish by cutting, filleting, wrapping, freezing, or otherwise preparing the fish for market.

(e) The possession of saltwater species of fish of greater or lesser length than set out in Subsection (c) of this section on board a licensed commercial shrimp boat engaged in the taking of shrimp or returning to port after taking shrimp is not a viola-

tion of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(1), eff. Sept. 1, 1975.]

**§ 47.035. Prima Facie Evidence**

Proof of possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle is prima facie evidence of possession for the purpose of sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.036. Venue**

Venue for a suit for possession of undersized or oversized fish is in the county where the illegal fish are found in possession, where the illegal fish are sold or offered for sale, or from which the illegal fish are shipped.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.037. Inspection**

No person may refuse to allow an employee of the department to inspect aquatic products handled by or in the possession of any commercial fisherman, wholesale fish dealer, or retail fish dealer at any time or in any place.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.038. Seines or Nets for Menhaden**

(a) Nets or purse seines used for catching menhaden may not be:

(1) less than one and one-half inch stretched mesh, excluding the bag;

(2) used in any bay, river, pass, or tributary, nor within one mile of any barrier, jetty, island, or pass, nor within one-half mile offshore in the Gulf of Mexico; or

(3) used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange.

(b) No person lawfully catching menhaden in the tidal water of this state may sell, barter, or exchange any edible aquatic products caught in a menhaden seine or net. Possession of edible aquatic fish in excess of five percent by volume of menhaden fish in possession is a prima facie violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**SUBCHAPTER C. PENALTIES, DISPLAY OF  
LICENSE, AND TRANSFER OF FUNDS**

**§ 47.051. Penalty**

A person who violates a provision of Section 47-002, 47.004 through 47.006, 47.009 through 47.015, 47.017, 47.032 through 47.034, or 47.037, of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and is subject to the forfeiture, for one year from the date of the conviction, of a license

held under the authority of the listed sections.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.052. Penalty**

(a) A person who fails to comply with or who violates a provision of Section 47.003 or 47.007 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than one month nor more than one year, or by both.

(b) The department may seize boats, nets, seines, trawls, or other tackle in the possession of a person violating the sections listed in Subsection (a) of this section and hold them until after the trial of the person.

(c) Violations of the above sections may also be enjoined by the attorney general by suit filed in a district court in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.053. Penalty**

(a) A person who violates a provision of Section 47.008, 47.016, or 47.038, of this code is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$20 nor more than \$100. On second conviction, the violator is punishable by a fine of not less than \$50 nor more than \$500.

(b) A licensee under any of the above sections who violates any of the above sections is also subject to suspension of his license for not less than 7 days nor more than 30 days at the discretion of the department on first conviction for a violation. On second conviction, the licensee is subject to revocation of his license for six months after the date of conviction.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.0531. Penalty: Red Drum License**

(a) A person who violates Section 47.019 of this code is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500.

(b) Nets, trotlines, and all red drum in possession of a person violating Section 47.019 of this code shall be confiscated.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 4, eff. Sept. 1, 1977.]

**§ 47.054. Refusal to Show License**

A person catching fish for the purpose of market or sale who refuses to show his license to an authorized employee of the department upon request is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$25.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 47.055. Disposition of Funds**

Money received for licenses issued under this chapter or fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**CHAPTER 48. FISH FARMER'S LICENSE**

**§ 48.001. Definitions**

In this chapter:

(1) "Fish farmer" means any person engaged in the business of producing, propagating, transporting, possessing, and selling fish raised in a private pond, but does not include a person engaged in the business of producing, propagating, transporting, possessing, and selling fish propagated for bait purposes.

(2) "Private pond" means a pond, reservoir, vat, or other structure capable of holding fish in confinement wholly within or on the enclosed land of an owner or lessor.

(3) "Owner" means a fish farmer licensed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.002. Fish Farmer's License Required**

No person may be a fish farmer without first having acquired from the department a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.003. Fish Farm Vehicle License Required**

(a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.004. Bill of Lading Required for Certain Vehicles**

A vehicle, from which no fish sales are made, transporting fish from a fish farm shall carry a bill of lading that shows the number and species of fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.005. License Fees**

The department shall issue a fish farmer's license or a fish farm vehicle license on the payment of \$5 for each license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.006. Form and Duration of License**

(a) A fish farmer's license and a fish farm vehicle license must be on a numbered form provided by the department.

(b) A license is valid from September 1 or the date of issue, whichever is later, through the following August 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.007. Additional Fish Farmer's Licenses**

A fish farmer holding a fish farmer's license may acquire additional licenses for display in or on additional premises or vehicles on payment to the department of \$1 for each additional license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.008. Records**

The holder of a fish farmer's license shall maintain a record of the sales and shipments of fish. The record is open for inspection by designated employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.009. Harvesting and Sale of Fish**

Fish of any size from a fish farm may be harvested and sold at any time and in any county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.010. Sales of Bass and Crappie Limited**

(a) Except as provided in Subsection (b) of this section, no person may sell bass or crappie from a fish farm for consumption or for resale.

(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.

(c) Other kinds of fish from a fish farm may be sold for any purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.011. Federal Grants**

Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.012. Penalties**

Any person who violates any provision of this chapter for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 48.013. Fish Farms Protected**

(a) No person, other than the owner or operator of a fish farm or a person with the owner's or operator's consent, may fish on or take fish from a fish farm.

(b) Except as provided in Subsection (c) of this section, a person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) A person who violates this section by taking fish of a value of more than \$200 is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not more than 10 years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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**CHAPTER 50. COMBINATION HUNTING AND FISHING LICENSE**

**§ 50.001. Combination License Authorized**

The department may issue to residents of this state a combination hunting and fishing license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 50.002. License Fee**

The fee for the combination license is \$8.75. Authorized agents of the department, other than em-

ployees of the department, may retain 25 cents of the fee as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 50.003. Other Licenses Not Required**

A resident who has acquired a combination hunting and fishing license is not required to obtain the hunting license required by Chapter 42 of this code or the fishing license required by Chapter 46 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 50.004. Form; Duplicate License**

(a) The department shall prescribe the form of the license and shall attach to it deer tags as provided in Chapter 42 of this code.

(b) Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses under Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 50.005. Holder Shall Comply With Other Law**

A holder of a combination hunting and fishing license shall comply with and is subject to the penalties in Chapters 42 and 46 of this code, unless those requirements or penalties conflict with this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**CHAPTER 51. SHELLFISH CULTURE LICENSE**

**§ 51.001. Definitions**

In this chapter:

(1) "Shellfish culture" means the business of producing, propagating, transporting, selling, or possessing for sale shellfish raised in private ponds or reservoirs in this state.

(2) "Shellfish" means aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, crabs, and crayfish of all varieties.

(3) "Private pond" means a pond, reservoir, vat, or other structure capable of holding shellfish in confinement wholly within or on privately owned enclosed land.

(4) "Exotic shellfish" means shellfish imported alive into this state for shellfish culture purposes, but does not include shellfish taken from the high seas adjacent to the Texas coast.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.002. License Required**

No person may engage in shellfish culture in this state unless he has first acquired a shellfish culture license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.003. License for Each Premises**

A separate license is required for each tract of land on which a private pond is used for shellfish culture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.004. Issuance of License; Period of Validity**

(a) The department shall issue the shellfish culture license, and each license shall be numbered on a form provided by the department.

(b) A license is valid during the license year for which it is issued. The license year begins September 1 and extends through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.005. License Fee**

The fee for a shellfish culture license is \$25.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.006. Shipments of Shellfish**

Vehicles transporting shellfish to or from a licensed facility shall carry a bill of lading showing:

- (1) the name, location, and license number of the shellfish culturist;
- (2) the quantity and species of shellfish; and
- (3) the source and destination of the shellfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.007. Records**

(a) The holder of a shellfish culture license shall make and keep records showing purchases, sales, and shipments of shellfish.

(b) The records are open to inspection by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.008. Harvest and Sale of Shellfish**

(a) Shellfish produced by a shellfish culturist may be harvested by any means and may be of any size.

(b) Subject to health regulations, shellfish produced by a shellfish culturist may be sold any time and in any county to any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.009. Exotic Shellfish Permit Required**

(a) No person may import, possess, propagate, or transport exotic shellfish unless he has acquired a permit from the department.

(b) The department may not issue a permit to any shellfish culturist for exotic shellfish unless the applicant furnishes sufficient evidence showing that the shellfish are free of disease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.010. Permits for Taking Brood Stock**

(a) The department may issue permits to shellfish culturists or their agents authorizing the taking of a reasonable quantity of shellfish brood stock during a closed season, in closed public waters, or of any size.

(b) The permits shall show:

- (1) the name, address, and license number of the shellfish culturist;
- (2) the period of time during which brood fish may be taken;
- (3) the place where taking is allowed;
- (4) the species and number of shellfish to be taken; and

(5) the method of taking.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 51.011. Penalty**

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**CHAPTER 61. UNIFORM WILDLIFE REGULATORY ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 61.001. Title**

This chapter may be cited as the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.002. Purpose**

The purpose of this chapter is to provide a method for the conservation of an ample supply of wildlife resources in the places covered by this chapter to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.003. Applicability of Chapter**

Title 7 of this code prescribes the counties, places, and wildlife resources to which this chapter applies.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.004. Applicability of Additional Counties**

A law making this chapter applicable to all or a portion of the wildlife resources of a county or place repeals any provision of general or special law regulating the taking of those wildlife resources when the commission's proclamation relating to those wildlife resources in the county or place takes effect.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.005. Definitions**

In this chapter:

- (1) "Hunt" includes take, kill, pursue, trap, and the attempt to take, kill, or trap.
- (2) "Wildlife resources" means all game animals, game birds, fur-bearing animals, alligators, marine animals, fish, and other aquatic life.
- (3) "Depletion" means the reduction of a species below its immediate recuperative potential by any deleterious cause.
- (4) "Waste" means a supply of a species or one sex of a species in sufficient numbers that a seasonal harvest will aid in the reestablishment of a normal number of the species.
- (5) "Daily bag limit" means the quantity of a species of game that may be taken in one day.



(6) "Possession limit" means the maximum number of a species of game that may be possessed at one time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.006 to 61.020 reserved for expansion]

#### SUBCHAPTER B. PROHIBITED ACTS

##### § 61.021. Taking Wildlife Resources Prohibited

Except as permitted under a proclamation issued by the commission under this chapter, no person may hunt or possess a game bird, game animal, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 61.022. Taking Wildlife Resources Without Consent of Landowner Prohibited

No person may hunt or possess a game animal, game bird, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time and at any place covered by this chapter unless the owner of the land or water, or the owner's agent, consents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.023 to 61.050 reserved for expansion]

#### SUBCHAPTER C. REGULATORY DUTIES

##### § 61.051. Duty to Investigate and Study Wildlife Resources

(a) The department shall conduct scientific studies and investigations of all species of wildlife resources to determine:

- (1) supply;
- (2) economic value;
- (3) environments;
- (4) breeding habits;
- (5) sex ratios;
- (6) effects of hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, and overpopulation; and
- (7) any other factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be made periodically or continuously.

(c) The commission shall make findings of fact based on the studies and investigations of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 61.052. General Regulatory Duty

(a) The commission shall regulate the periods of time when it is lawful to take wildlife resources in the places covered by this chapter.

(b) The commission shall regulate the means, methods, manners, and places in which it is lawful to take wildlife resources in the places covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 61.053. Open Seasons

The commission shall provide open seasons for the

taking of wildlife resources if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 61.054. Proclamations of the Commission

(a) Regulation of the taking of wildlife resources under this chapter shall be by proclamation of the commission.

(b) A proclamation of the commission authorizing the taking of wildlife resources must specify:

(1) the species, quantity, age or size, and, to the extent possible, the sex of the wildlife resources authorized to be taken;

(2) the means or method that may be used to take the wildlife resources; and

(3) the region, county, area, or portion of a county where the wildlife resources may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 61.055. Amendments and Revocations

(a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to pursue, take, and kill wildlife resources.

(b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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#### SUBCHAPTER C-1. REGULATION OF COMMERCIAL FISHING [NEW]

##### § 61.061. Finfish Research

The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum;

(2) factors affecting the increase or decrease of finfish supply;

(3) the use of trawls, nets, and other devices for the taking of finfish;

(4) the effect on finfish of industrial and other types of water pollution in areas naturally frequented by finfish; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of fish landed in this state.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

##### § 61.062. Reports

(a) The department shall make findings and issue reports based on the research required by Section 61.061 of this code.

(b) The findings and reports shall be filed in the permanent records of the department.

(c) The reports and findings must include recommendations for opening or closing bay areas to the

use of trawls, nets, and saltwater trotlines when the studies indicate appropriate action to prevent waste or avoid depletion of red drum and other desirable finfish.

(d) Before the convening of each regular session of the legislature, the department shall publish and present to the governor and the legislature a special report on studies, findings, recommendations, and actions taken under this subchapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

**§ 61.063. Red Drum: Prohibitions**

No person may catch red drum for sale:

(1) in excess of the harvest limits set by the commission under this chapter;

(2) by a method or means not permitted by the regulations of the commission issued under this chapter; or

(3) at a time or a place prohibited by a regulation of the commission under this chapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

**§ 61.064. Proclamations: Red Drum**

The commission shall provide for the means, manner, and methods for taking red drum for sale, the times and places for taking red drum for sale, and the maximum individual and collective retention limits for the taking of red drum for sale.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

**§ 61.065. Yearly Harvest Limits**

The commission shall set the maximum number of pounds of red drum that may be taken for sale from each of the eight bay areas of the Texas coast and from the Gulf of Mexico within the state during each yearly period beginning on October 1 of a year and extending through September 30 of the following year.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

Section 15(c) of the 1977 Act provided:  
"For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds."

**§ 61.066. Closing Water**

(a) When the department determines through statistical data that 90 percent of the allowable red drum for the yearly period has been taken for sale from a bay system, the commission shall issue a proclamation closing the bay system to the taking of red drum during the remainder of the yearly period.

(b) The hearing required by Section 61.101 of this code is not required prior to the issuance of a proclamation under this section.

(c) In addition to the requirements of Section 61.105 of this code, the department shall provide for adequate notice of a proclamation under this section closing a bay for the taking for sale of red drum.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

**§ 61.067. Sale of Red Drum From Closed System**

No person may purchase or sell a red drum taken from a closed bay system after the effective date of a proclamation closing the bay system under Section

61.066 of this code.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

**§ 61.068. Access to Records of Red Drum Sales**

(a) Not later than 72 hours after a sale of red drum, the department is entitled to examine and shall have access to cash sale tickets showing the sale of red drum.

(b) A cash sale ticket must include:

(1) the name of the seller;

(2) the red drum license number of the seller;

(3) the number of pounds of red drum sold;

(4) the date of the sale; and

(5) the name of the bay system or the area of Gulf of Mexico water from which the red drum were taken.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

[Sections 61.069 to 61.100 reserved for expansion]

**SUBCHAPTER D. ADMINISTRATIVE PROCEDURES**

**§ 61.101. County Hearing on Proclamation**

(a) Before a proclamation of the commission may be adopted, the department shall hold a public hearing in the county to be affected by the proclamation.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any county hearing.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.102. Notice on County Hearing**

Notice of the hearing must be given in a newspaper published in the county at least 10 days before the date of the hearing. If no newspaper is published in the county, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.103. Adoption of Proclamations**

(a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

(d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is four members.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 61.104. Effective Date and Duration of Proclamations**

(a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commis-

sion may not be earlier than 20 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 61.105. Copies of Proclamations

On the adoption of a proclamation, a copy shall be numbered and filed in the office of the commission in Austin. A copy shall be filed with the secretary of state. A copy shall be sent to each county clerk for filing and to each county attorney of a county affected by the proclamation.

#### § 61.106. Judicial Review of Proclamation

(a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.107 to 61.200 reserved for expansion]

### SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

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#### § 61.202. Approval of Certain County Commissioners Courts

(a) No proclamation of the commission is effective in a county listed in Subsection (c) of this section unless it has been approved by the commissioners court of the county.

(b) The commissioners court of a county listed in Subsection (c) of this section shall approve or disapprove a proclamation, in whole or in part, at the first regular meeting occurring more than five days after it receives notification of the adoption of a proclamation affecting the county.

(c) If the commissioners court approves the proclamation, it takes effect at the time the commission has designated or immediately on its approval, whichever is later.

(d)(1) If the commissioners court of Bandera, Coke, Crockett, Dimmit, Edwards, Frio, Grayson, Hays, Kinney, Lampasas, Medina, Regan, Robertson, Sutton, Val Verde, or Zavala county disapproves a proclamation, the taking of wildlife resources in the county is governed by the previous year's proclamation. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(2) If the commissioners court of Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, Refugio, San Saba, Schleicher, or Uvalde county disapproves a proclamation, or part of a proclamation, the taking of wildlife resources in the county is governed either by the

general law of this state or by the proclamations of the prior year, to be determined by order of the commissioners court, until such time as the commissioners court approves of subsequent proclamations of the commission. If the commissioners court fails to designate either the general law or the proclamations for the prior year, the law or proclamation in effect for the prior year continues in effect. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(e) This section applies only to Bandera, Coke, Crockett, Dimmit, Edwards, Grayson, Frio, Gillespie, Hays, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Medina, Menard, Reagan, Real, Refugio, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties.

#### § 61.203. Trotlines and Crab Traps in Aransas County

(a) The commission shall regulate the use of trotlines and crab traps outside the net-free zone in Aransas County to protect persons engaged in fishing, boating, and other water sports.

(b) The regulations may require spacing and marking of trotlines and crab traps and may authorize the seizure of abandoned trotlines and traps.

(c) The regulations under this section shall be adopted in the same manner as other regulations under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

### SUBCHAPTER F. PENALTIES

#### § 61.901. Penalties

(a) Except as provided in this section, a person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each game animal, game bird, fur-bearing animal, or fish taken in violation of this chapter or of a proclamation or regulation of the commission constitutes a separate offense.

(b) A person who violates a proclamation or regulation of the commission by the use of artificial lights in Hardin, Jasper, Newton, Orange, or Tyler counties is guilty of a misdemeanor and on conviction is punishable by confinement in jail for not less than 3 nor more than 90 days, or by a fine of not less than \$50 nor more than \$200, or by both.

(c) A person who violates a proclamation or regulation of the commission regulating the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200 and on a second or subsequent conviction is punishable by a fine of not less than \$50 nor more than \$500. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 381, ch. 190, §§ 1, 2, eff. May 20, 1977.]

## § 61.902. Penalties: Red Drum Violations

A person who violates a proclamation issued under Subchapter C-1 of this chapter or Sections 61.067 or 61.068 of this code shall on a first offense be punished as provided in Section 61.901 of this code. On a second or subsequent conviction of a violation of a proclamation issued under Subchapter C-1 of this chapter or of a violation of Sections 61.067 or 61.068 of this chapter, the person is guilty of a misdemeanor and is punishable by a fine of not less than \$200 nor more than \$500 and each commercial fishing license held by the person shall be forfeited.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 7, eff. Sept. 1, 1977.]

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## CHAPTER 66. FISH

### SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING

#### § 66.001. Salt and Fresh Water Defined

In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.

(2) "Salt water" means all coastal or tidal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.002. Consent to Take Fish From Private Water

(a) No person may catch fish by the use of a net or seine or explosive or by poisoning, polluting, muddying, ditching, or draining in any privately owned lake, pool, or pond without the consent of the owner.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(c) In a prosecution under this section, the burden of proof to show consent is on the person charged. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.003. Placing Explosives or Harmful Substances in Water

(a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.

(b) Subsection (a) of this section does not apply to the use of explosives necessary for construction purposes when the use is authorized in writing by the county judge of the county where the work is to be done.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100 and by confinement in the county jail for not less than 60 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.004. Taking of Fish by Electric Shock Prohibited; Exception

(a) Except as provided by Subsection (d) of this section, no person may catch fish by using an elec-

tricity-producing device designed to shock fish.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) The possession of an electricity-producing device designed to shock fish, in a boat or along the shore or bank of any water of this state, is prima facie evidence of a violation of this section by the person in possession of the device.

(d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

(e) An electricity-producing device used in violation of this section is a nuisance, and an officer or employee of the department who has probable cause to believe that a device is used in violation of this section shall seize the device and hold it as evidence for the trial of the person in possession of the device. If the person is found guilty of a violation of this section, the department shall be responsible for the destruction of the device unless it can be utilized by the department for research purposes, or upon request the device may be released to a state-supported college or university for use in marine or aquatic research. An officer or employee of the department who seizes or destroys a device is immune from liability for any damages resulting from seizure or destruction, and the department is likewise immune from liability for any damages resulting from seizure, destruction, or disposition thereof.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1662, ch. 656, § 1, eff. Aug. 29, 1977.]

#### § 66.005. Wilful Destruction of Boat, Seine, or Net

(a) No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and confinement in the county jail for not less than 30 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.006. Returning Small Fish Taken by Net or Seine

(a) No person who catches fish by the use of a seine or set net may fail to return to the water all fish under or over the size or weight limitations established in this chapter and all other fish for which no limitation is provided.

(b) Subsection (a) of this section does not apply to shark, gar, ray, turtle, sawfish, or catfish, except that it does apply to the gaff-topsail catfish.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction

is punishable by a fine of not less than \$50 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.007. Harmful Tropical Fish

(a) No person may import, possess, sell, or release into water of this state harmful or potentially harmful tropical fish or fish eggs unless he has acquired from the department a written permit.

(b) The department shall determine and publish a list of tropical fish that are harmful or potentially harmful to human or other animal life.

(c) The department shall make rules to carry out the provisions of this section.

(d) A person who violates Subsection (a) of this section or a rule of the department made under Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.008. Fishing From Bridge

(a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(c) The State Highway Department shall post appropriate signs on all bridges and causeways affected by this section.

(d) A person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.009. Navigation Districts

(a) No person may use a seine or net of any type, trolline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.

(b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100, by confinement in the county jail for not less than 5 days nor more than 30 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.010. Bait Fish

(a) No person may possess more than 250 bait fish taken from the public water for personal use.

(b) No person may catch, possess, or transport, as bait fish any of the following species or their hybrids:

- (1) black bass of any type;
- (2) crappie;

(3) catfish, except bullheads;

(4) walleye;

(5) striped bass;

(6) trout;

(7) white bass; or

(8) northern pike.

(c) No person may catch bait fish except by the use of dip nets, lift nets, cast nets, and umbrella nets of nonmetallic material, minnow seines of nonmetallic material not exceeding 20 feet long, and common fruit jar traps or similar devices not longer than 24 inches and with a throat not more than one inch in diameter

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Added by Acts 1977, 65th Leg., p. 213, ch. 105, § 1, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., ch. 105, which by §§ 1 to 42 added this section and amended and repealed various other sections of the Parks and Wildlife Code, provided in § 43: "This Act takes effect September 1, 1977."

[Sections 66.011 to 66.100 reserved for expansion]

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### SUBCHAPTER C. SALTWATER FISHING

#### § 66.201. Redfish

(a) No person may take from public water and retain, or place in a boat, creel, live-box, or other container or on a stringer, a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.2011. Red Drum: Daily Catch and Retention Limits

(a) No person may:

(1) catch and retain in one day more than 10 red drum;

(2) possess at one time more than 20 red drum;

(3) possess at one time more than two red drum longer than 35 inches.

(b) This section does not apply to the holder of a commercial red drum license. Subdivisions (2) and (3) of Subsection (a) of this section do not apply to the holder of a fish dealer's license as to fish at the place of business or in a vehicle of the fish dealer.

(c) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the fishing license under which he is fishing.

(d) In addition to the penalty provided in Subsection (c) of this section, a person who violates this section shall have all equipment, other than vessels, in his possession used for the taking of red drum confiscated. This subsection expires on October 31, 1978.

[Added by Acts 1977, 65th Leg., p. 722, ch. 270, § 5, eff. Sept. 1, 1977.]

**§ 66.202. Nets and Seines in Inside Water: Non-commercial Fishing**

(a) No person engaged in noncommercial fishing in the inside water of this state may use for the purpose of catching fish a seine or drag seine or any other device except:

- (1) an ordinary pole and line;
- (2) a casting rod;
- (3) a rod and reel;
- (4) artificial bait;
- (5) a trotline or set line;
- (6) a cast net;
- (7) a minnow seine of not more than 20 feet in length for catching bait only; and
- (8) a set net, trammel net, or strike net, the meshes of which may not be less than one and one-half inches from knot to knot.

(b) In this section, inside water is that water defined as "inside water" in Chapter 77 of this code and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(c) A person who violates this section is guilty of a misdemeanor and on the first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and the person's fishing license is subject to cancellation. If the person's license is cancelled, he is not entitled to receive another fishing license for one year from the date of his conviction.

(d) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.]

**§ 66.203. Nets and Seines in Outside Water: Non-commercial Fishing**

(a) No person engaged in noncommercial fishing in the outside water of this state may use a net or seine that fails to meet the requirements of Subsection (b) of this section.

(b) The mesh of a net or seine, not including the bag and 50 feet on each side of the bag, must have sides of not less than one and one-half inches. The bag and that part of the net or seine 50 feet on each side of the bag must have meshes the sides of which are not less than one inch. No net or seine or combination of nets and seines connected together may be longer than 2,000 feet.

(c) In this section, outside water is that water defined as "outside water" in Chapter 77 of this code, and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$20 nor more than \$100. On a second conviction the person is punishable by a fine of not less than \$50 nor more than \$200 and may have his license suspended for a period of not less than 30 nor more than 90 days. On a third or subsequent conviction the person is punishable by confinement in the county jail for not less than 30 nor more than 90 days and may have his license

suspended for a period of not less than one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 66.204. Vessels and Obstructions in Fish Passes**

(a) No person may operate, possess, or moor a vessel or other floating device, or may place any piling, wire, rope, cable, net, trap, or other obstruction, in a natural or artificial pass opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay, within a distance of 2,800 feet inside the pass measured from the mouth of the pass where it empties into or opens on the Gulf of Mexico.

(b) The department shall erect permanent iron or concrete monuments showing the restricted area.

(c) This section does not restrict the power of the United States to regulate navigation.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$1 nor more than \$100. On a second or subsequent conviction the person is punishable by a fine of not less than \$1 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 66.205. Drum Seining Permits**

(a) A person who has a lease for taking oysters in water where seining is prohibited may apply to the department for a permit to seine for drum.

(b) The application shall be under oath and must include a statement that drum are seriously damaging the applicant's oysters and that if the permit is issued he will not take and retain or destroy other food fish but will return them to the water.

(c) If the department finds that drum are seriously damaging the oysters of the applicant, the permit shall be issued. The permit must state the period of validity and must specify the area of its applicability.

(d) The department shall assign an employee of the department to supervise the seining.

(e) Seining for drum in prohibited water is lawful when done under the authority of a permit issued under this section and when done in the presence of the assigned employee.

(f) The holder of a permit shall pay \$2.50 for each day of seining under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 66.206. Trotline Tags**

(a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet, and the department shall collect a fee of \$1 for each tag issued.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) A person who violates this section or a rule of the commission relating to safe trotline usage is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(f) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.]

#### § 66.207. Fish Pound Net Prohibited

(a) No person may use a fish pound net in the water of the Gulf of Mexico within three nautical miles of the coastline.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.208. Commercial Joint Fishing Ventures

(a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$100 nor more than \$200. On a second or subsequent conviction the person is punishable by a fine of not less than \$500 nor more than \$2,000 or by confinement in the county jail for not less than five days nor more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.209. Statistical Reports

(a) The department shall gather statistical information on the harvest of fish, shrimp, oysters, and other forms of edible marine life of the Texas coast.

(b) The department shall prescribe and distribute the report form. The form shall be designed to allow for statistical information concerning the numbers and quantity by weight of seafood taken, the species taken, the kinds of equipment used, and the water from which the catch is made.

(c) No dealer who purchases fish, shrimp, oysters, or other forms of edible marine life directly from the fisherman may fail to file the report with the department each month on or before the 10th day of the month. No dealer required to report may willfully file an incorrect report.

(d) Any dealer who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.210. Rough Fish

(a) The commission shall investigate saltwater species of fish. It shall classify and reclassify, when necessary, saltwater fish as game fish and nongame fish.

(b) In this subchapter:

(1) "Game fish" means species that are desir-

able because of their sport and recreational value and that strike or bite at bait or artificial lures.

(2) "Nongame fish" means species that have no sporting value, predatory fish, bony or rough-fleshed fish, and other species whose numbers should be controlled to protect and encourage the propagation of game fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.211. Permits for Taking Rough Fish

(a) The commission shall issue permits for the taking of nongame fish in salt water to control nongame fish and to provide for their use when the commission finds that the taking will not adversely affect the conservation of game fish.

(b) The permit may authorize the use of nets, seines, and other devices that are otherwise prohibited, except that the commission may not authorize the use of a net or other device, the use of which was unlawful on May 26, 1941, in water in which the use of a trammel net, set net, or gill net was unlawful on that date. The permit shall specify the species of fish permitted to be taken.

(c) An applicant for a permit must:

(1) be a citizen of the United States and have resided in this state continuously for a period of at least six months before the date of the application; and

(2) not have been convicted of a violation of any fishing law of this state for a period of two years before the date of the application.

(d) The department shall collect a fee of \$5 for the issuance of the permit.

(e) The permit is valid for one year from the date of its issuance unless it is revoked prior to its expiration.

(f) The department shall inspect, approve, and attach metal identification tags to all devices used under this section for taking fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.212. Holders of Rough Fish Permits: Offenses

(a) No person holding a permit to take rough saltwater fish may:

(1) use a net or other device that the commission may not authorize for use in water covered by the exception in Section 66.211 of this code;

(2) use for the taking of fish any device without there being attached to it a metal identification tag issued by the department;

(3) use any device that would be prohibited except for the permit to take any game fish or any other species of fish not authorized to be taken by the permit; or

(4) use any device that would be prohibited except for the permit in any manner that will or does carelessly or needlessly injure marine life other than those species authorized to be taken by the permit.

(b) A holder of a permit who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. On conviction he may also have the permit revoked.

(c) An officer of the department who finds a device authorized by permit being used in violation

of this section shall immediately seize the device and hold it until after the trial. During the prosecution for an offense under this section, the holder of the permit may not use any device authorized by the permit but otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.213. Possession of Illegal Nets and Seines

(a) No person may possess a seine, strike net, gill net, or trammel net in or on the tidal water of this state where the use of the seine or net for the catching of fish is prohibited unless the seine or net is on board a vessel in port or in a channel and going to or from the Gulf of Mexico or actually going to or from other waters where the use of seines or nets is not prohibited. No person may possess or use for the purpose of catching finfish any seine, strike net, trammel net, or gill net in or on any waters of this state unless said seine, strike net, gill net, or trammel net is equipped with floats at intervals of six feet or less and of sufficient buoyancy to maintain the seine, strike net, gill net, or trammel net in an upright position in the water thereby avoiding a hazard to motor boat traffic.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and the person's commercial fishing license is subject to cancellation. A person whose license is cancelled under this section may not receive another license for one year from the date of the conviction.

### SUBCHAPTER D. TEXAS TERRITORIAL WATER

#### § 66.301. Definition

In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.302. Licenses

(a) Except as provided in Subsections (b) and (c) of this section, the department shall grant to or withhold from alien vessels licenses required for boats or vessels used in fishing or shrimping in the coastal water of this state on the basis of reciprocity or retaliation.

(b) The department shall issue licenses to a vessel of a nation designated as a friendly ally or neutral on receipt of a formal suggestion transmitted to the governor by the Secretary of State of the United States.

(c) The department shall not issue a license to any boat or vessel owned in whole or in part by any alien power, or a subject or national of an alien power, or any individual who subscribes to the doctrine of international communism or who has signed a treaty of trade, friendship, and alliance or a nonaggression pact with any communist power.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.303. Prohibited Acts

(a) No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.

(b) A captain, master, or owner of any unlicensed alien vessel or boat who violates this section is guilty of a misdemeanor and on conviction is punishable by

a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.304. Port Authorities and Navigation Districts

It is the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably suspect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.305. Harbor Pilots

All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.306. Enforcement

All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 66.307. Political Asylum

No crew member or master seeking bona fide political asylum shall be fined or imprisoned under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

## CHAPTER 67. NONGAME SPECIES

#### § 67.001. Regulations

The department by regulation shall establish any limitations on the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife that the department considers necessary to manage these species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]



**§ 67.002. Management of Nongame Species**

The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 67.003. Continuing Scientific Investigations**

The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 67.004. Issuance of Regulations**

(a) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

(b) The department shall conduct a public hearing on all proposed regulations and shall publish notice of the hearing in at least three major newspapers of general circulation in this state at least one week before the date of the hearing.

(c) The department shall solicit comments on the proposed regulations at the public hearing and by other means.

(d) On the basis of the information received at the hearing or by other means, the department may modify a proposed regulation.

(e) Regulations become effective 60 days after the date they are proposed unless withdrawn by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 67.005. Penalty**

(a) A person who violates a regulation of the commission issued under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**CHAPTER 68. ENDANGERED SPECIES**

**§ 68.001. Definitions**

In this chapter:

- (1) "Fish or wildlife" means any wild mam-

mal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.

(2) "Management" means:

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

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 68.002. Endangered Species**

Species of fish or wildlife are endangered if listed on:

(1) the United States List of Endangered Foreign Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix A);

(2) the United States List of Endangered Native Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix D); or

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 68.003. Statewide Extinction List**

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

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

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

(2) its overutilization for commercial or sporting purposes;

(3) disease or predation; or

(4) other natural or man-made factors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

(a) If the lists of endangered species issued by the United States are modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

(b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state. The order is effective on filing.

(c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of

this section, the order may not be filed until the conclusion of the proceeding on reclassification.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.005. Petition of Reclassification

(a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.

(b) The petition must present substantial evidence for the addition or deletion.

(c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.

(d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.007. Propagation Permit Required

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.008. Original Propagation Permit

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

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

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.009. Renewal Propagation Permit

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

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.010. Reports by Permittee

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

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.012. Appeal

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration

or cancellation of the permit in the manner required by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.014. Regulations

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

- (1) permit application forms, fees, and procedures;
- (2) hearing procedures;
- (3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter; and
- (4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.015. Prohibited Acts

(a) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(b) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(c) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

(a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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

(a) All revenue received under this chapter shall

be deposited in the state treasury to the credit of the general revenue fund.

(b) Funds for the administration of this chapter may be appropriated from the general revenue fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.019. Applicability of Chapter

All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.020. Exceptions

(a) This chapter does not apply to:

- (1) coyotes (prairie wolves);
- (2) cougars;
- (3) bobcats;
- (4) prairie dogs;
- (5) red foxes; or

(6) animals, fish, or fowl that are privately owned or to the management or taking of privately owned animals, fish, or fowl by the private owners.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions. The department may require an institution to furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 68.021. Penalty

(a) A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not less than six months nor more than one year.

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

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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SUBTITLE D. CRUSTACEANS AND MOL-  
LUSKS

CHAPTER 76. OYSTERS

SUBCHAPTER A. PUBLIC AND PRIVATE  
OYSTER BEDS

§ 76.001. Natural Oyster Bed

(a) A natural oyster bed exists when at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(b) In this section, a barrel of oysters is equal to three boxes of oysters in the shell. The dimensions of a box are 10 inches by 20 inches by 13-½ inches. In filling a box for measurement, the oysters may not be piled more than 2-½ inches above the height of the box at the center. Two gallons of shucked oysters without shells equals one barrel of oysters in the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.002. Designation of Public and Private Beds

(a) All natural oyster beds are public.

(b) All oyster beds not designated as private are public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.003. Beds Subject to Location

Except as provided in Section 76.004 of this code, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department. This section does not apply to a bed or reef that has been exhausted within an eight-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.004. Riparian Rights

(a) The lawful occupant of a grant of land in this state has the exclusive right to use any creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

(c) The right of a riparian owner of land along any bay shore in this state to plant oysters extends 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a natural oyster bed under this subsection is not exclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.005. Affidavit of Riparian Rights

(a) The department may require the owner of riparian rights described in Section 76.004 of this code when offering oysters for sale to make an affidavit stating that the oysters were produced on his property.

(b) The failure of an owner of riparian rights described in Section 76.004(a) of this code to have an affidavit when required by the department or to show it to a game management officer on request or to the person to whom the oysters are offered for

sale when required by the department is prima facie evidence that the oysters were produced from public beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.006. Application for Location: Fee

(a) Any citizen of the United States or any domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state.

(b) The application must describe the location desired.

(c) The application must be accompanied by a fee of \$20.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.007. Maximum Acreage Under Location

No person may own, lease, or control more than 100 acres of land covered by water under certificates of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.008. Lease or Control by Foreign Corporation Prohibited

No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.009. Examination and Survey of Location

(a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.010. Areas Not Subject to Location

The following areas are not subject to location:

(1) a natural oyster bed;

(2) a bay shore area within 100 yards of the shore;

(3) an area subject to an exclusive riparian right; and

(4) an area already under certification as a location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.011. Survey Markings and Buoys

(a) In making a location, the surveyor shall plant two iron stakes or pipes having a diameter of not less than two inches on the shoreline nearest to the proposed location, so that one stake or pipe is at each end of the location. The stakes or pipes shall be set at least three feet in the ground and with reference to bearings of at least three permanent objects or natural landmarks.

(b) The locator shall place and maintain, under the direction of the department, a buoy at each corner of the location farthest from the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.012. Locator's Certificate

(a) The department shall issue to each locator a certificate signed and sealed by the director.

(b) The certificate must contain:

(1) the date of the application;

(2) the date of the survey; and

(3) a description of the location by metes and bounds with reference to points of the compass and natural objects by which the location may be found and verified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.013. Survey Fee

(a) Before delivery of the certificate, the locator shall pay to the department the surveyor's fee and other costs of establishing the location.

(b) The amount of the fee required by Section 76.006(c) of this code may be deducted from the amount owed to the department under this section.

(c) If the amount paid under Section 76.006(c) of this code exceeds the amount owed under this section, the difference shall be returned to the locator.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.014. Filing of Certificate

(a) Before the expiration of 60 days following the date of the certificate, the locator shall file the certificate with the county clerk of the county of the location.

(b) The clerk shall file the certificate in a well-bound book kept for that purpose and shall return the original certificate and a registration receipt to the locator. The clerk is entitled to receive as a fee for filing the certificate the same fee as for recording deeds.

(c) The original certificate and certified copies of it are admissible in court under the same rules governing the admissibility of deeds and certified copies of deeds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.015. Rights of Locator

(a) The holder of a certificate of location as provided for in Section 76.012 of this code is protected in his possession of the location against trespass in the same manner as are freeholders.

(b) This section applies only as long as the stakes or pipes and buoys required by this chapter are maintained in their correct positions and the locator complies with the law and the regulations governing the fish and oyster industries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.016. Fencing of Location

A locator or his assignee may fence all or part of his location if the fence does not obstruct navigation into or through a regular channel or cut leading to other public water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.017. Location Rental

(a) No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location.

(b) When oysters are sold or marketed from the location and thereafter, the holder of the certificate shall pay to the department \$2.25 per acre of location per year and 10 cents for each barrel of oysters from the location sold.

(c) Rental fees are due annually by March 1.

(d) The failure to pay any rental when due terminates the lease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.018. Oyster Production Required

If oysters from the location are not sold or marketed within five years from the date of the establishment of the location, the lease is void.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.019 to 76.030 reserved for expansion]

### SUBCHAPTER B. OYSTER PERMITS

#### § 76.031. Application for Permit

(a) A person desiring to plant oysters on his own location or to take oysters from oyster reefs and public water shall apply to the department for an oyster permit.

(b) Only those persons who are citizens of Texas or corporations composed of American citizens and chartered by this state to engage in the culture of oysters or to transact business in the purchase and sale of fish and oysters may apply for a permit.

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.032. Discretion to Issue Permit

The department may issue or refuse to issue a permit to any applicant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.033. Conditions of Permit

(a) The department shall require the permittee to take only the oysters authorized in the permit from beds or reefs designated in the permit.

(b) The department shall:

(1) mark off the exact area of beds or reefs from which oysters may be taken;

(2) designate the bottoms on which oysters may be deposited if they are taken to be prepared for market;

(3) require the permittee to cull the oysters on the grounds where they are to be located; and

(4) specify what implements may be used in taking oysters.

(c) The department may make other conditions or regulations to protect and conserve oysters on public reefs and beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.034. Minimum Size

No permittee may take oysters of a smaller size than 3-1/2 inches from hinge to mouth unless authorized by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.035. Oysters Property of Permittee

All oysters taken or deposited in public water by the holder of an oyster permit under the terms of a permit are the personal property of the permit holder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.036. Marking Beds

(a) The holder of a permit shall clearly and distinctly mark, by buoys, stakes, or fences, the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

(b) No person may be prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.037. Theft of Oysters From Private Bed

(a) No person may fraudulently take oysters placed on private beds without the consent of the owner of the private bed or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who lawfully deposited them.

(b) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.038. Interference With Buoys or Markers

(a) No person may deface, injure, destroy, or remove a buoy, marker, or fence used to designate or enclose a private oyster bed or location where oysters have been deposited for preparation for market without the consent of the owner of the bed or location.

(b) No person may deface, injure, destroy, or remove a buoy, marker, or sign of the department used for designating water closed for the taking of fish or oysters without the consent of the department.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.039. Prohibited Sales

(a) No person gathering oysters for planting or for depositing for market preparation on locations or on private oyster beds may sell, market, or dispose of the oysters gathered, at the time they are gathered, for any other purpose than planting or preparing for market.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(c) This section does not affect the right of a person to sell or assign an oyster location or private bed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

## SUBCHAPTER C. OYSTER DREDGE LICENSE

### § 76.101. Oyster Dredge License Required

No person may take or attempt to take oysters from the public water of this state by the use of a dredge without first having acquired an oyster dredge license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.102. Exemptions From License

An oyster dredge license is not required if the boat taking the oysters is licensed as a commercial bay or bait shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.103. Types of Licenses; Period of Validity

(a) The department may issue commercial oyster dredge licenses and sports oyster dredge licenses.

(b) An oyster dredge license expires on August 31 following the date of its issuance or on August 31 of the yearly period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.104. License Fees

(a) The fee for a commercial oyster dredge license is \$25.

(b) The fee for a sports oyster dredge license is \$5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.105. Commercial License: Dredge Size

No holder of a commercial oyster dredge license may use more than one dredge which may not exceed 36 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.106. Sports License: Dredge Size

No holder of a sports oyster dredge license may use more than one dredge which may not exceed 14 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.107. Sale of Sports Oysters Prohibited

No person may sell oysters taken under the authority of a sports oyster dredge license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.108. Open Season

(a) No person may take oysters from public beds or reefs except during the open season or except by permit issued by the department.

(b) The open season is the period beginning on November 1 of one year and extending through April 30 of the following year.

(c) There is no closed season in that part of Laguna Madre and abutting water south of the Port Mansfield Channel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 76.109. Night Dredging Prohibited

During the open season, no person may take oysters from public water during the period between sunset and sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.110. Number and Description of Dredges

(a) No person may possess on board any commercial fishing boat, barge, float, or other vessel more than one oyster dredge. If a vessel is towing another vessel, the towing and towed vessels combined may not have on board more than one dredge.

(b) No person may possess on board any commercial fishing boat, barge, float, or other vessel, or any combination of vessels in tow, a dredge:

- (1) exceeding 36 inches in width across the mouth; or
- (2) having a capacity of more than two bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.111. Retention Limits

(a) No person may have on board any vessel in the public water of this state, or on any combination of vessels in tow, more than 50 barrels of culled oysters of the legal size.

(b) A barrel is equal to three bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.112. Oyster Size Limits

(a) No person may take or possess a cargo of oysters more than five percent of which are between three-fourths inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.113. Culling Oysters

(a) No person may fail or refuse to cull oysters between three-fourths inches and three inches measured as provided in Section 76.112 of this code at the time the oysters are taken or to fail or refuse to return culled oysters to the reef immediately.

(b) No person may possess more than one bushel of unculled oysters during the period he is on the reef.

(c) Unculled oysters shall be kept separate from culled oysters.

(d) If returning undersized oysters to the bed from which they were taken is impractical, the department may sell them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.114. Exception to Size and Retention Limits

(a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

(b) The commission by permit may allow the taking and retention of cargoes having oysters between three-fourths inch and three inches in a greater percentage than five percent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.115. Closing Areas

(a) The commission may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is

to be reseeded or restocked.

(b) The commission may open closed areas when appropriate.

(c) Before closing any area, the commissioner shall post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall publish notice in a daily newspaper of general circulation in the area to be closed. The notices shall be posted and published at least three days before the effective date of the closing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 18, eff. Sept. 1, 1975.]

#### § 76.116. Oysters From Polluted Areas

(a) There is no open season for taking oysters from areas declared to be polluted by the State Department of Health.

(b) The department may authorize by permit the transplanting of oysters from polluted areas to private oyster leases.

(c) A person removing oysters from polluted areas without a permit shall replace the oysters in the beds from which they were taken as directed by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.117. Obedience to Orders

No person may fail or refuse to obey a lawful order of a commissioned game management officer of the department issued under the authority of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.118. Penalty

A person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.119 to 76.200 reserved for expansion]

### SUBCHAPTER D. SHELLFISH IN POLLUTED WATER

#### § 76.201. Definitions

In this subchapter:

(1) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell.

(2) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.

(3) "Commissioner" means the State Commissioner of Health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.202. Declaration of Polluted Areas

(a) The commissioner shall declare any area within the jurisdiction of the state to be polluted if he finds that it is a polluted area.

(b) The commissioner shall close to the taking of shellfish for a period he deems advisable any water to which shellfish from polluted areas may have been transferred.

(c) The commissioner shall establish by order the areas which he declares to be polluted and shall modify or revoke the orders in accordance with the results of sanitary and bacteriological surveys conducted by the State Department of Health. The commissioner shall file the orders in the office of the State Department of Health and shall furnish copies of the orders describing polluted areas to any interested person without charge.

(d) The commissioner shall conspicuously outline polluted areas on maps, which he shall furnish without charge to any interested person. The failure of any person or persons to avail themselves of this information does not relieve them from a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.203. Rules and Regulations

(a) The commissioner, with the approval of the State Board of Health, shall make rules and regulations establishing specifications for plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.

(b) The commissioner shall file the rules and regulations in the office of the secretary of state.

(c) The rules and regulations are effective three months from the date of their promulgation.

(d) The commissioner shall furnish without charge printed copies of the rules and regulations to any interested person on request.

(e) The commissioner may make reasonable and necessary regulations, not inconsistent with any provision of this subchapter, for the efficient enforcement of this subchapter.

(f) The violation of any regulation made under this subchapter is a violation of this subchapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.204. Inspection of Shellfish Plants

(a) The commissioner or his authorized agent shall inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the rules and regulations promulgated under this subchapter, the commissioner shall issue a certificate attesting to the compliance.

(b) The commissioner or his authorized agent may reinspect a plant at any time and shall revoke the certificate on refusal of the operator to permit an inspection or free access at reasonable hours, or on a finding that the plant is not being operated in compliance with the rules and regulations promulgated under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.205. Taking Shellfish From Polluted Areas

No person may take, sell, or offer or hold for sale any shellfish from an area declared by the commissioner to be polluted without complying with all rules and regulations made by the commissioner to insure that the shellfish have been purified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.206. Transplanting Shellfish From Polluted Areas

(a) Section 76.205 of this code does not prohibit the transplanting of shellfish from polluted water when permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by the department.

(b) The department shall furnish a copy of the transplant permit to the commissioner prior to the commencement of transplanting activity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.207. Purification of Shellfish

The commissioner may allow purification of shellfish taken from polluted areas by artificial means, subject to the rules and regulations of the commissioner and subject to supervision deemed necessary by the commissioner in the interest of public health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.208. Sale of Shellfish Improperly Handled

No person may sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.209. Sale of Shellfish From Improper Facilities

No person may sell or offer or hold for sale any shellfish where the facilities for packaging and handling the shellfish do not comply with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.210. Unlawfully Operating a Shellfish Plant

No person may operate a shellfish plant engaged in the handling and packaging of shellfish, either shucked or in the shell, without a valid certificate issued by the commissioner for each plant or place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.211. Sale of Shellfish Without a Certificate Number

No person may sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States Public Health Service. The provisions of this section do not apply to the sale for on-premises consumption of shellfish removed from a certified container.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.212. Compliance With Regulations

(a) The commissioner shall give any plant a reasonable time to comply with regulations issued under this subchapter after the date of promulgation, but not longer than six months unless an extension is granted.

(b) On a showing that more time is reasonably



required, the commissioner may extend the time for compliance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.213. Enforcement

Commissioned officers of the Parks and Wildlife Department shall enforce the provisions of Section 76.205 of this code. Other provisions of this subchapter shall be enforced by the commissioner and his authorized representatives with assistance from the officers of the department as determined by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.214. Disposition of Unfit or Unlawful Shellfish

Any shellfish that are held or offered for sale at retail or for human consumption, and that have not been handled and packaged in accordance with the specifications fixed by the commissioner under this subchapter, or that are not in a certified container as provided in this subchapter or are otherwise found by the commissioner to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the commissioner or his agents. The shellfish shall be held, destroyed, or otherwise disposed of as directed by the commissioner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.215. Performance Bond

In order to insure that the certificate holder will comply with all legal requirements imposed under this subchapter, the commissioner, when reasonably necessary for the enforcement of this subchapter, may require each person holding a plant certificate to post and maintain with him a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner. Any failure to comply with the legal requirements of this subchapter will result in the certificate holder or his surety paying as forfeiture to the commissioner a sum not to exceed \$1,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 76.216. Penalty

A person who violates any provision of this subchapter or a regulation of the commissioner is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

## CHAPTER 77. SHRIMP

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 77.001. Definitions

In this chapter:

(1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.

(2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.

(3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of the state.

(4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake north of Cameron Causeway, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay (including East Matagorda Bay), Tres Palacios Bay south of a line from Grassy Point to the mouth of Pilkerton Bayou, Espiritu Santo Bay, Lavaca Bay, seaward of State Highway 35, San Antonio Bay seaward of a line from McDowell Point to Grassy Point to Marker 32 on the Victoria Barge Canal, Ayres Bay, Carlos Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets, lakes, and rivers.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(9) "Shrimp house operator" means a person who operates a shrimp house, plant, or other establishment for compensation or profit for the purpose of unloading and handling, from commercial gulf shrimp boats or commercial bay shrimp boats, fresh shrimp and other edible

aquatic products caught or taken from the coastal water of the state or from salt water outside the state and brought into the state without having been previously unloaded in another state or foreign country, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit for the purpose of handling shrimp caught for use as bait from the inside water of this state, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus *Penacus* are found.

(14) 'Bait bays' includes major bays, Copano Bay east of a line running from Rattlesnake Point to the northeastern boundary of the Bayside township, Nueces Bay from the bridge at State Highway 181 west to the second overhead power line dissecting the bay, Upper Laguna Madre, Baffin Bay, Alazan Bay, Carlos Bay, Baroom Bay, Lower Laguna Madre, and the Gulf Intracoastal Waterway exclusive of all tributaries.

(15) 'Nursery areas' includes tributary bays, bayous, inlets, lakes, and rivers, which are proven to serve as significant growth and development environments for postlarval and juvenile shrimp not including the outside waters, major bays, or bait bays as defined in this section.

#### § 77.002. License Fees

License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.003. Disposition of Funds

Money received for licenses issued under this chapter or fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.004. Research Program

(a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of shrimp;

(2) factors affecting the increase or decrease in shrimp;

(3) the use of trawls, nets, and other devices for the taking of shrimp;

(4) industrial and other pollution of the water naturally frequented by shrimp; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state.

(b) The research may be conducted by the department or an agency designated by the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.005. Reporting by Licensee

A licensee under this chapter who lands shrimp in the state shall submit to the department by the 10th day of each month, on forms furnished by the department, a report stating:

(1) the number of pounds of shrimp landed at points in the state by the licensee during the reporting period;

(2) the water from which the shrimp were taken; and

(3) the names of the species of shrimp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.006. Department Findings and Report

(a) Based on the study and reports obtained under Section 77.004 and 77.005 of this code, the department shall make findings of fact and enter the findings in the permanent records of the department.

(b) The findings of fact shall be published as a report and presented to the governor and each member of the legislature before each regular session of the legislature.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.007 to 77.010 reserved for expansion]

### SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO SHRIMPING

#### § 77.011. License Requirement

No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.012. Foreign Shrimp

Provisions of this chapter prohibiting possession, sale, purchase, unloading, or other handling of shrimp apply to shrimp caught in this state and shrimp coming from another state or country unless specifically provided otherwise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.013. Size

Except as provided by this chapter, no person may catch, possess, or have on board a boat within coastal water, or buy, sell, unload, transport, or handle, an amount of fresh shrimp, except sea bobs, which average in count of individual specimens more than 65 headless fresh shrimp to the pound or more than 39 heads-on fresh shrimp to the pound, with the exception in major bays the maximum heads-on count average from August 15 to October 31 each year shall be no more than

50 heads-on fresh shrimp to the pound and in such bays there shall be no count size required from November 1 to December 15 each year.

**§ 77.014. Method of Taking Count**

(a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.015. Gradation and Processing**

Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.016. Restrictions on Individual Bait-Shrimp Trawl**

No person may use, possess, or have on board a boat in coastal water more than one individual bait-shrimp trawl, or an individual bait-shrimp trawl:

(1) with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl is placed in use;

(2) exceeding 20 feet in length between the doors or boards or other spreading device; or

(3) with doors or boards exceeding 15 inches by 30 inches each, or a total of 450 square inches each.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.017. Possession After Season**

No person may retain saltwater shrimp in their fresh state legally taken in the coastal water of this state for more than five days after the end of an open season for the taking of shrimp unless he is a licensed bait dealer or sports fisherman.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.018. Foreign Trawl or Shrimp**

(a) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county a trawl and spreading device that may lawfully be used in the coastal water of another state if:

(1) the trawl and equipment are immediately en route to or from a home port or destination on land;

(2) the trawl and equipment have been used

during the open season for shrimp in another state; and

(3) the trawl and equipment are not used or intended for use in the coastal water of this state in violation of this chapter.

(b) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county shrimp that are lawfully caught in the coastal water of another state if the catch is immediately en route to or from a home port or destination on land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.019. Prohibited Handling of Shrimp**

No shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer, or other person holding a license issued by the department may knowingly unload, buy, or handle in any way shrimp or bait shrimp:

(1) from an unlicensed gulf shrimp boat or unlicensed commercial bay shrimp boat;

(2) of a prohibited size;

(3) caught in the inside water or outside water during the closed season for the water; or

(4) in violation of a provision of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.020. Penalty**

(a) A person who violates a provision of this chapter except Section 77.024 of this code, or those sections specified in Subsection (b) below, is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of not less than \$50 nor more than \$200 for the first offense;

(2) by a fine of not less than \$100 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 60 days, or both, for the second offense; and

(3) by a fine of not less than \$500 nor more than \$2,000 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

(b) A person who violates Section 77.011, 77.013, 77.016, 77.017, 77.018, 77.019, 77.047, 77.061, 77.063, 77.064, 77.065, 77.066, 77.067, 77.068, 77.069, 77.070, 77.081, 77.082, 77.085, 77.086, 77.087, 77.088, 77.089, 77.090, 77.091, 77.092, 77.093, 77.095(a), 77.096, 77.097, 77.098, or 77.099 of this code is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of \$200 for the first offense;

(2) by a fine of not less than \$300 nor more than \$700 or confinement in the county jail for not less than 10 days nor more than 60 days or both for the second offense;

(3) by a fine of not less than \$750 nor more than \$2,500 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

NOTE S.B. 764

Section 2.

(a) Except as provided by Subsection (b) of this section, this Act applies only to offenses committed on or after the effective date of this Act, and an offense committed before the effective date of this Act is governed by the law in existence before this Act took effect, and

that law is continued in force for that purpose as if this Act were not in effect.

(b) In a criminal action pending on or commenced on or after the effective date of this Act for an offense committed before this Act took effect, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

Section 3.

This act takes effect September 1, 1979.

#### § 77.021. Separate Offense

Each day on which a violation occurs constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.022. Responsibility for Violation

(a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(i), eff. Sept. 1, 1975.]

#### § 77.023. License Forfeiture

(a) On conviction for a third and subsequent offense under this chapter, a license under which operations involved in the violation are being conducted is subject to forfeiture.

(b) A license that is forfeited under this section may not be reissued for a period of 12 months from the date of forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.024. Operation Without License

(a) No person whose license has been forfeited under Section 77.023 of this code may do business without a new license or possess another license for the period of forfeiture.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000 and confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.025. Period of Limitation

*Text as added by § 13(j) of Acts 1975,  
64th Leg., p. 1213, ch. 456*

Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

[Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(j), eff. Sept. 1, 1975.]

*For text as added by § 20(g) of Acts 1975,  
64th Leg., p. 1222, ch. 456, see  
Section 77.025, post*

#### § 77.025. Confiscation and Disposal of Shrimp

*Text as added by § 20(g) of Acts 1975, 64th Leg.,  
p. 1222, ch. 456*

When an enforcement officer of the department believes that a person has unlawful possession of any shrimp taken in violation of this chapter, all shrimp aboard any vessel involved or in the trawl, whether in storage, on deck, and whether alive or dead, whole or headed, frozen or fresh, shall be deemed to have been taken in violation of the chapter and shall be confiscated by the arresting officer. The cargo of shrimp shall be sold to the highest of three bidders by the officer. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund number 900, pending the outcome of the action taken against the person charged with the illegal possession. Unless the person is found guilty, all the proceeds shall be paid to the defendant. [Acts 1975, 64th Leg., p. 1222, ch. 456, § 20(g), eff. Sept. 1, 1975.]

*For text as added by § 13(j) of Acts 1975, 64th  
Leg., p. 1213, ch. 456, see Section 77.025, ante*

[Sections 77.026 to 77.030 reserved for expansion]

#### SUBCHAPTER C. SHRIMP LICENSES

#### § 77.031. Commercial Bay Shrimp Boat License

(a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

(b) The fee for a commercial bay shrimp boat license is \$40.

(c) A commercial bay shrimp boat license expires on March 1 of the year following the date of issuance.

(d) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from commercial fishery and that he will maintain adequate facilities to conduct the business.

~~(d) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from commercial shrimp fishery and that he will maintain adequate facilities to conduct the business.~~

(e) Except as provided in Section 77.0371 of this code, not more than one commercial bay shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(g), eff. Sept. 1, 1975.]

#### § 77.032. Issuance of Commercial Bay Shrimp Boat License

A commercial bay shrimp boat license may be issued only in the months of January and February unless the applicant has acquired title to the shrimp boat by purchase or new construction after the last day of February of the year for which the license is sought, in which case the applicant must submit an

affidavit that the boat was acquired after the last day of February and that prior to the last day of February the applicant had not entered into an agreement to acquire the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.033. Commercial Bait-Shrimp Boat License**

(a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

(b) The fee for a commercial bait-shrimp boat license is \$40.

(c) A commercial bait-shrimp boat license expires August 31 following the date of issuance.

(d) Not more than one commercial bait-shrimp boat license may be issued to a boat for each licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.034. Inspection for Commercial Bait-Shrimp Boat License**

**REPEALED**

**§ 77.035. Commercial Gulf Shrimp Boat License**

(a) No person may operate a commercial gulf shrimp boat for catching or assisting in catching shrimp and other edible aquatic products from the outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

(b) The fee for a commercial gulf shrimp boat license is \$50.

(c) The commercial gulf shrimp boat license expires August 31 following the date of issuance.

(d) Except as provided in Section 77.0371 of this code, not more than one commercial gulf shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(h), eff. Sept. 1, 1975.]

**§ 77.036. Official Registration**

(a) An applicant for a commercial shrimp boat license issued under this subchapter must submit to the department the boat's United States Bureau of Customs official document or the Texas certificate of number for a motorboat.

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat and the number appearing on the United States Bureau of Customs official document or the Texas certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.037. Transfer of License**

A commercial shrimp boat license issued under this subchapter may be transferred on the application of the licensee only from a boat that has been destroyed or lost to a boat acquired by the licensee

as a replacement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.0371. Duplicate License of Transfer of Vessel**

On the sale of any boat licensed under this subchapter, the department, on receipt of an application from the new owner and the surrender of the original license, shall issue, without charge, a duplicate license reflecting the change of ownership.

[Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(a), eff. Sept. 1, 1975.]

**§ 77.038. Display of Licenses**

A commercial shrimp boat license issued under this subchapter must be prominently displayed on the bow, outside the wheelhouse, or at another point outside the boat designated by the department, and on each side of the boat, evidencing payment of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.039. License Design**

(a) A commercial shrimp boat license issued under this subchapter must be a metal or plastic sign or emblem at least 32 square inches in size, and have a different color or design for each license period.

(b) The character, color, and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.040. Other Licenses Required**

(a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain and each paid member of the crew of a boat having a commercial shrimp boat license issued under this subchapter must have a general commercial fisherman's license issued under Section 47.002 of this code, but these licenses may be purchased in the name of the vessel. The license form provided by the department for a vessel may be a single license covering the number of persons licensed as captain and crew, and the fee for the total number of persons licensed is the amount provided in Section 47.002 of this code times the number of persons comprising the captain and crew.

**§ 77.041. Gear on Commercial Shrimp Boat**

All shrimp trawls and fishing gear, except fishnets or seines, with which a boat having a commercial shrimp boat license issued under this subchapter is equipped may be used unless the use is otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.042. Shrimp House Operator License**

(a) No person may engage in business as a shrimp house operator unless he has obtained a shrimp house operator's license issued by the department.

(b) The fee for a shrimp house operator's license is \$150.

(c) A shrimp house operator's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.043. Bait-Shrimp Dealer License**

(a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

(b) The fee for a bait-shrimp dealer's license is \$40.

(c) A bait-shrimp dealer's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.044. Issuance of Bait-Shrimp Dealer's License**

(a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

(b) A bait-shrimp dealer's license may not be held by a person who also holds a shrimp house operator's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.045. Rights and Duties of Bait-Shrimp Dealer**

(a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a coastal county.

(c) Frozen dead bait held under a bait-shrimp dealer's license must be packaged and labeled "Bait Shrimp" in block letters at least one inch in height. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.046. Exemptions From Bait-Shrimp Dealer's License**

A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.047. Prohibited Handling of Shrimp by Bait-Shrimp Dealer**

No bait-shrimp dealer may knowingly unload, buy, or handle in any way bait shrimp from an unlicensed commercial bait-shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 77.048. Individual Bait-Shrimp Trawl License**

(a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl

unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

(b) The fee for the individual bait-shrimp trawl license is \$5.

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.049 to 77.060 reserved for expansion]

**SUBCHAPTER D. SHRIMPING IN OUTSIDE WATER**

**§ 77.061. General Closed Season**

Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

**§ 77.062. Change in General Closed Season**

Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

**§ 77.0621. Contiguous Zone Season**

Except as specifically provided in this subchapter, no citizen of this state may catch from the contiguous zone shrimp during a closed season as provided in Subdivision (1) of Section 77.061 of this code, including a closed season modified as provided in Section 77.062 of this code.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(c), eff. Sept. 1, 1975.]

**§ 77.063. General Limitation on Nets**

(a) Except as specifically provided in this subchapter, no person may catch shrimp in the outside water with, or possess or have on board a boat in the coastal water for use in outside water, a trawl, except a try net or test net, with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been put in use. Measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) When restrictions are imposed on either or both the size and number of main trawls, no person may use a try net in outside water exceeding 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each or a beam trawl exceeding 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

(c) This section does not apply to the taking of sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.064. Night Shrimping

No person may catch shrimp of any size or species in the outside water extending from the coastline of Texas up to and including seven fathoms in depth during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.065. White Shrimp

(a) A licensed commercial gulf shrimp boat operator may catch white shrimp in the outside water not exceeding four fathoms in depth from June 1 to July 15, both dates inclusive, or during the period prescribed under Section 77.062 of this code.

(b) No more than one net may be used at a time, except a try net, and when such net is an otter trawl, the trawl may not consist of doors less than three feet in length as measured along the door centerline from the leading tip to the trailing edge of the door, excluding any add-on devices of any type, and the total measurement of doors and trawl may not exceed the measurement as described in Subsection (c) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door. When the trawl used is a beam trawl, the trawl may not exceed 25 feet in width as measured along the beam in its fully extended position.

(c) The total measurement for an otter trawl and doors under this section shall not exceed the following:

(1) doors three feet or more but less than four feet — 40 feet;

(2) doors four feet or more but less than five feet — 42 feet;

(3) doors five feet or more but less than six feet — 44 feet;

(4) doors six feet or more but less than seven feet — 46 feet;

(5) doors seven feet or more but less than eight feet — 48 feet;

(6) doors eight feet or more but less than nine feet — 50 feet;

(7) doors nine feet or more but less than 10 feet — 52 feet;

(8) doors 10 feet or more — 54 feet.

#### § 77.066. Sea Bobs

(a) No commercial gulf shrimp boat operator may catch sea bobs with a trawl exceeding 25 feet in width measured along the corkline from board to board or between the extremes of any other spreading device or with a trawl having a mesh size in excess of six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been placed in use. Not more than one trawl may be used at a time.

(b) No person catching sea bobs may catch or have on board a boat any other species of shrimp which exceed ten percent, in weight or number, of the entire catch.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.067. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in the outside water with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the outside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirements set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.068. Noncommercial Shrimping

(a) Subject to the limitations prescribed in this section, during the open season in outside water a person may catch shrimp for personal use by means of:

(1) a cast net, dip net, bait trap, or minnow seine that is not more than 20 feet long and that is manually operated on foot only without the use of any mechanical means or devices;

(2) an individual bait-shrimp trawl; or

(3) a manually operated seine not exceeding 400 feet in length with a mesh of not less than one and one-half inch square, except for the bag and 50 feet on each side of the bag, the mesh of which may not be larger than one inch square.

(b) A person may catch for personal use not more than 100 pounds of shrimp (in their natural state with heads attached) each day during the open season in outside water.

(c) The seine described in Subsection (a)(3) of this section may not be used within one mile of any natural or man-made pass leading from inside water to outside water, and any shrimp or marine life caught with the seine but not kept by the person using the seine shall be returned to the water. Shrimp caught with this seine may not be sold. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.069. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in outside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.070. Possession of Shrimp

Except as permitted by Section 77.065 and Section 77.067 of this code, no person may possess or have on board a boat in coastal water, or buy, sell, unload,

transport, or handle in any way, shrimp caught in the outside water during the closed season or shrimp taken unlawfully from the contiguous zone during the closed season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(d), eff. Sept. 1, 1975.]

#### § 77.071. Regulations in Contiguous Zone

(a) The department shall not enforce any regulations in the contiguous zone if it determines that the shrimp it desires to manage are being harvested on a meaningful basis by vessels not subject to the same or similar regulations.

(b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.

### SUBCHAPTER E. SHRIMPING IN INSIDE WATER

#### § 77.081. Application

No person may catch shrimp of any size or species within the inside water except as provided in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.082. Shrimping in Passes

No person may catch shrimp of any size or species within the natural or man-made passes leading from the inside water to the outside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.083. Heading Shrimp

No person may head shrimp aboard a boat in the inside water or dump or deposit shrimp heads in the inside water except in artificial passes, canals, or basins.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.084. Trawl Doors

No person may have on board a boat in the inside water for use on the inside water more than one set of trawl doors or other spreading devices nor more than one set of try-net doors not to exceed 450 square inches per door.

#### § 77.085. Try Nets

No person may use, possess, or have on board a boat in inside water a try net or test net (1) exceeding 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each, or (2) a beam trawl 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

#### § 77.086. Mesh Size

(a) Except as provided in this subchapter, no person may catch shrimp in the inside water with, or possess or have on board a boat in the coastal water for use in inside water, a trawl and bag or trawl liner having a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl or bag has been placed in use. The measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) This section does not apply to try nets or test nets.

#### § 77.087. Net Width

During the period from August 15 to December 15 of each year, both dates inclusive, no person may catch shrimp of any size or species in the major bays with more than one otter trawl or an otter trawl exceeding 95 feet in width as measured along an uninterrupted corkline, from leading tip of door to leading tip of door. This section does not apply to try nets or test nets.

#### § 77.088. Night Shrimping Prohibited

Except as provided in this subchapter, no person may catch shrimp or use or operate a net or trawl to catch shrimp of any size or species in the inside water except during the period beginning 30 minutes before sunrise and ending 30 minutes after sunset.

#### § 77.089. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in bait bays with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the inside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 77.090. Noncommercial Shrimping

(a) A person may catch shrimp for personal use with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only and without the use of any mechanical means or devices:

(1) in major bays of inside water during the open season ending on December 15 as provided in Section 77.091 of this code in an amount not to exceed 100 pounds of shrimp per day; and

(2) in major bays of inside water from May 15 to July 15, both dates inclusive, in an amount not to exceed 15 pounds of shrimp per day.

(b) The weight of shrimp taken or caught under this section is determined in their natural state with heads attached.

NOTE: In the 66th Leg., both SB 335 and HB 1872 amended subsection(a) of 77.090. Both passed, were signed, and became effective on identical days but with conflicting limits for the fall season. Until an opinion of the Attorney General or court decision rules to the contrary, the pre-existing limit is deemed applicable.

#### § 77.091. Commercial Shrimp Season

A licensed commercial bay shrimp boat operator may catch shrimp of lawful size in the major bays during the periods from August 15 to December 15, both dates inclusive, and May 15 to July 15, both dates inclusive.



### § 77.092. Commercial Shrimp Limit

(a) During the period from May 15 to July 15, both dates inclusive, a licensed commercial bay shrimp boat operator may catch not more than 300 pounds of shrimp per boat per calendar day, and may possess or have on board a boat in the inside water or unload or attempt to unload at a point in this state not more than 300 pounds of shrimp.

(b) The weight of shrimp must be determined in their natural state with heads attached.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 77.093. Commercial Shrimp Nets

In major bays of inside water during the period from May 15 to July 15, no licensed commercial bay shrimp boat operator may catch shrimp with more than one net at a time, except a try net, or with a net:

(1) in the case of an otter trawl, exceeding a total measurement as described in Subsection (2) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door or with doors less than three feet in length as measured along the door centerline from the leading tip to the trailing edge of the door, excluding any add-on devices of any type; and

(2) the total measurement for the otter trawl and doors under Subsection (1) above shall not exceed the following:

(A) doors three feet or more but less than four feet — 40 feet;

(B) doors four feet or more but less than five feet — 42 feet;

(C) doors five feet or more but less than six feet — 44 feet;

(D) doors six feet or more but less than seven feet — 46 feet;

(E) doors seven feet or more but less than eight feet — 48 feet;

(F) doors eight feet or more but less than nine feet — 50 feet;

(G) doors nine feet or more but less than 10 feet — 52 feet;

(H) doors 10 feet or more — 54 feet; or

(3) in the case of a beam trawl, the beam trawl shall not exceed 25 feet in width as measured along the beam in its fully extended position; or

(4) having meshes, including the meshes of the bag or liner, less than six and one-half inches between the most widely separated knots in any consecutive series of five stretch meshes after the net or bag has been placed in use.

### § 77.094. Commercial Bait-Shrimp Season

(a) A licensed commercial bait-shrimp boat operator in the inside water may catch shrimp of any size or species in bait bays for use as bait only at any time of the year.

(b) Persons holding a valid bait-shrimp dealer's license and maintaining a fixed place of business immediately adjacent to a nursery area, prior to designation of the area as a nursery area, shall be authorized to operate not more than two licensed bait-shrimp boats during any given day within the area adjacent to their facility wherein bait-shrimping has otherwise been prohibited. This authorization will terminate 12 years after designation of the prohibition on shrimping in the area and is subject to the limitations of this

chapter and within the period of validity of the bait-shrimp dealer's license. Authorized vessels must be reported to the department prior to period of operation within the specific area authorized. This report must include vessel identification, bait-shrimp dealer's license number under which authorization is granted, body of water to be shrimped, and other information deemed necessary for proper enforcement by the department. This provision does not apply to bait-shrimp dealers not harvesting bait shrimp from nursery areas.

### § 77.095. Commercial Bait-Shrimp Limit

(a) No licensed commercial bait-shrimp boat operator may catch more than 150 pounds of shrimp per boat per calendar day, or possess or have on board a boat, or unload or attempt to unload at a point in the state more than 150 pounds of shrimp.

(b) The weight of the shrimp must be determined in their natural state with heads attached. Not more than 50 percent of the shrimp may be dead and 50 percent of the shrimp must be kept in a live condition on board the vessel taking the bait shrimp.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

### § 77.096. Commercial Bait-Shrimp Nets

No licensed commercial bait-shrimp boat operator may catch shrimp in bait bays with:

(1) more than one net at a time, except one try net not exceeding 12 feet in total measurement as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that do not exceed 450 square inches each, or a beam trawl exceeding five feet in width as measured along the beam of a beam trawl in its fully extended position;

(2) an otter trawl and doors not exceeding the total measurement as described in Subsection (3) below as measured along an uninterrupted corkline from leading tip of door to leading tip of door; and

(3) the total measurement for the otter trawl and doors under Subsection (2) above shall not exceed the following:

(A) doors three feet or more but less than four feet — 40 feet;

(B) doors four feet or more but less than five feet — 42 feet;

(C) doors five feet or more but less than six feet — 44 feet;

(D) doors six feet or more but less than seven feet — 46 feet;

(E) doors seven feet or more but less than eight feet — 48 feet;

(F) doors eight feet or more but less than nine feet — 50 feet;

(G) doors nine feet or more but less than 10 feet — 52 feet;

(H) doors 10 feet or more — 54 feet; or

(4) a beam trawl that does not exceed 25 feet as measured along the beam in its fully extended position; or

(5) a net or bag having mesh size of not less than six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

### § 77.097. Commercial Bait-Shrimping at Night

(a) No licensed commercial bait-shrimp boat operator may catch shrimp for use as bait between sunset and sunrise except during the period begin-

ning December 16 of one year and ending August 14 of the following year, both dates inclusive.

(b) Bait-shrimp may be taken at any time of the day or night in the water of the Laguna Madre.

#### § 77.098. Bait-Shrimp Sale

No licensed commercial bait-shrimp boat operator may sell or unload shrimp caught under this subchapter at any time except to a bona fide bait-shrimp dealer or a sports fisherman operating a boat in inside water.

#### § 77.099. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in inside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

#### § 77.100. Retention of Certain Fish

During the period beginning on December 16 of a year and extending through February 28 of the following year, no person may retain redfish or spotted sea trout caught in inside water with a trawl.

### CHAPTER 78. CLAMS, MUSSELS, AND SPONGE CRABS

#### SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS

##### § 78.001. License Required

No person may take any mussels, clams, or naiads or their shells from the public water of the state without a license.

##### § 78.002. License Form; Expiration

The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. The license expires one year after the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 78.003. License Fee

The license fee is \$10, payable to the department, with an additional \$25 fee for permission to use a dredge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 78.004. Unlawful Acts

A person who violates the provisions of Section 78.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

#### SUBCHAPTER B. SPONGE CRABS

##### § 78.101. Definitions

"Coastal water" has the same meaning as is given to the term by the Texas Shrimp Conservation Act (Chapter 77 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 78.102. Unlawful Taking of Sponge Crabs

(a) No person may take sponge crabs from the coastal water of the state by any means.

(b) No person may buy or sell a female crab that:

- (1) has its abdominal apron detached; and
- (2) was taken from coastal water.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

### SUBCHAPTER C. BLUE CRABS

#### § 78.201. Unlawful Taking of Blue Crabs

(a) Except as provided in Subsections (b) and (c) of this section, no person may possess or may catch and retain a blue crab smaller than five inches across the shell from tip to tip.

(b) During the period from March 1 through April 30, a person may catch and retain blue crabs of any size for use as bait if bait blue crabs smaller than the minimum size are kept alive in a container separate from nonbait blue crabs.

(c) The holder of a commercial fishing license may catch and retain a number of blue crabs smaller than the minimum size that equals or is less than five percent of the total number of blue crabs caught and retained by the licensee, excluding bait blue crabs.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

### CHAPTER 79. EXTENDED FISHERY JURISDICTION

#### Section

79.001. Compliance.

79.002. Authority.

79.003. Suspension of Other Laws.

#### § 79.001. Compliance

The department is authorized to cooperate with the Gulf of Mexico Fishery Management Council established pursuant to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), in developing state management programs which are consistent with plans proposed by the council and approved by the secretary of commerce.

[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

#### § 79.002. Authority

New regulatory authority by the department may occur only if federal regulation in state waters is proposed and under no other circumstances. When necessary to retain jurisdiction of resources in the state, and only then, the department may follow procedures outlined in Chapter 61 of this code in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).

[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

#### § 79.003. Suspension of Other Laws

Irrespective of exclusions or limited application of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) or any chapter in Title 7 of this code the commission shall exercise the authority set out in Section 79.002 of this code and conflicting provisions limiting the area, species to which applicable, or special seasons, are hereby suspended when the proclamation of the commission becomes effective, but only for the period specified in such proclamation.

[Added by Acts 1977, 65th Leg., p. 1281, ch. 501, § 2, eff. June 15, 1977.]

**CHAPTER 81. MANAGEMENT AREAS AND PRESERVES: GENERAL AUTHORITY**

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**SUBCHAPTER B. FISH HATCHERIES**

**§ 81.101. Saltwater Areas**

The commission may construct and maintain salt-water hatcheries and propagation farms for fish, oysters, and game on islands owned by the state in coastal water. Funds available to the department for the enforcement of game, fish, and oyster laws may be used for costs and expenses authorized under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 81.102. Freshwater Areas**

The department may purchase land for the construction, maintenance, enlargement, and operation of freshwater fish hatcheries, and for the construction and maintenance of passes leading from one body of tidewater to another. On approval of the title by the attorney general, purchases may be made from funds appropriated to the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 81.103. Property Acquisition: Manner and Means**

The department may enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of erecting, constructing, enlarging, and maintaining fish hatcheries, buildings, equipment, roads, and passageways to the hatcheries. The department may also enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of constructing, enlarging, and maintaining passes or channels from one body of tidewater to another body of tidewater in the state. The manner and method of condemnation, assessment, and payment of damages is the same as is provided for railroads.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 81.104. Condemnation Suits**

Condemnation suits under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department and shall be held in Travis County. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the comptroller against any fund in state treasury that is limited in use for fish or wildlife purposes and that is appropriated to the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.105 to 81.200 reserved for expansion]

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**CHAPTER 82. STATUTORY SANCTUARIES AND PRESERVES**

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**SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT**

**§ 82.101. Creation and Boundaries**

The Connie Hagar Wildlife Sanctuary—Rockport in Aransas County is described as follows:

Being all of the water area of Aransas Bay and Little Bay between the shoreline of Live Oak Peninsula and a line described as follows:

BEGINNING at the point where the city limits of the City of Rockport intersects the shoreline of the Aransas Bay;

THENCE, one mile due east to a point in Aransas Bay;

THENCE, in a northeasterly direction approximately 1- $\frac{3}{8}$  miles to a point which is  $\frac{1}{2}$  mile due east of Nine Mile Point;

THENCE, in a north by northwesterly direction approximately 2 miles to a point which is  $\frac{1}{2}$  mile due east of the channel entrance to the Fulton Harbor;

THENCE, due west to the shoreline of Live Oak Peninsula.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 82.102. Boundary Markers**

The department shall place suitable markers defining the boundaries of the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 82.103. Unlawful Act**

No person may hunt any bird or animal within the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 82.104. Penalties**

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.105 to 82.200 reserved for expansion]

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**SUBCHAPTER D. WILDLIFE SANCTUARY: GALVESTON COUNTY**

**§ 82.301. Creation**

The group of small islands located in Galveston Bay near Smith's Point and known as Vingt et Un Islands are a state wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 82.302. Unlawful Acts**

No person may hunt or in any way molest any of the birds on any of the islands or within 50 yards of the islands, nor may any person enter on the islands

for any purpose without first obtaining permission from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 82.303. Penalties

A person violating any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.304 to 82.400 reserved for expansion]

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## SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY: SAN PATRICIO AND NUECES COUNTIES

### § 82.501. Creation

The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;

THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;

THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southern most point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;

THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southern most portion of this cut;

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 82.502. Marking Boundaries

The department shall place suitable markers defining the boundary of the wildlife sanctuary as described in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 82.503. Unlawful Acts

(a) No person may hunt any bird within the sanctuary.

(b) No person may fish by any means other than rod and reel within the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 82.504. Penalties

A person who violates any provision of this sub-

chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.505 to 82.600 reserved for expansion]

\* \* \*

## SUBCHAPTER H. ISLAND CHANNEL

### § 82.651. Island Channel

(a) The department may construct and maintain a channel through Padre Island, Mustang Island, and St. Jo Island, or any of them.

(b) The department may contract for the construction of a channel under this section on approval by the commission and approval from the federal government of an application for authority to construct channels.

(c) The cost of the construction and maintenance of a channel constructed under this section may be paid from the special game and fish fund only.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.652 to 82.700 reserved for expansion]

\* \* \*

## CHAPTER 83. FEDERAL-STATE AGREEMENTS

### § 83.001. Fish Restoration Projects

The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 83.002. Commercial Fisheries Research

(a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 83.003. Wildlife-Restoration Projects

The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated

under the act by the secretary of agriculture.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 83.004. Migratory Game Bird Reservations

(a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act.  
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### SUBTITLE F. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

#### CHAPTER 86. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

##### § 86.001. Management and Protection

The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey or private land, and on islands within those areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.002. Permit Required; Penalty

(a) No person may disturb or take marl, sand, gravel, shell, or mudshell under the management and protection of the commission or operate in or disturb any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority without first having acquired from the commission a permit authorizing the activity.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day's operation in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.003. Application for Permit

(a) A person desiring a permit may apply to the commission.

(b) The application must be in writing and must describe the area in which authorization to operate is sought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.004. Granting of Permit

The commission may grant a permit to an appli-

cant who has complied with all requirements of the commission if the commission finds that the disturbing, taking, and carrying away of marl, sand, gravel, shell, or mudshell will not:

(1) damage or injuriously affect any island, reef, bar, channel, river, creek, or bayou used for navigation, or any oysters, oyster beds, or fish in or near the water used in the operation; and

(2) change or injuriously affect any current that would affect navigation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.005. Economic Considerations

In determining whether or not a permit should be granted, the commission shall consider the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation as well as the needs of industry for marl, sand, gravel, shell, and mudshell and its relative value to the state for commercial use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.006. Permit

(a) The permit shall identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell and shall describe the nature of the material that may be disturbed, taken, or carried away.

(b) The permit shall describe the area where the operation may occur and shall state the purpose of the operation.

(c) The permit may contain other terms and conditions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.007. Permits Not Assignable

A permit issued under this chapter is not assignable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.008. Denial of Permit

If the commission refuses to grant a permit to an applicant, it shall make a full written finding of facts explaining the reason for the refusal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.009. Termination and Revocation

The failure or refusal by the holder of a permit to comply with any term or condition of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 86.010. Removal and Replanting of Oysters and Oyster Beds

(a) The commission may remove oysters and oyster beds and replant them in other natural or artificial reefs if the commission finds that the removal and replanting will benefit the growth and propagation or the betterment of oysters and oyster beds or fishing conditions.

(b) The removal and replanting of oysters and oyster beds shall be at the expense of the person holding a permit or of an applicant for a permit and not the state.

(c) Before authorizing the removal and replanting of oysters or oyster beds the commission shall give notice to interested parties and hold a hearing on the subject.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.011. No Special Privileges

No special privileges or exclusive rights may be granted to any person to take marl, sand, gravel, shell, or mudshell or to operate in or on any place under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.012. Sales of Materials

(a) The commission, with the approval of the governor, may sell marl, sand, gravel, shell, and mudshell for not less than four cents a ton.

(b) The commission may require other terms and conditions for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for sales shall be made to the commission.

(d) Marl, sand, gravel, shell, and mudshell may be removed without payment to the commission if removed from land or flats patented to a navigation district by the state for any use on the land or flats or on any adjoining land or flats for any purpose for which the land or flats may be used under the authority of the patent to the district, or if removed to provide access to a boat ramp under Section 31.141(c) of this code.

#### § 86.013. Use on Roads

(a) A county, subdivision of a county, city, or town that has a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase marl, sand, gravel, shell, or mudshell taken and used for roads and streets.

(b) A county, subdivision of a county, city, or town that purchases marl, sand, gravel, shell, or mudshell for use on roads and streets from a holder of a permit who has purchased the material from the commission may receive a refund of the amount paid by the permit holder by submitting a sworn itemized account of an official of the county, subdivision of the county, city, or town. All refunds under this subsection must be approved by the commission and be paid by the comptroller by warrant.

(c) The State Highway Commission may receive a refund of the amount paid to the commission for the purchase of marl, sand, gravel, shell, or mudshell used by the highway commission on public roads.

(d) The commission may make regulations for the payment of refunds under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.014. Use for Seawalls, etc.

(a) The commission shall grant to any county, city, or town that is authorized under Title 118, Revised Civil Statutes of Texas, 1925, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending, protecting, maintaining, or improving any seawall, breakwater, levee, dike, flood-

way, or drainway.

(b) Permits under this section shall be issued under regulations established by the commission.

(c) A county, city, or town taking marl, sand, gravel, shell, or mudshell under this section is not required to purchase the marl, sand, gravel, shell, or mudshell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.015. Sand From Corpus Christi and Nueces Bays

Sand and other deposits having no commercial value may be taken from Corpus Christi and Nueces bays for filling and raising the grade of the salt flats in the northern part of the city of Corpus Christi and the lowlands lying north of the north boundary line of the city of Corpus Christi, in Nueces County, and south of the south boundary line of the city of Portland, in San Patricio County, without making payments for it to the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.0151. Use to Open Brown Cedar Cut

(a) A nonprofit corporation, fund, or foundation exempted from federal income taxes under Section 503(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 503(c)(3)), may take sand, gravel, marl, shell, and mudshell from Brown Cedar Cut in Matagorda County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and East Matagorda Bay.

(b) The fee required by Section 86.012 of this code does not apply to sand, gravel, marl, shell, or mudshell taken under Subsection (a) of this section, and that sand, gravel, marl, shell, and mudshell may be deposited on private land.

#### § 86.016. Deposit of Funds

The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.017. Use of Funds

Funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for the enforcement of the provisions of this chapter, the payment of refunds, and the construction and maintenance of fish hatcheries. No less than three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, shall be used for the construction and maintenance of fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 86.018. Taking From Certain Areas Prohibited

(a) No person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$200.

**§ 86.019. Oil and Gas Lessees**

This chapter does not require the holder of an oil and gas lease executed by the state to obtain a permit from the commission to exercise any right granted under the lease or other laws of this state. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**TITLE 6. COMPACTS**

**CHAPTER 91. GULF STATES COMPACT**

**§ 91.001. Members of Commission**

The three members of the Gulf States Marine Fisheries Commission from the state authorized under Article III of the Gulf States Marine Fisheries Compact are:

- (1) the executive director of the department;
- (2) a legislator appointed jointly by the lieutenant governor and speaker of the house of representatives; and
- (3) a citizen with a knowledge of the marine fisheries problems appointed by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.0011. Application of Sunset Act**

The office of Gulf States Marine Fisheries Compact Commissioner for Texas is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.087, eff. Aug. 29, 1977.]

<sup>1</sup> Civil Statutes, art. 5429k.

**§ 91.002. Terms of Commission Members**

(a) The executive director of the department shall serve on the Gulf States Marine Fisheries Commission in an ex-officio capacity, and his term expires when he ceases to hold the office of executive director of the department. His successor as a member of the Gulf States Marine Fisheries Commission is his successor as executive director of the department.

(b) The legislator appointed as a member of the Gulf States Marine Fisheries Commission shall serve in an ex-officio capacity, and his term expires at the time he ceases to hold his legislative office. His successor as a member of the Gulf States Marine Fisheries Commission shall be appointed as provided by Section 91.001(2) of this code.

(c) The citizen appointed as a member of the Gulf States Marine Fisheries Commission shall serve a term of three years or until his successor has been appointed and has qualified. A vacancy in this position shall be filled for the unexpired term by appointment by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.003. Delegate of Commissioner**

The executive director of the department as ex-officio member of the Gulf States Marine Fisheries Commission may delegate to an authorized employee of the department the power to be present and participate, including the right to vote for the execu-

tive director, at any meeting, hearing, or proceeding of the Gulf States Marine Fisheries Commission. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.004. Powers and Duties**

All the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact are granted to the Gulf States Marine Fisheries Commission and members of the commission. These powers are in aid of and supplemental to but not a limitation on the powers vested in the Gulf States Marine Fisheries Commission by other laws of this state or by the terms of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.005. Cooperation of State Agencies**

(a) All officers of the state shall do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact.

(b) All officers, bureaus, departments, and persons in state government shall furnish the Gulf States Marine Fisheries Commission information and data requested by the commission and aid the commission by loan of personnel or other means lying within their legal rights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.006. Reports**

The Gulf States Marine Fisheries Commission shall keep accurate accounts of receipts and disbursements and shall submit on or before February 10 of each year a report to the governor and legislature of the state containing:

(1) a detailed description of the transactions conducted by the commission during the preceding calendar year;

(2) recommendations for any legislative action considered advisable or necessary to carry out the intent and purposes of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.007. Auditor**

The state auditor from time to time shall examine the accounts and books of the Gulf States Marine Fisheries Commission, including receipts, disbursements, and other items relating to its financial standing. The auditor shall report the results of the examination to the governor of each state that is a party to the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 91.008. Text of Compact**

The Gulf States Marine Fisheries Compact reads as follows:

**GULF STATES MARINE FISHERIES COMPACT**

The contracting states solemnly agree:

**ARTICLE I**

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the

development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

#### ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

#### ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

#### ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever, and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto the stocking of the waters of such States with fish

and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

#### ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

#### ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

#### ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

#### ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

#### ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

#### ARTICLE X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so



compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

**ARTICLE XI**

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

**ARTICLE XII**

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriation as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	\$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	\$13,000.00

The proration and total cost per annum of Thirteen Thousand (\$13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

**ARTICLE XIII**

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**TITLE 7. LOCAL AND SPECIAL LAWS**

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**CHAPTER 104. ARANSAS COUNTY**

**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

**§ 104.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Aransas County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 104.002. Partial Exclusion of Certain Area**

For that part of San Antonio Bay lying within the northeast part of Aransas County, the Aransas River where it forms the boundary with Refugio County, and Copano Creek where it forms the boundary with Calhoun County, wildlife resources under the Uniform Wildlife Regulatory Act includes only fish, aquatic life, and marine animals and does not include oysters.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 104.003 to 104.010 reserved for expansion]

**SUBCHAPTER B. FISH**

**§ 104.011. Shrimp**

In Aransas County shrimp are not covered under the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 104.012. Net-Free Zone**

(a) The net-free zone in Aransas County is comprised of Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-mile Point, past the town of Rockport to a point at the east end of Talley Island. The net-free zone also includes that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(b) No person may set or drag a net or seine except a minnow seine not exceeding 20 feet in length for taking bait in the net-free zone.

(c) No person may place or set a trotline or crab trap in the net-free zone.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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SUBCHAPTER B. PROVISIONS GENERALLY  
APPLICABLE TO HUNTING

CHAPTER 120. BRAZORIA COUNTY

§ 120.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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CHAPTER 129. CALHOUN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM  
WILDLIFE REGULATORY ACT

§ 129.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Calhoun County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 129.002. **Wildlife Act Applicability: Exclusions**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to oysters and shrimp in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 129.003 to 129.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 129.011. **Guadalupe River: Fishing Methods**

(a) No person may catch fish from the Guadalupe River in Calhoun County except by:

- (1) hook and line;
- (2) trotline;
- (3) flounder gig and light; or
- (4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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CHAPTER 131. CAMERON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM  
WILDLIFE REGULATORY ACT

§ 131.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cameron County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 131.002. **Regulatory Act: Shrimp and Oysters in  
Outside Water Excluded**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp and oysters in the outside water of the Gulf of Mexico in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 131.011. **Audubon Society Land**

(a) This section applies to Green Island and the group of three islands in Big Bay and the flats, reefs, and shallow water near those islands in Cameron County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

- (1) hunting birds known to be a prey on other birds or eggs; or
- (2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. FISH

§ 131.021. **Flounder, Speckled Trout, and Redfish  
Size Limits**

(a) No person in Cameron County may retain or place in a container or boat or on a stringer a speckled trout less than 12 inches long, a flounder less than 12 inches long, or a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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CHAPTER 136. CHAMBERS COUNTY

§ 136.001. **Regulatory Act: Applicability**

[Text of section effective October 1, 1978]

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Chambers

County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

*For text of section effective until October 1, 1978, see § 136.001, ante*

**§ 136.002. Regulatory Act: Red Drum**

*[Text of section added effective October 1, 1978]*

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to red drum in Chambers County.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

[Sections 136.003 to 136.010 reserved for expansion]

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**SUBCHAPTER E. FISH**

**§ 136.041. Catfish Size Limits**

(a) No person may retain or place in a container or boat or on a stringer a catfish caught from the public water of Chambers County which is less than 11 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 136.042. Net Size for Rough Fish and Catfish**

(a) In Chambers County, except in the water of Trinity Bay, Lake Anahuac, and Turtle Bay Bayou, a hoop net, gill net, and trammel net may be used for the catching of rough fish and catfish only.

(b) No person may use in the water described in Subsection (a) of this section for the purpose of taking rough fish or catfish a hoop net, gill net, or trammel net having meshes smaller than three inches.

(c) No person may take bass or crappie with a net authorized by this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 136.043. Seining Near Cities Prohibited**

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Chambers County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the

owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

**§ 136.044. Galveston and Trinity Bays: Nets**

(a) No person may possess, use, or place in or on that portion of Galveston Bay or Trinity Bay in Chambers County lying north of a line from Eagle Point to Smith Point a setnet, gill net, trap, or other device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.]

**§ 136.045. East Galveston Bay: Nets**

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Chambers County during the period beginning on August 15 and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Chambers County at any time:

(1) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(2) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation

for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.]

#### § 136.046. Other Water: Fishing Methods

(a) No person may place or use a seine, net, or other device for catching fish in any of the bays, streams, bayous, or canals of Chambers County not covered by Sections 136.042, 136.043, and 136.044 of this code except:

- (1) an ordinary pole and line;
- (2) a casting rod and reel;
- (3) artificial bait;
- (4) a trotline;
- (5) a setline;
- (6) a flounder gig and light; and
- (7) a cast net or minnow seine not more than 20 feet long and used only for catching bait.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurs is prima facie evidence against the owner of the boat, vehicle, net, or seine, or against the party last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.]

#### § 136.047. Commission May Close Certain Water

(a) The commission may close tidal water in Chambers County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent its destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 136.043, 136.044, and 136.045 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 136.048. Nets and Trotlines: Use

[Text of section added effective October 1, 1978]

(a) In that portion of Galveston Bay or Trinity Bay in Chambers County where nets, seines, and saltwater trotlines are permitted, during the period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 9, eff. Oct. 1, 1978.]

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### CHAPTER 184. GALVESTON COUNTY

#### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

##### § 184.001. Regulatory Act: Applicability

[Text of section effective October 1, 1978]

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Galveston County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 724, ch. 270, § 10, eff. Oct. 1, 1978.]

##### § 184.002. Regulatory Act: Saltwater Marine Life

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all marine life except shrimp in Galveston County.

**NOTE: The reader should refer to Section 61.004 of this Code to determine when Sections in Subchapter C become inoperative.**

#### SUBCHAPTER C. FISH

##### § 184.021. Galveston Bay: Seines

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Galveston County during the period beginning on August 15 of one year and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Galveston County at any time:

- (1) Swan Lake;
- (2) Moses Lake;
- (3) Clear Lake;
- (4) Dickinson Bayou or Bay west of a line from Miller's Point to April Fool Point;
- (5) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and
- (6) water of Galveston Bay lying east of a

line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.]

#### § 184.022. Other Water: Net and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the bays, streams, bayous, or canals of Galveston County not covered by Section 184.021 of this code, or in San Luis Pass in Galveston County.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and his commercial fishing license is subject to forfeiture for a period of one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.]

#### § 184.023. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Galveston County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation

occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 184.024. Commission May Close Certain Water

(a) The commission may close tidal water in Galveston County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 184.021, 184.022, and 184.023 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 184.025. Nets and Trotlines: Use

(a) In that portion of Galveston Bay or Trinity Bay in Galveston County where nets, seines, and saltwater trotlines are permitted, during that period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 11, eff. Sept. 1, 1977.]

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### CHAPTER 201. HARRIS COUNTY

#### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 201.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harris County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

## SUBCHAPTER B. FISH

### § 201.011. Regulatory Act: Marine Life Excluded

[Text of section effective October 1, 1978]

In Harris County, saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 725, ch. 270, § 12, eff. Oct. 1, 1978.]

[For text of section effective until October 1, 1978, see § 201.011, ante]

### § 201.012. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Harris County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 201.013. Galveston Bay: Nets and Seines

(a) No person may possess, use, or place in or on that portion of Galveston Bay lying in Harris County a setnet, gill net, trap, or other similar device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction, he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.]

### § 201.014. Other Water: Nets and Seines

(a) No person may place or use a seine, net, or

other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the saltwater bays, streams, bayous, or canals of Harris County other than Galveston Bay.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.

(c) The identification of a boat, vehicle, net, or seine from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.]

### § 201.015. Commission May Close Certain Water

(a) The commission may close tidal water in Harris County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

(1) the reason for the closing;

(2) a designation of the area to be closed;

(3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 201.012, 201.013, and 201.014 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### § 201.016. Nets and Trotlines: Use

[Text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13]

(a) No person may use a net, seine, or trotline within a saltwater bay or lake in Harris County:

(1) during the period beginning on Saturday of Memorial Day weekend and extending through sunset on Labor Day; and

(2) during the period beginning at sunset on Friday and extending through sunset on Sunday

of each week.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, eff. Sept. 1, 1977.]

*For text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, see Section 201.016, post.*

#### § 201.016. Crab Traps and Pots: Certain Bays

*[Text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5]*

(a) This section applies only to the water of Burnett Bay, Crystal Bay, Scott Bay, and Black Duck Bay in Harris County.

(b) No person may possess, use, or place more than three crab traps, crab pots, or other similar devices used for the catching of crabs on or in the water described in Subsection (a) of this section. This prohibition does not include crab lines, hooks or lines, or trotlines normally employed for the catching of crabs.

(c) It is an affirmative defense to a prosecution under this section that the person possessed the trap, pot, or device prohibited by Subsection (b) of this section on board a vessel while en route to water where the use of the trap, pot, or device is not prohibited and that the trap, pot, or other device was not used for the purpose of catching crabs in the water to which this section applies.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(e) Peace officers and other authorized employees of the department may seize crab traps, crab pots, and other devices used in violation of this section. Items seized under this section shall be held for evidence and may be destroyed or disposed of as required by law if used in violation of this section. No suit may be maintained against an officer or an authorized employee of the department for the seizure of items as authorized by this section.

[Added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, eff. Sept. 1, 1977.]

*For text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, see Section 201.016, ante.*

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### CHAPTER 220. JACKSON COUNTY

#### § 220.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jackson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

### CHAPTER 223. JEFFERSON COUNTY

#### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

##### § 223.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jefferson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 223.002 to 223.010 reserved for expansion]

#### SUBCHAPTER B. SHRIMP

##### § 223.011. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp in Jefferson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

##### § 223.012. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Jefferson County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Jefferson County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of nets and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Jefferson County.

(c) The commission, by regulation adopted in accordance with this section, may provide for the licensing of all persons taking, selling, or handling shrimp in Jefferson County and may license boats and equipment used for the taking, selling, or handling of shrimp in Jefferson County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Jefferson County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the methods of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The

commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 231. KENEDY COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 231.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Kenedy County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Act (Chapter 61 of this code) does not apply to wildlife resources in Kenedy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 237. KLEBERG COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 237.001. Regulatory Act: Applicability

Except as provided by this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources, except shrimp and oysters, in Kleberg County.

\* \* \*

### SUBCHAPTER C. BIRDS

#### § 237.022. Audubon Society Land

(a) This section applies to North Bird Island and South Bird Island and the flats, reefs, and shallow water near those islands in Kleberg County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States, may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 261. MATAGORDA COUNTY

### Section

261.001. Regulatory Act: Applicability.

261.002. Regulatory Act: Shrimp Excluded.

#### § 261.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Matagorda County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 261.002. Regulatory Act: Shrimp Excluded

In Matagorda County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 278. NUECES COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 278.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Nueces County with respect to fish, aquatic life, and marine animals, except shrimp and oysters.

(b) Except as provided in Subsection (a), the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Nueces County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

### SUBCHAPTER B. SHRIMP

#### § 278.011. Nets and Seines

(a) No person may use for the purpose of catching shrimp a net or seine, except a cast net or minnow seine not more than 20 feet in length for catching bait only, in the water of the Gulf of Mexico within one mile of the Horace Caldwell pier located on Mustang Island and the Bob Hall pier located on Padre Island in Nueces County or within 1,000 feet of the shoreline of Padre Island in Nueces County.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100, and on a second or subsequent conviction is punishable by a fine of not less than \$100 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]



\* \* \*

## CHAPTER 281. ORANGE COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 281.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Orange County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

### SUBCHAPTER C. SHRIMP

#### § 281.021. Regulatory Act: Shrimp Excluded

In Orange County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 281.022. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Orange County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Orange County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of net and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Orange County.

(c) The commission by regulation adopted in accordance with this section may provide for the licensing of all persons taking, selling, or handling shrimp in Orange County and may license boats and equipment used for the taking, selling, or handling of shrimp in Orange County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Orange County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained, and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the method of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the

commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 296. REFUGIO COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 296.001. Regulatory Act; Applicability

Except as provided by this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to deer, fur-bearing animals, and all aquatic life except shrimp and oysters in Refugio County.

\* \* \*

## CHAPTER 305. SAN PATRICIO COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 305.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

## CHAPTER 335. VICTORIA COUNTY

### SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

#### § 335.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Victoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

### SUBCHAPTER C. FISH

#### § 335.021. Regulatory Act: Marine Life Excluded [Text of section effective October 1, 1978]

In Victoria County saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 725, ch. 270, § 14, eff. Oct. 1, 1978.]

#### § 335.023. Seining Within One Mile of City

(a) No person may catch fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Victoria County within one mile of a city.

(b) "City" means a community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes,

or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. The identification of a boat operating in violation of this section is prima facie evidence of a violation by the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 335.024. Fishing Methods: Certain Water

(a) No person may catch fish from the water of Lavaca Bay, Banal Lake, Mesquite Creek, Placado Creek, Garcitas Creek, or Oyster Bayou in Victoria County except by:

- (1) hook and line;
- (2) rod and reel;
- (3) trotline;
- (4) flounder gig and light; or
- (5) cast net or minnow seine not exceeding 20 feet in length and for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

#### § 335.025. Commission May Close Certain Water

(a) The commission may close tidal water in Victoria County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 335.023 and 335.024 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

## CHAPTER 345. WILLACY COUNTY

### § 345.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Willacy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

\* \* \*

PARKS AND WILDLIFE CODE

CHAPTER 21

Sec. 21.111. ENTRY FEES TO PARKS. (a) The department, wherever feasible and so long as any of the bonds are outstanding, shall charge and collect an entrance fee to state park sites.

(b) Income derived from the fees required by this section, less expenses incurred in collecting the fees, shall be deposited in a special fund with the state treasurer. The amounts deposited are net income.

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged. (V.A.C.S. Art. 6070h, Sec. 8.)

Beach Park Access

NOTE: Language of subsection (c) was added by S.B. 1003  
(Chap. 428) Acts of the 64th Leg., Reg. Ses., 1975

Art. 4413 (32a) Interagency Planning Councils

Section 1. The imperative need to maximize the prudent use of governmental revenues being self-evident, the Legislature recognizes that planning is a governmental purpose and function of the State and its political and legal subdivisions.

Sec. 2. The Governor is hereby designated the Chief Planning Officer of the State.

Sec. 3. The Governor shall appoint Interagency Planning Councils to coordinate joint planning efforts in the various functional areas of government, and each Council shall be composed of a member of the Governor's Office and the Administrative heads of the several State agencies and departments and institutions of higher education represented on the respective Councils. The Interagency Planning Councils shall represent the areas of natural resources, health, education, and such other areas as may require coordinated planning efforts.

Sec. 4. (a) The Governor shall establish a Division of Planning Coordination within his office.

(b) Responsibilities of the Division of Planning Coordination.

(1) The Division shall coordinate the activities of the Interagency Planning Councils. The several councils may participate jointly in studies providing information common to all planning efforts.

(2) The Division shall serve as the State Clearinghouse on all state agency applications for federal grant or loan assistance, and shall be notified of all applications for federal grant or loan assistance prior to actual submittal of such applications.

(3) The Division may provide for the review and comment of all state plans of state agencies required as a condition for federal assistance and may provide for the review and comment on all state agency applications for grant or loan assistance.

(4) The Division shall establish policies and guidelines for the effective review and comment on such state plans and applications for federal grant or loan assistance.

(5) The Division shall cooperate with the Legislative Budget Board in developing information requirements pertaining to the review and comment process.

Art. 4413 (32a) V.T.C.S.  
Interagency Planning Councils

Governor as Chief Planning  
Officer

Governor to appoint councils

Division of Planning Coordination

Section 1. CREATION OF THE TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL. (a) The Texas Energy and Natural Resources Advisory Council is established.

(b) The council is composed of 21 members. The members are the following officials: the governor, the lieutenant governor, the speaker of the house of representatives, the attorney general, a member of the Railroad Commission of Texas designated by the Railroad Commission of Texas, a member of the Public Utility Commission of Texas designated by the Public Utility Commission of Texas, the chairman of the Texas Air Control Board, the chairman of the Texas Water Development Board, the chairman of the Parks and Wildlife Commission, the Commissioner of the General Land Office, the commissioner of agriculture, the comptroller of public accounts, the Director of the Bureau of Economic Geology of The University of Texas at Austin, two senators appointed by the lieutenant governor, two members of the house of representatives appointed by the speaker of the house, and four citizens appointed by the governor. Appointees serve at the pleasure of the appointing officer.

(c) The governor and lieutenant governor are cochairmen of the council. The speaker of the house of representatives is vice-chairman.

(d) Eleven members of the council constitute a quorum.

(e) The council shall meet at least once every three months or at the call of either cochairman. At any time a majority of the council may petition the cochairmen for a meeting of the council at a time certain.

(f) A member of the council is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the council. The lieutenant governor, speaker of the house, senate members on the council, and members of the house of representatives on the council shall be reimbursed from the appropriate funds of the member's respective house of the legislature. Other members shall be reimbursed from the funds of the office or agency in which the member serves. The citizen members are to be reimbursed from the council's funds appropriated for that purpose.

Section 2. DIRECTORS AND STAFF. (a) There shall be appointed by the cochairmen an executive director. The executive director with the approval of the cochairmen may hire directors to assist him in carrying out the duties and functions of the council. The executive director and directors shall serve at the pleasure of the cochairmen.

(b) The executive director shall employ staff necessary to administer the functions of the council and may contract with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the council.

(c) The executive director shall perform functions relating to the conservation of energy resources or the allocation of fuel products that the governor is responsible for performing as designated by law and that the governor may delegate to the executive director.

(d) The executive director may with the approval of the cochairmen and with the advice of the council issue such orders as may be necessary to implement programs and priorities concerning the allocation and conservation of fuels.

(e) The executive director and the directors may represent the council at state, regional, national, or international energy or natural resource meetings at the cochairmen's request.

(f) All staff responsible for technical assessments or for the development of computer or econometric systems, excluding administrative personnel, must be qualified by academic training

## Membership

## Meetings

## Staff

and actual work experience in the area of their respective responsibilities.

(g) The executive director and the directors are entitled to compensation as provided by the general appropriations bill.

(h) Compensation for staff members shall be determined according to the classification act for other state employees.

Section 3. DIVISIONS. The executive director with the approval of the cochairmen may establish divisions to carry out the functions of the council. The executive director with the approval of the cochairmen may add, remove, or transfer duties among divisions.

Section 4. ENERGY ANALYSIS AND DEVELOPMENT DIVISION. (a) The energy analysis and development division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy analysis and development division shall:

(1) develop and maintain an energy data base system and econometric modeling of the state and nation;

(2) prepare an annual Texas energy outlook report and an assessment of the United States Department of Energy, Energy Information Administration's Annual Report to Congress;

(3) provide energy information and policy analysis for the council and others as the cochairmen may direct;

(4) recommend energy policy positions to the council;

(5) recommend legislation to the council to foster the development of increased energy supplies and more efficient energy systems not inconsistent with other laws of the state;

(6) administer the Texas Energy Development Fund as directed by the council;

(7) maintain an awareness of all energy-related research of importance to this state conducted inside and outside this state in order to promote information exchange and coordination and in order to coordinate and support necessary energy technology research, development, and demonstration;

(8) coordinate and support energy-related technology research, development, and demonstration; and

(9) perform other duties as assigned by the executive director.

Section 5. ENERGY CONSERVATION DIVISION. (a) The energy conservation division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy conservation division shall:

(1) provide and develop energy conservation information and policy analysis for the council and others as the cochairman may direct;

(2) recommend energy conservation policy positions to the council;

(3) recommend legislation to the council to foster energy conservation;

(4) coordinate and support energy conservation related technology, research, development, and demonstration; and

(5) perform other duties as assigned by the executive director.

Section 6. FUNCTIONS OF THE COUNCIL. The council shall:

(1) adopt and continually reassess an energy policy for the state;

## Divisions

### Energy Analyses & Development Division

### Energy Conservation Division

## Functions

(2) adopt and continually reassess a natural resources policy for the state;

(3) recommend legislation to the United States Congress and the Texas Legislature implementing energy policy and natural resources policy of the state;

(4) review existing and proposed actions and policies of federal agencies to determine the energy and natural resources impact on this state and to recommend to the legislature and the governor alternative actions and policies consistent with state energy and natural resources policy;

(5) adopt a plan and award contracts for the development of alternative energy technologies under the Energy Development Fund;

(6) represent the governor at state, regional, national, or international energy or natural resources meetings at the governor's request;

(7) provide staff and technical assistance to the advisory committees;

(8) adopt a budget and an annual operating plan;

(9) develop projects and programs to insure proper protection and development of the state's natural resources including the participation of all necessary entities;

(10) study problems and issues connected with state agency permitting processes; and

(11) perform such other tasks as may be assigned by the governor and/or accepted by the council.

Section 7. ADVISORY COMMITTEES. (a) The cochairmen may appoint advisory committees composed of public officials or private citizens to advise the Texas Energy and Natural Resources Advisory Council.

(b) A member of an advisory committee is not entitled to compensation for services performed as a member of the committee. A member is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the advisory committee.

(c) The council shall prescribe the operating procedures for advisory committees.

Section 8. GIFTS AND GRANTS. (a) The executive director may accept on behalf of the state a gift, grant, or donation from any source to be used to administer the council's functions.

(b) A gift, grant, or donation received by the executive director shall be deposited in the State Treasury to the credit of a special fund to be known as the Texas Energy and Natural Resources Advisory Council Fund and may be used only to administer the council's functions.

Section 9. REPORT. Before December 1 of each year, the executive director shall file a report with the governor and the legislature about the activities of the council during the preceding year.

Section 10. RULES. The council may adopt rules necessary to accomplish the purposes of this Act.

Section 11. APPLICATION OF SUNSET ACT. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires effective September 1, 1983.

Section 12. AMENDMENT. Subsection (2) of Section 3, The Texas Energy Development Act of 1977 (Article 4413(47b), Vernon's Texas Civil Statutes) is amended to read as follows:

"(2) 'Council' means the Texas Energy and Natural Resources Advisory Council."

## Advisory Committees

## Gifts & Grants

## Report

## Rules

## Sunset provision

## Texas Energy Development Act of 1977 (amendments).

Section 4. CREATION OF THE ENERGY DEVELOPMENT FUND. The Energy Development Fund is created in the state treasury and is composed of funds provided by legislative appropriation, not to exceed \$5 million, plus such additional funds as are received from other sources in accordance with Section 7 of this Act. The fund is created to support research, development, and demonstration of alternate energy supplies and energy conservation technologies of particular importance to Texas.

Section 5. TEXAS ENERGY AND NATURAL RESOURCES ADVISORY COUNCIL. The Texas Energy and Natural Resources Advisory Council shall be responsible for the proper administration of the Energy Development Fund and shall have the director for energy analysis and development submit to the governor and legislature before March 1 of each odd-numbered year a comprehensive report on the operation of the fund.

Section 6. ADMINISTRATION OF THE FUND. (a) The council shall provide for the administration of the fund.

(b) The council shall promulgate a plan for the development of alternative energy technologies. Such a plan shall prescribe detailed regulations for: submission and solicitation of proposals, evaluation and selection of proposals by an impartial group of technical experts, the disbursement of contracted funds, project cost accounting, and project reporting requirements. Such a plan shall be published within 60 days of the effective date of this Act. Within 90 days thereafter, the council shall adopt the plan following public hearing and appropriate review.

(c) The council may contract with universities, nonprofit institutions, and other persons that meet the criteria for funding adopted by the council.

Section 7. ADDITIONAL SOURCES OF FUNDING. The council may receive funds from private or public sources for the purposes of this Act."

Section 14. ABOLITION AND SUCCESSION OF AGENCIES. The Texas Energy Advisory Council, created by Chapter 795, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(47a), Vernon's Texas Civil Statutes), and the Natural Resources Council are abolished and are succeeded by the Texas Energy and Natural Resources Advisory Council. The records and other property in the custody of the agencies are transferred to the Texas Energy and Natural Resources Advisory Council.

Section 15. REPEALER. The following laws are repealed:

(1) Chapter 795, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(47a), Vernon's Texas Civil Statutes);

(2) the Natural Resources Council Act of 1977 (Article 4413(48), Vernon's Texas Civil Statutes); and

(3) Section 8, The Texas Energy Development Act of 1977 (Article 4413(47b), Vernon's Texas Civil Statutes).

Section 16. EFFECTIVE DATE. This Act takes effect September 1, 1979.

TNRAC established and Development Act amendments were by SB 921, Acts of 66th Leg. 1979



SENATE CONCURRENT RESOLUTION 38

Coastal Resources Management  
Program  
(Studies and reports)

WHEREAS, The state-owned submerged lands, islands, estuaries, and estuarine areas in the Texas Gulf Coast Area, including the submerged lands of the state seaward of the mean of lower low water marks in the Gulf of Mexico, and the natural resources and the environmental natural beauty with which they are so richly endowed, constitute an important and valuable property right belonging to the Public Free School Fund and to all of the people of Texas, and they are of immediate and potential value to the present and future generations of Texans; and

WHEREAS, It is the declared policy of the state that such submerged lands, islands, estuaries, and estuarine areas shall be so managed and used as to insure the conservation, protection, and restoration of such submerged lands, islands, estuaries, and estuarine areas with resources and natural beauty and, consistent with such protection, conservation and restoration, their development and utilization in a manner that adequately and reasonably maintains a balance between the need for such protection in the interest of conserving the natural resources and natural beauty of the state and the need to develop these submerged lands, islands, estuaries, and estuarine areas to further the growth and development of the state; and

WHEREAS, The people of the State of Texas have a primary interest in the correction and prevention of irreparable damage to or unreasonable impairment of the uses of the coastal waters of the state and inland waters of the state in such estuaries and estuarine areas caused by drainage, waste water disposal, industrial waste disposal, and all other activities that may contribute to the contamination and pollution of such waters; and

WHEREAS, The people of the State of Texas also have primary interests in the value of such lands, islands, estuaries, and estuarine areas as public property for production and marketing of oil and gas and other minerals and mineral resources, for the production of living resources, for shell and other fisheries and fishing, hunting, and other recreation, for wildlife conservation, and for health and other uses in which the public at large may participate and enjoy; and

WHEREAS, It is also the declared policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico and hence the people of the State of Texas have a further primary interest in conserving the natural beauty of the state's beaches and protecting and conserving them for the use of the public; and

WHEREAS, A comprehensive study is necessary to prepare the way for constructive legislation for the present and future protection of the interests of the people of the State of Texas in such submerged lands, beaches, islands, estuaries, and estuarine areas; and

WHEREAS, The United States Government is now conducting similar studies under P.L. 660 of the 84th Congress as amended and under P.L. 90-454 of the 90th Congress and is entitled to receive the full cooperation of the agencies of this state with respect to the lands, beaches, waters, estuaries, and estuarine areas of this state; now, therefore be it

RESOLVED, By the Senate of the State of Texas, the House of Representatives concurring, that the following be accomplished:

Section 1. The Interagency Natural Resources Council, an interagency planning entity created under the authority of House Bill 276, Acts 1967, 60th Legislature, Regular Session, Chapter 417, in consultation with the School Land Board and the Submerged Lands Advisory Committee and with all other appropriate local, state, and federal agencies, is authorized and directed to make a comprehensive study of the state's submerged lands, beaches, islands, estuaries, and estuarine areas, including but without limitation coastal marshlands, bays, sounds, seaward areas, and lagoons. The term "estuary" means all or part of the mouth of an intrastate or interstate river or stream or other body of water, including, but not limited to, a sound, bay, harbor, lagoon, inshore body of water, and channel, having unimpared natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage. The term "estuarine areas" means an environmental system consisting of an estuary and those transitional areas which are constantly influenced or affected by water from an estuary such as, but not limited to, coastal salt and freshwater marshes, algal flats, coastal and intertidal areas, sounds, bays, harbors, lagoons, inshore bodies of water, and channels. For the purpose of the study or studies of these lands, beaches, islands, estuaries, and estuarine areas, the Council shall consider, among other matters (a) their wildlife, health, and recreational potential, their ecology, their value as natural marine habitats and nursery feeding grounds for the marine, anadromous, and shell fisheries, their value as established marine soils for producing plant growth of a type useful as nursery or feeding grounds for marine life and their natural beauty and esthetic value, (b) their importance to navigation, their value for flood, hurricane, and erosion control, their mineral value, and (c) the value of such areas for more intensive development for economic use to further the growth and development of the state. The study or studies shall also include (a) studies of the various problems of coastal engineering such as the protection of the beaches and bay bluffs from harmful erosion, the design and use of groins, seawalls, and jetties, and the effects of bay fills, fish passes, and other coastal works upon the physical features of the shores, channels, and bay bottoms and upon marine life and wildlife inhabiting such areas and (b) studies of the effects of waste and drainage water discharges into the waters of such estuaries and of the Gulf of Mexico in relation to the reasonable protection and conservation of the marine environment and the natural resources and natural beauty of these submerged lands, beaches, islands, estuaries, estuarine areas, and their overlying waters. In conducting the study or studies, the Interagency Natural Resources Council shall consider, among other matters, and without limitation as to the generality thereof, the physical and economic effects of existing and proposed water development projects of federal, state, and local agencies, and of authorized and prospective drainage projects of whatever nature upon the coastal waters and the waters of the state's estuaries and estuarine areas, the feasibility of reclaiming drainage waters from such projects, the future population growth and economic development in the area and in areas tributary thereto, the effects of existing and proposed projects for the filling and reclamation of waterfront lands upon the waste assimilative capacity of the coastal waters and the waters of the state's estuaries and estuarine areas, the possibilities of reclamation and reuse of waste waters and drainage water from such projects, and the feasibility of flow augmentation through managed releases from upstream reservoirs as an aid to quality maintenance.

Sec. 2. The Interagency Natural Resources Council may receive grants and matching funds from and may contract with such state, federal, or local public agencies or private agencies, entities, or educational institutions as it deems necessary for the rendition and affording of such management and technical services, facilities, studies, and reports, and personal services and operating expenses as will best assist it to carry out the purposes of this concurrent Resolution.

Sec. 3. The Interagency Natural Resources Council of Texas is directed to call on the advice, counsel, and guidance, and participation of appropriate local, state, and federal departments, boards, agencies, and educational institutions. The council shall, to the fullest practicable extent, cooperate and coordinate its work with all departments, boards, and agencies undertaking planning and technical investigations pertinent to this study. The Interagency Natural Resources Council is directed to coordinate its study and, in order to avoid duplication of work, shall make maximum use of data and information available from state agencies and boards and federal agencies, including but not limited to the United States Public Health Service, the United States Corps of Engineers, the United States Department of Health, Education and Welfare, the Federal Water Pollution Control Administration, the United States Soil Conservation Service, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, the United States Geological Survey, and United States Department of the Interior, the member agencies of the Interagency Natural Resources Council, and the Bureau of Economic Geology of The University of Texas.

Sec. 4. The Interagency Natural Resources Council is authorized to hold one or more public hearings which it deems necessary or desirable for the full development of all facts pertinent to its studies. City, county and state officials, officers, and employees and those of any other political subdivision of the state and of the state government are directed to furnish the Council, upon its request and within the limits of their respective facilities, such data, reports, and any other information it may require in connection with its studies, without any cost, fee, or charge whatsoever.

Sec. 5. On or before the first day of December, 1970, preceding the 1971 Regular Session of the Legislature, the Interagency Natural Resources Council shall submit to the Governor of Texas and to the Legislature a progress report indicating the status of its studies to date together with any recommendations for emergency legislation at that time to carry out the purposes of its studies as herein defined.

Sec. 6. The Interagency Natural Resources Council shall submit its final report to the Governor of Texas and to the Legislature on or before the first day of December, 1972, preceding the 1973 Regular Session of the Legislature, together with its findings and recommendations for appropriate legislation to carry out the purposes of its studies as herein defined.

NOTE: The studies called for in this resolution and reports resulting from them have served as the basis for much legislation and policy modification in Texas since 1969.

1973 - 63rd Legislature

SENATE CONCURRENT RESOLUTION 101

WHEREAS, A sufficient inflow of fresh water is necessary to protect and maintain the ecological health of Texas estuaries and related living marine resources; and

WHEREAS, The surface waters of this state constitute an important and valuable resource belonging to all the people of Texas; and

WHEREAS, All present and future generations of Texans have an inherent right to use and enjoy such resources; and

WHEREAS, All citizens have a vested right to use beneficially the waters of this state in a manner consistent with established water laws, doctrines and customs; and

WHEREAS, There are many complex scientific, legal, institutional, and financial problems associated with providing water to estuaries; and

WHEREAS, Existing knowledge and procedures are inadequate to deal with the many complex issues, as evidenced by the current number of conflicts now being brought before the courts; and

WHEREAS, It would be in the best interest of all Texas to establish the necessary institutional and technical mechanisms to resolve these conflicts; now, therefore, be it

RESOLVED, by the Senate of the State of Texas, the House of Representatives concurring, That the Texas Council on Marine-Related Affairs, in cooperation with other interested and knowledgeable parties, including, among others, the member agencies of the state's Interagency Council on Natural Resources and the Environment, undertake a comprehensive study of the problem of providing estuarine inflows. This study shall consider, but is not limited to (a) an assessment of the scientific information available to determine the precise water requirements, including quantity, quality, and timing for estuaries; (b) a determination of the options and associated costs for satisfying these needs; (c) a legal-administrative evaluation of alternative cost-sharing policies; and (d) the development of legislative recommendations for resolving the many conflicts; and, be it further

RESOLVED, The council shall submit a report containing its findings and recommendations to the governor and the 64th Legislature on or before December 31, 1975.

Study resolution relating  
to fresh water inflows  
for bays and estuaries

NOTE: See also S.B. 137 and S.B. 1054 as well as  
S.R. 267 (all 64th Leg.) on this subject

SENATE CONCURRENT RESOLUTION 102

WHEREAS, The Legislature of the State of Texas recognizes the following facts:

1. The fishery resources of the state represent valuable resources both as a food source and for recreation;
2. The fisheries resources of the coastal area of this state exist in a delicate environment which is subject to constant pressures as a result of man's activities and natural phenomena;
3. While the needs of man for food and recreation continue to grow, the habitat suitable for sustained production is diminishing;
4. Experience in Texas and in other states has shown that habitat enhancement is possible and feasible and that such efforts can improve the opportunity of fishermen to harvest a portion of the resource;
5. One such proven method consists of artificial reef placement in submerged areas lacking a hard surface extending above the bottom to serve as attachment and/or sanctuary for marine organisms;
6. Such reefs or habitats are productive in open Gulf waters as well as in the shallower waters of the bays of Texas;
7. The government of the United States has made available to the states through Public Law 92-402 (86 Stat. 617) surplus World War II ships to be used in creating artificial reefs to restore such ships to a productive status;
8. The Texas Council on Marine-Related Affairs has found such a program to be feasible and desirable and has recommended that the offer of the federal government be accepted; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives concurring, That the State of Texas endorse the concept of utilization of desirable portions of such surplus ships for creation of artificial reefs and that the Parks and Wildlife Department be authorized and directed to take the necessary action to assure the maximum benefit to the citizens of this state in the acquisition and placement of such Liberty Ships in or adjacent to the territorial waters of this state; and, be it further

RESOLVED, That the Texas Council on Marine-Related Affairs be directed to work jointly with the Parks and Wildlife Department in any way necessary in order to expedite this important project; and, be it further

RESOLVED, That the Texas Council on Marine-Related Affairs and the Parks and Wildlife Department be authorized to expend such state funds and any matching funds as may be donated and provided by local interests, or appropriated for this purpose.

See Note

Liberty Ship Reefs to be constructed

NOTE: The Texas Council on Marine Related Affairs became the Texas Coastal and Marine Council by Chap. 239, Acts of the 63rd Leg.; Reg. Sess., 1973.

SENATE CONCURRENT RESOLUTION 75

WHEREAS, It is the public policy of this state that the members of the public, individually and collectively, have the right to gain ingress and egress to and from, and to use and enjoy, the public beaches of this state; and

WHEREAS, These rights have been recognized by the legislature and courts of this state; and

WHEREAS, The legislature has declared that it is the duty of the attorney general to protect and enforce these rights; and

WHEREAS, Public rights can only be established through operation of legal principles, such as prescription, dedication, and continuous use from time immemorial, as recognized in law and custom; and

WHEREAS, In order to prove these rights in a court of law, it is necessary to introduce testimony regarding a long history of continued use by the public; and

WHEREAS, Potential witnesses who have knowledge of this long continued use may in the future be unable to testify because of death or old age; and

WHEREAS, The recording of such evidence at the present time would preserve it for later introduction and use; and

WHEREAS, The collection of all such testimony could prevent future lawsuits from being necessary; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives concurring, That the attorney general shall collect and maintain an evidence bank of testimony from persons with knowledge of public use of the beaches of this state during the early years of this century and before; and, be it further

RESOLVED, That this evidence be taken pursuant to Rule 187 of the Texas Rules of Civil Procedure, which provides for an established method of perpetuating testimony, for its introduction as evidence in a court of law in the event the witness is unable to testify in person; and be it further

RESOLVED, That a copy of this resolution be sent to the Attorney General of Texas, so that his office may begin to collect the evidence referred to herein which is necessary to the protection of public rights in state-owned lands and lands over which the public may have acquired the right of use or easement, for the purpose of ingress and egress to and from, and the use and enjoyment of, the public beaches of this state.

Beach data bank file  
authorized

1975 - 64th Legislature

SENATE RESOLUTION 267

WHEREAS, A sufficient inflow of fresh water is necessary to protect and maintain the ecological health of Texas estuaries and related living marine resources; and

WHEREAS, The surface waters of this state constitute an important and valuable resource belonging to all the people of Texas; and

WHEREAS, All present and future generations of Texans have an inherent right to use and enjoy such resources; and

WHEREAS, All citizens have a vested right to use beneficially the waters of this state in a manner consistent with established water laws, doctrines and customs; and

WHEREAS, There are many complex scientific, legal, institutional, and financial problems associated with providing water to estuaries; and

WHEREAS, Progress is being made toward determining minimal sustaining inflow requirements; and

WHEREAS, The institutional and financial aspects of insuring inflows are equally important; and

WHEREAS, It is in the best interest of all Texans to begin to examine and develop possible solutions to the institutional and financial questions; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, that the Texas Coastal and Marine Council, in cooperation with the Governor's Task Force on Water Resource Conservation and Development, The Interagency Council on Natural Resources and the Environment, and other interested and knowledgeable parties, undertake a comprehensive assessment of the institutional and financial aspects of providing estuarine inflows; such an assessment shall consider, among other things, (a) options for meeting various inflow levels; (b) the costs associated with such options; (c) alternative cost sharing policies; and (d) other matters deemed necessary; and, be it further

RESOLVED, That the council and task force shall submit a report containing its findings and recommendations to the Governor and the 65th Legislature on or before December 31, 1977.

Fresh water inflow  
study and report

NOTE: Same as H.S.R. 83 same session

HOUSE CONCURRENT RESOLUTION 148

WHEREAS, Matagorda Island, located in the Gulf of Mexico in Calhoun County, Texas, is a narrow 30-mile strip of unspoiled natural splendor enhanced by undulating sand dunes bordering magnificent and picturesque beaches, and abounding with diverse wildlife and unique flora as well; and

WHEREAS, The federal government owns 18,992.18 acres along the Gulf side of the island, more than 16,000 acres on the north or bay side already belong to the State of Texas and are under the jurisdiction of the General Land Office, and some 15,000 acres at the southwest end of the island are privately controlled; and

WHEREAS, Since 1940, Matagorda Island has been a U.S. Air Force base and bombing range, consequently restricting public use of its unsurpassed recreational assets; and

WHEREAS, The Air Force recently announced that it will soon abandon the island facility and declare the federal land to be surplus property; and

WHEREAS, The U.S. Interior Department has notified the U.S. General Services Administration that it intends to request that all federal lands on the island be turned over to the U.S. Fish and Wildlife Service, whose need for additional land in this area is seriously questioned; and

WHEREAS, Because the island is within easy weekend range of millions of residents of the Houston, San Antonio, and Corpus Christi metropolitan areas, the Texas Parks and Wildlife Department has expressed a desire to acquire the federal and state-owned portions of the island to permit its use by campers, fishermen, and hunters and as a wildlife management area for biological studies; and

WHEREAS, The Senate Interim Committee on Parks, Recreation, and Historical Preservation of the 62nd Legislature and the Parks Subcommittee of the House Committee on Environmental Affairs of the 63rd Legislature recommended in interim reports the incorporation of Matagorda Island into the state park system; and

WHEREAS, Unless the state gains control over most of Matagorda Island, there is a strong likelihood that its great natural resources and recreational value will continue to be off limits to the citizens of Texas; now, therefore, be it

RESOLVED by the House of Representatives of the State of Texas, the Senate concurring, That the 64th Legislature hereby direct the Texas Parks and Wildlife Commission, in cooperation with the General Land Office, to seek acquisition of the federally owned portion of Matagorda Island for the purpose of combining it with the state-owned portion to create a unique island state park of matchless beauty for the benefit of all Texans and to continue its ongoing program of providing state beach parks on our Gulf Coast Islands and peninsulas; and, be it further

RESOLVED, That the speaker of the house and lieutenant governor be requested to initiate the creation of a special joint committee to facilitate the acquisition of land necessary for a Matagorda Island state park and to recommend possible uses and development of the park; and, be it further

RESOLVED, That official copies of this resolution be prepared for the Texas Parks and Wildlife Commission, the General Land Commissioner, and all members of the Texas delegation to the United States Congress as an expression of the will of the 64th Legislature of the State of Texas.

Matagorda Island Acquisition

Parks and Wildlife Department  
and General Land Office  
joint effort

Special joint legislative  
committee

Congressional delegation  
informed



HOUSE RESOLUTION 81

WHEREAS, Marine commerce and transportation have long been recognized as essential in the economical movement of raw materials, products, and goods in intrastate, interstate, and international trade; and

WHEREAS, Utilization of waterways for such energy saving movement requires maintenance, deepening, and improvement of channels, especially in the coastal waters of this state; and

WHEREAS, Millions of cubic yards of sediment are now removed annually from existing waterways to maintain required dimensions of federal projects and additional millions are dredged by private interests to provide facilities adjacent to such waterways; and

WHEREAS, Disposal of the dredged material, commonly called "spoil," is becoming an increasingly complex and controversial problem; and

WHEREAS, Dredged material disposal, if done carelessly and without proper consideration for adverse environmental impacts, can cause significant damage to fragile estuarine and wetland ecosystems; and

WHEREAS, Rapidly expanding knowledge and technology is demonstrating that adverse impacts can be greatly reduced and potential beneficial uses of such material can be found to mitigate certain environmental damages resulting from such activities; now, therefore, be it

RESOLVED by the House of Representatives of Texas, That the many varied aspects associated with dredged material removal and disposal be carefully examined with the view toward determining a comprehensive state policy on handling and disposal of dredge materials; and, be it further

RESOLVED, That the Texas Coastal and Marine Council, pursuant to its statutory directive to assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs, shall undertake a comprehensive assessment and evaluation of dredged material disposal resulting from navigation activities. The council shall consult and solicit assistance from the Interagency Council on Natural Resources and the Environment, the Interagency Transportation Council, navigation districts, federal agencies, and other interested and knowledgeable parties. Agencies and political subdivisions of the state are directed to cooperate with, and upon the request of the council, shall furnish, within the limits of their respective facilities, such data, reports, and other information as may be required to fulfill the purposes of this resolution; and, be it further

RESOLVED, That the council shall consider, among other matters: (a) current practices and policies for material handling and disposal; (b) environmental aspects, both adverse and beneficial, of such practices; (c) alternatives for lessening adverse and increasing beneficial impacts; (d) costs of current practices and policies and future alternatives, including an identification of beneficiaries and those persons who would bear such costs; and (e) suggestions for developing a comprehensive balanced and equitable dredge material disposal policy and program for the coastal waters of the state; and, be it further

RESOLVED, That the council shall hold public hearings, and the council shall submit a report to the legislature and governor on or before the last day of December, 1976, containing its findings pursuant to this resolution.

## Dredged Material Disposal

Comprehensive policy

Assessment and evaluation

- cooperation

Basic considerations

SENATE RESOLUTION 269

WHEREAS, Texas has a vital interest in the continued economic and natural productivity of its coastal area, and marine commerce is an essential element in maintaining such productivity; and

WHEREAS, Texas is the nation's second largest maritime state, transporting nearly 75 percent of all out-of-state goods by water through 22 navigation districts and 10 deepwater ports; and

WHEREAS, Water transportation is the most economical and energy-efficient method of transporting goods, and the conservation of energy is of paramount importance to all Texans; and

WHEREAS, The problems and opportunities of marine commerce in Texas are not thoroughly understood, and its role in the dynamic, changing economy of the state is not completely documented, nor are long-term effects of existing and emerging governmental constraints and policies on the state's system of independent navigation districts, formed by state consent, to plan and maintain an effective, integrated, and efficient transportation system; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, that a comprehensive assessment of marine commerce in and relating to Texas be conducted; and, be it further

RESOLVED, That the Texas Coastal and Marine Council, pursuant to its statutory directive to assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs, shall undertake such a comprehensive assessment of current activities, problems, and opportunities regarding marine commerce in Texas; the council shall consult with and solicit assistance from navigation districts, port authorities, the Interagency Transportation Council, the Interagency Council on Natural Resources and the Environment, federal agencies, private interests, conservation organizations, and all other interested and knowledgeable parties; agencies and political subdivisions of the state are directed to cooperate with, and upon request of the council, shall furnish, within the limits of their respective facilities, such data, reports and other information as may be required to fulfill the purposes of this Resolution; and, be it further

RESOLVED, That the Council shall consider, among other matters: (a) the direct and indirect economic benefits which the citizens of Texas derive from water transportation and the extent to which these benefits are diffused throughout the state's economy; (b) an identification and analysis of state agencies whose policies, programs, or regulatory functions affect marine commerce, how interagency coordination is achieved, and how such coordination might be improved; (c) the environmental implications of marine commerce and port development, including but not limited to, considerations of adverse impacts, possibilities for environmental enhancement, and the probable environmental impacts of alternative methods of transportation; (d) the financial resources available for financing marine transportation systems and facilities in Texas, the adequacy of these resources to meet future expansion needs, and the efficacy of the existing systems; and (e) the present and possible institutional arrangements for planning, managing, and maintaining an effective and efficient water transportation system in Texas; and, be it further

RESOLVED, That the council shall hold public hearings and the council shall submit a report to the legislature and the governor on or before the last day of December, 1976, containing its findings pursuant to this resolution.

Marine Commerce

Comprehensive assessment

Basic considerations

NOTE: Same as H.S.R. 82 of the same session

1975 - 64th Legislature

SENATE RESOLUTION 268

WHEREAS, The coastal area of Texas is ravaged by a hurricane on the average of once every other year bringing death and destruction; and

WHEREAS, The coastal area is a pleasant place to live and work, and should be wisely developed for such purposes; and

WHEREAS, The proper design and construction methods can be employed to enable development to occur that can be reasonably expected to survive hurricanes with a minimum of damage; and

WHEREAS, The responsibility for establishing and enforcing building standards appropriately rests with local governments, but they frequently lack adequate technical or financial resources to develop specialized standards for high-risk, exposed coastal areas; and

WHEREAS, State and federal disaster legislation requires the delineation of high-risk areas and suggests the development of appropriate standards to be used in such high-risk areas to minimize damages; and

WHEREAS, Severe damage in coastal areas wrought by a hurricane adversely affects all Texans because of its impact on insurance rates and the cost of disaster relief and recovery operations; and

WHEREAS, It would be of benefit to all Texans to have available a set of model minimum building standards for high-risk coastal areas that could be adopted and used by local governments as such local governments may deem appropriate; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, that a cooperative effort be undertaken to develop model minimum building standards for high-risk areas along the Texas coast that are particularly susceptible to damage by hurricanes and other natural processes; and, be it further

RESOLVED, That the principal responsibility for development of such model minimum standards shall rest with the Texas Coastal and Marine Council in cooperation with the Texas Engineering Extension Service, the Division of Disaster Emergency Services, and the Bureau of Economic Geology; in performing the duties called for in this Resolution, the responsible agencies shall cooperate and coordinate with local governments, other state agencies, federal agencies, educational institutions, building and insurance industries, professional organizations, consumer groups, and any other appropriate persons; agencies and political subdivisions of the state are directed to cooperate with, and upon the request of the council, shall furnish, within the limits of their respective facilities, such data, reports and other information as may be required to fulfill the purpose of this Resolution; and, be it further

Coastal Building Standards

Model Minimum Building Standards

Cooperative Study

RESOLVED, That the responsible agencies shall consider (a) the nature and extent of natural processes and forces associated with hurricanes including, but not limited to, wind, surge tides, scour, and aftermath flooding; (b) the degree of exposure and susceptibility to destructive forces; (c) the structural and foundation design and construction practices that reduce vulnerability; (d) the levels of acceptable risks associated with protection of lives and mitigation of property damages; (e) the impact on insurance availability and cost; (f) the economic and financial implications; (g) the enforcement aspects; (h) the current activities which may increase the risk to life and property from natural forces and hazards; (i) the esthetic and environmental considerations; and (j) any other matters the responsible agencies deem appropriate; and, be it further

RESOLVED, That the responsible agencies complete and publish the model standards by August 31, 1977; and that the responsible agencies also present a report to the 65th Legislature concerning their activities and any legislative recommendations deemed appropriate on or before December 1, 1976.

## Basic considerations

SENATE RESOLUTION 106

Barrier Islands Study  
(65th Leg. Reg. Ses. 1977)

WHEREAS, The barrier islands, barrier peninsulas, and other similar areas along the Texas coast, including the Gulf beaches and adjacent submerged lands both seaward and landward of the barrier islands and peninsulas and the natural resources associated therewith, constitute valuable and irreplaceable resources for present and future generations of Texans; and

WHEREAS, The barrier islands contain many valuable resources in which the people of the State of Texas have a primary interest, such as oil and gas; other mineral resources; habitat and productive areas for living resources for fishing, hunting, and wildlife conservation; recreation, including leisure housing; tourism; storm protection for the mainland; and other beneficial uses; and

WHEREAS, Significant portions of these barrier islands and peninsulas are publicly owned, with the resources being managed for the benefit of the Public Free School Fund and all the people of Texas, with other portions of them being private property with attendant rights, and also that the public has acquired a right to use most Gulf-front beaches, it becomes especially important that the state exercise prudent management practices to achieve the maximum possible benefits from the public resources in a manner consistent with private property rights; and

WHEREAS, Such areas are subject to many dynamic, and often severe, natural processes including shoreline erosion, hurricane storm surge, hurricane washover channels, hurricane winds, and other less extreme occurrences; these processes can, and do, pose a distinct threat to property and human life on the islands and peninsulas, but many believe the amenities of living on and utilizing their valuable resources outweigh the risks; further it is recognized that an adequate personal awareness of the potential hazards, combined with proper development practices and a willingness by both individual citizens and government to take early action can greatly reduce the potential loss of life and property; and by bearing the brunt of such natural occurrences, the barrier islands and peninsulas help to provide hurricane protection to the mainland; and

WHEREAS, The barrier islands and related resources are being subjected to ever-increasing pressures as a result of the state's rapid economic growth, and these resources are valuable and should be utilized for the economic improvement of the state and all its citizens, but in a careful manner so as not to destroy their value for future generations; achieving such an objective requires careful and prudent management by the state of its own resources and careful coordination of those state actions affecting others; in order to make the best management decisions the state needs a clear delineation of the policy options and the implications of such options; now, therefore, be it

RESOLVED, By the Senate of the State of Texas that a comprehensive assessment of the barrier islands and barrier peninsulas of Texas and related resources and problems be conducted; and be it further

RESOLVED, That it is the intent of the Senate that this effort not be a detailed technical endeavor since many such studies have previously been done, and a great wealth of valuable scientific and technical information is available; but rather that this assessment carefully consider how the execution of existing state policies and programs in resource management, public facility investment, stimulation of economic development, disaster planning and relief (including insurance), higher education, and other areas, affects the activities and resources of the barrier islands and peninsulas with the goal of documenting such considerations and recommending, where appropriate, changes in state policies, programs, and laws to insure improved management of the resources for wise development and prudent conservation purposes; and be it further

RESOLVED, that the Texas Coastal and Marine Council, pursuant to its general statutory directive to assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs (Art. 4413(38) V.A.C.S.) undertake such a comprehensive assessment of resources, activities, problems, opportunities, and possible solutions; in conducting such assessment, the Council shall work with members of the Interagency Council on Natural Resources and the Environment, local governments, private interests, conservation organizations, federal agencies, and all other interested and knowledgeable parties; the Council shall strive to use available information and resources when such exist; agencies and political subdivisions of the state are directed to cooperate with, and upon request of the Council, shall furnish, within the limits of facilities, such data, reports, and other information that may be necessary or helpful to fulfill the purposes of the Resolution; and be it further

RESOLVED, That the Council shall consider:

(a) The nature and extent of the resources on and associated with the barrier islands and peninsulas, including opportunities for their potential use for recreational purposes, fish and wildlife conservation, mineral production, intensive development for commercial and industrial purposes (including tourism and non-conventional forms of energy production), and other beneficial uses; and

(b) The existing and potential problems that may be encountered or created by any of the potential uses, such as hurricane protection, insurance availability and cost, habitat destruction or improvement, waste disposal, conflicting uses, energy consumption; and

(c) Existing institutional arrangements that may be either beneficial or detrimental to the wise use and conservation of the resources, and changes in such institutional arrangements that would result in improved resource use and conservation; and

(d) The beaches as a particularly important element because of their unique legal status and acknowledged benefits to all Texans; and

(e) Other matters deemed necessary or appropriate; and be it further

RESOLVED, That the Council shall hold public hearings and the Council shall submit a report to the Legislature and the Governor on or before the last day of December, 1978, containing its findings and recommendations pursuant to this Resolution.

SENATE RESOLUTION 82

Waterways Maintenance Study  
(65th Leg. Reg. Sess. 1977)

WHEREAS, The wise management and utilization of water resources for multiple public purposes—including municipal, agricultural and industrial water supply, navigation and commerce, fish and wildlife enhancement, and flood and hurricane protection—is vital to the economic, social and environmental well being of all states, and particularly to the State of Texas, and

WHEREAS, The federal government has historically assumed responsibility for the management of water resources in river basins and coastal regions, on a coordinated and comprehensive basis, with State and local interests providing lands, easements, rights-of-way and, in the case of navigation improvements, port and terminal complexes necessary for the completion and utilization of the project, and

WHEREAS, Waterway transportation has demonstrated a superior record of efficiency in the use of energy, steel and other raw materials, as compared with other modes of transportation, and the continued growth of the water carrier fleet, affording both inland river and coastwise service, offers the least capital-intensive means of meeting future freight transportation needs in areas where navigable channels are readily or potentially available, and

WHEREAS, Over the years, availability of efficient water transportation fostered by established toll-free national waterways policy has stimulated private capital investments in productive facilities on a scale and at locations not otherwise feasible, thereby promoting regional growth, agricultural productivity, an enhanced local tax base, and relief of urban employment pressures while, at the same time, helping to restrain inflation because of water transportation's low cost of service, and

WHEREAS, The Coastal Waterway Act of 1975 authorized the State Highway and Public Transportation Commission to serve as the non-federal sponsor for Texas portion of the Gulf Intracoastal Waterway, which, together with its connecting shallow- and deep-draft channels, is an efficient and vital artery of commerce for growing volumes of petroleum and petroleum products, fertilizer, industrial chemicals, iron and steel products, farm commodities and other fuels and raw materials, and

WHEREAS, The continued operation and maintenance of Texas waterways as a responsibility of the federal government without collection of special tolls or use taxes is important to the region's economic stability, its ability to compete in mid-continental and foreign markets, and, as well, the many recreational boaters and fishermen, both sport and commercial, who use the navigation channels, and

WHEREAS, The U.S. Department of Transportation recently proposed to levy a federal tax on the fuel used by both shallow- and deep-draft shipping as a part of a plan to shift the costs of all water resources projects, including those providing flood and hurricane protection, from the federal government to non-federal entities and local beneficiaries; now, therefore, be it

**RESOLVED**, That the Senate of the State of Texas urges the Congress and the Executive Branch of the United States to carefully evaluate, on a comprehensive basis, all aspects of the public financing or other support of transportation facilities in the United States; and urges that such a comprehensive evaluation be completed before any alterations be made in the historical programs of federal responsibility for development, improvement and maintenance of the nation's waterways or before any modifications be made in the financing of such projects, including the enactment of any tolls or taxation upon the users of such waterways; and furthermore supports an aggressive program of continued federal responsibility for development and maintenance of America's waterways as the most prudent and efficient means of assuring the proper management of priceless water resources; and be it further

**RESOLVED**, That copies of this Resolution be sent to the Texas Congressional Delegation for their consideration and use.



SENATE RESOLUTION 471

Waste Care Study  
(65th Leg. Reg. Sess., 1977)

WHEREAS, the heavily industrialized coastal section of the state is a major factor in the economic well-being of Texas; and

WHEREAS, rapid technological advances continue to develop new processes, products and by-products as the inter-relationships of industries become more complex; and

WHEREAS, many by-products of these vital manufacturing processes are wastes that can be hazardous to humans and the environment; and

WHEREAS, some of these non-nuclear waste materials are impossible, with the current state of processing and treatment technology, to either convert into a useful product or treat to a relatively innocuous state where it can be discharged into the environment without significant adverse effect; and

WHEREAS, in such instances it is necessary to permanently store such materials in carefully prepared sites that are privately owned and operated under state regulation; and

WHEREAS, experience in Texas and elsewhere indicates that this is an acceptable practice that can be conducted safely, but that sometimes difficulties arise when facilities are abandoned and/or operators experience financial difficulty, and the state and/or its political subdivisions must bear some of the burden of correcting this situation; and

WHEREAS, it seems that a mechanism is needed to insure an equitable method of dealing with such situations to protect the public interest; now therefore be it

RESOLVED, that an assessment of the need to create a perpetual care fund to insure that such sites can be properly maintained in an equitable fashion without placing an undue burden on the taxpayers of the State of Texas; and be it further

RESOLVED, that the Texas Coastal and Marine Council, in cooperation with the Gulf Coast Waste Disposal Authority, the Texas Water Quality Board, and other interested and knowledgeable parties undertake such an assessment which shall include (a) an evaluation of current and projected waste volumes and disposal problems, (b) alternative institutional arrangements, (c) possible financing methods, and (d) other matters deemed appropriate; and be it further

RESOLVED, that a report be presented to the 66th Legislature when it convenes on the need for a perpetual care fund for hazardous wastes and alternative ways of instigating and managing such a fund.

SENATE RESOLUTION 586

WHEREAS, The Texas coast is a major center for oil and gas production, petroleum refining, shipment of petroleum and refined products, and the manufacture and fabrication of equipment for energy production across the United States and around the world; and

WHEREAS, The Congress, with the Texas Congressional Delegation concurring with only one dissenting vote, acted wisely in amending the Coastal Zone Management Act to, among other matters, create the Coastal Energy Impact Program; and

WHEREAS, Numerous state officials endorsed these amendments; and

WHEREAS, The Coastal Energy Impact Program was designed and passed by the Congress to provide support and assistance for coastal states and communities where socioeconomic and environmental impacts of energy facility development are significant; and

WHEREAS, The allotment procedure for allocating financial assistance to those coastal states where energy is being produced, processed, or transferred, or equipment is manufactured to be used in the production of energy, and that consequently suffer some adverse socioeconomic, environmental, or recreational losses, should be fair and equitable to those states; and

WHEREAS, The rules and regulations for administering this program should be as simple and easy to administer as possible in keeping with the intent of the act; and

WHEREAS, Even though the Texas coast has 22% of the nation's refining capacity, 10% of the nation's gas production, and 15% of the nation's gas processing capability, and many other facilities related to energy production, the existing allotment procedure would provide only 5.2% of the Coastal Energy Impact Program's financial assistance to Texas, and, furthermore, the bulk of this assistance is in the form of loans and bond guarantees which the state cannot use because of Constitutional constraints, and which local governments will find very difficult to utilize; and

WHEREAS, The federal government has contacted the Governor and has asked for Texas' views on the Coastal Energy Impact Program by May 2, 1977; therefore, be it

RESOLVED, By the Senate of the State of Texas that the Senate urges the Governor to carefully assess the Coastal Energy Impact Program as it may impact Texas and to seek a reevaluation of the proposed funding allotment and procedures to try and make it more equitable and less complex for local and state government; and be it further

RESOLVED, That the Senate urges the Texas Congressional Delegation to work with their fellow members of Congress to carefully examine the existing Coastal Energy Impact Program and its administration to make the program more equitable and less complex for those coastal states that are currently bearing the burden of providing energy to the nation; and be it further

RESOLVED, That copies of the resolution be sent to the Governor and the Texas Congressional Delegation.

Federal Coastal Energy  
Impact Program Assessment  
Urged  
(65th Leg. Reg. Sess. 1977)

SENATE RESOLUTION 224

Maritime Industry Study  
(65th Leg. Reg. Sess. 1977)

WHEREAS, Texas has a healthy economy and valuable natural resources and the maintenance of both are important to all citizens of the state; and

WHEREAS, Water transportation and the maritime industry are vital to the entire state, especially for the importation of petroleum, ores, and other raw materials, and the export of agricultural and other products; and

WHEREAS, The importance of the maritime industry is reflected by the fact that Texas' ports move more tonnage than those of any other state, 237 million tons in 1974, and directly contribute an estimated \$2 billion to the state's economy; and

WHEREAS, The maritime industry is being confronted with many problems arising from governmental actions, changing state, national and world-wide economic patterns and policies, new technologies, and other causes; and many such problems arise from lack of communication between the many private and public entities involved; and there is a growing trend for ports and other maritime interests located in common geographical areas and serving common trade regions to cooperatively examine the many problems and opportunities that collectively face them and strive to develop strategies to lessen problems and capitalize on opportunities without upsetting existing competitive balances; and the Maritime Administration of the U.S. Department of Commerce is participating in and partially supporting such projects; and a significant portion of the United States has or is being examined in such a systematic fashion, and the failure to do such an evaluation in Texas on a cooperative basis by the state, local governments, operating ports, and private interests, including labor, might result in an erosion of Texas' overall competitive position as compared to other sections of the United States; now, therefore be it

RESOLVED, By the Senate of the State of Texas, that it is vital to the state and its citizens that such an evaluation be undertaken to protect and enhance the state's maritime industry thereby insuring the ready availability of low-cost water transportation for those industries that rely on imports or exports, to maintain their economic health, and thus to maintain the viable and expanding economy of Texas; and be it further

RESOLVED, That the Texas Coastal and Marine Council and the Texas Department of Highways and Public Transportation, the public ports of Texas, the maritime industry, labor, conservation organizations, and all other interested and knowledgeable parties shall undertake an evaluation and assessment of the problems, opportunities, and courses of action that may be taken by the public and private sectors of the maritime industry for the benefit of all citizens of the state; and be it further

RESOLVED, That the results of this evaluation be published and submitted to the Legislature and the Governor on or before January 1, 1979.

SENATE RESOLUTION 272

Marine Fishery Industry Study  
(65th Leg. Reg. Sess., 1977)

WHEREAS, today, March 1, is an historic day opening a new frontier, a new opportunity, a new responsibility for the United States of America, by extending our claim to all of the economic resources found within the waters, and on and underneath the ocean floor within 200 nautical miles from our coastline and that of our dependencies; and

WHEREAS, this vast area is more than half the size of the continental United States with an economic potential that brings back memories of the potential still to be tapped at the time of the historic signing of the Louisiana Purchase in 1803 and the Treaty of Guadalupe-Hidalgo of 1848; and

WHEREAS, the potential to be developed from this new economic claim includes petroleum, minerals and fisheries, and fishery potential alone embracing more jobs, more food, better health and increased recreational opportunities; and

WHEREAS, in 1975 the total U.S. commercial fishery landing was 4.8 billion pounds, with a dock side value of \$970.8 million and a finished product value of \$2.7 billion; and

WHEREAS, even these impressive statistics of domestic production comprise only 40% of the fishery products consumed in the United States, creating a \$1.5 billion trade deficit; and

WHEREAS, 40% to 50% of this trade deficit is caused by fish caught by foreign flag boats in today's American waters, and then returned to the United States; and

WHEREAS, with our Fishery Conservation and Management Act implemented today, American fishermen flying American flags will be encouraged to harvest the bulk of what before has been a foreign harvest; and

WHEREAS, Texas has long been known as the leader in beef, grains and fibers in our country which today has become the bread basket of the world; now, therefore,

BE IT RESOLVED by the Senate of the 65th Legislature of the State of Texas, that one day the fishery products of Texas will take their rightful place among our other leading products; and

BE IT FURTHER RESOLVED, that Texas begin to marshal all political and economic resources and commit itself to developing this vast resource; and

BE IT FURTHER RESOLVED that it is the desire of the Senate of the 65th Legislature to entrust to the Texas Coastal and Marine Council the assessment and preparation of a favorable plan for the structuring, implementing, and funding of a program for the development for the marine fishery resources of the State of Texas; and

BE IT FURTHER RESOLVED that the Texas Coastal and Marine Council is directed to present to the 66th Legislature a marine fishery resources plan; and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Governor, Lieutenant Governor and to each member of the Texas Coastal and Marine Council.

SENATE CONCURRENT RESOLUTION 51

Model Hurricane Evacuation  
Plan

WHEREAS, The 66th Legislature of the State of Texas recognizes the importance of preparing in advance for hurricanes in order to avoid catastrophic loss of human lives and property; and

WHEREAS, One-third of the State of Texas population resides in the two tiers of counties bordering the Gulf of Mexico, and average population in the coastal areas is increasing at three times the rate of the remainder of the state; over 3.5 million coastal residents are now exposed to the destructive forces of hurricanes; and

WHEREAS, Evacuation of persons from extremely vulnerable coastal areas, barrier islands, and other low-lying communities remains the best means for insuring against loss of life due to the destructive forces of hurricanes; and

WHEREAS, The responsibility for formulation and coordination of local emergency plans rests with local governments with the assistance of the Governor's Division of Disaster Emergency Services (DDES); but local governments frequently lack the technical and financial resources and State DDES presently lacks the manpower and finances to undertake such necessary detailed coordination; and

WHEREAS, Good coordination of emergency evacuation plans among coastal counties and communities is at best scarce and at worst nonexistent; and

WHEREAS, The Texas Coastal and Marine Council has long advocated predisaster planning, and now the President of the United States has issued an executive order to federal agencies mandating consideration of predisaster actions which can be taken to mitigate the consequences of natural disasters; and

WHEREAS, The State of Texas must in good conscience protect the lives and property of its citizens when it has known means to do so; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives of the State of Texas concurring, That a cooperative effort be undertaken to develop a model hurricane evacuation plan for selected high population areas of the Gulf Coast; and, be it further

RESOLVED, That such a model emergency evacuation plan should include but not be limited to the following elements: (1) analysis of legal authority involved; (2) hazard vulnerability analysis; (3) evacuation and rescue element; (4) reception and shelter element; (5) warning element; (6) recovery element; and (7) plan coordination on a federal, state, and local level and any other matters the responsible agencies deem appropriate; and, be it further

RESOLVED, That the principal responsibility for development of the model evacuation plan shall rest with the Division of Disaster Emergency Services and Bureau of Economic Geology, in cooperation with the Texas Coastal and Marine Council; in performing the duties called for in this resolution, the responsible agencies shall cooperate and coordinate with local governments, other state agencies, federal agencies, educational institutions, and any other appropriate persons or organizations; agencies with and upon the request of the responsible entity shall furnish, within the limits of their respective facilities, such data, reports, and other information as may be required to fulfill the purpose of the resolution; and, be it further

RESOLVED, That the appropriate agencies complete and publish the model evacuation plan and that the responsible agencies also present a report to the 67th Legislature concerning their activities, summary of the plan, and any legislative recommendations deemed appropriate on or before January 1, 1981.

SENATE CONCURRENT RESOLUTION 62

Acquaculture Evaluation

WHEREAS, There is a need for more marine life to fulfill the present and future recreational and nutritional needs of the people of Texas; and

WHEREAS, Raising marine life in controlled conditions called Aquaculture or Mariculture is used successfully all over the world; and

WHEREAS, The practice of Aquaculture and Mariculture is a developing technology that could provide a substantial food source of marine life for Texans; and

WHEREAS, Agency programs and policies affecting Aquaculture and Mariculture occurring in Texas are not well coordinated; and

WHEREAS, The people of Texas would be benefited by a coordinated governmental effort to encourage more Aquaculture and Mariculture in the public sector as well as for private enterprise; and

WHEREAS, The 96th Congress of the United States has under consideration H. R. 20 to provide for a national program of research, demonstration, and assistance to further the development of Aquaculture throughout the country; now, therefore, be it

RESOLVED by the Senate of the State of Texas, the House of Representatives concurring, That the Texas Coastal and Marine Council coordinate an evaluation by the Parks and Wildlife Department, the Department of Agriculture, the Industrial Commission, the General Land Office, and the Department of Water Resources of the results produced by their respective programs and policies and report the findings and recommendations thereon to the 67th Session of the Texas Legislature.

SENATE RESOLUTION 553

Coastal Legislation

WHEREAS, The complexity of various statutes affecting coastal activities of the citizens of this state continues to grow; and

WHEREAS, The diverse activities regulated in coastal areas of the state deal with such diverse subjects as natural hazards, fisheries, navigation, energy, subsidence, water supplies, insurance, and public lands; and

WHEREAS, The legal references for such closely related subjects are only to be found by searching in the Water Code, Natural Resources Code, Parks and Wildlife Code, Insurance Code, and various session laws; and

WHEREAS, A paperback compilation of the coastal concerns in portions of such codes and special laws would greatly facilitate the coordination and understanding of such statutory responsibilities; now, therefore, be it

RESOLVED by the Senate of the State of Texas, That the Coastal and Marine Council be charged with the preparation of such a compilation and distribution for the benefit of the Legislature and its committees, governmental agencies of all levels, and the public; and, be it further

RESOLVED, That copies of the Texas coastal legislation booklet be provided to the Legislative Reference Library and the State Library for filing and distribution.





