PRELIMINARY DRAFT

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Parks and Wildlife Code
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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

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TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

SUBTITLE I. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

CHAPTER 5401. COMMISSION POWERS AND DUTIES

Revised Law

Sec. 5401.0101. MANAGEMENT AND PROTECTION OF MARL, SAND, GRAVEL, SHELL, AND MUDSHELL. The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within:

(1) the tidewater limits of this state, including on islands within those limits; and

(2) the freshwater areas of this state not embraced by a survey of private land, including on islands within those areas. (Parks & Wild. Code, Sec. 86.001.)

Source Law

> Sec. 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 of private land, and on islands within those areas.

Revised Law

Sec. 5401.0102. COMMISSION RULES. The commission may adopt rules governing:

(1) application consideration;

(2) application fee setting and collection;

(3) permit conditions;

(4) permit assignability;

(5) permit renewal;

(6) issuance of permits by rule;

(7) assessment of transcript costs in contested cases;

(8) substrate material pricing and payment terms;

(9) payment of refunds; and

(10) any other matter necessary to administer this subtitle. (Parks & Wild. Code, Sec. 86.020.)

Source Law

Sec. 86.020. RULES. The commission may adopt rules to govern:

(1) consideration of applications;

(2) setting and collection of application fees;

(3) assessment of transcript costs in contested cases;

(4) permit conditions;

(5) issuance of permits by rule;

(6) pricing of and terms for payment for substrate materials;

(7) assignability of permits;

(8) payment of refunds;

(9) permit renewal; and

(10) any other matter necessary for the administration of this chapter.

Revised Law

Sec. 5401.0103. OYSTER OR OYSTER BED REMOVAL AND REPLANTING. (a) The commission may remove oysters or 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, oyster beds, or fishing conditions.

(b) The removal and replanting of oysters and oyster beds is at the expense of the permit holder or a permit applicant and not this state.

(c) Before authorizing the removal and replanting of oysters or oyster beds, the commission shall:

(1) notify interested parties; and

(2) hold a hearing on the subject. (Parks & Wild. Code, Sec. 86.010.)

Source Law

Sec. 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.

Revised Law

Sec. 5401.0104. STUDY ON EFFECT OF PERMITTED OPERATIONS ON NATURAL RESOURCES. (a) The commission may:

(1) require the performance of a scientific study as needed to determine the cumulative effect of permitted operations in a watershed on natural resources using the criteria described by Section 5403.0103(a);

(2) provide for permit holders to participate in the performance of a study under Subdivision (1); and

(3) reimburse a participating permit holder for costs the permit holder incurs in performing a study under Subdivision (1) in an amount not to exceed one-fourth of the amount of all royalty fees the permit holder paid to the commission.

(b) The total amount of reimbursements paid to all participating permit holders under Subsection (a)(3) may not exceed one-half of the total cost of the study. (Parks & Wild. Code, Sec. 86.021(c).)

Source Law

> (c) The commission may require the performance of scientific studies as needed to determine the cumulative effect of permitted operations in a watershed on natural resources using the criteria described by Section 86.004 and may provide for permit holders to participate in the performance of those studies. The commission may reimburse a participating permit holder for costs incurred by the permit holder in performing the study in an amount equal to not more than one-fourth of all royalty fees paid by the permit holder to the commission. Total reimbursements to all participating permit holders may not exceed one-half the total cost of the study.

CHAPTER 5402. SALE OF MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

Revised Law

Sec. 5402.0101. SALE BY COMMISSION. (a) Except as provided by Chapter 5404, 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 establish other terms for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for a sale described by this section must be

made to the commission. (Parks & Wild. Code, Secs. 86.012(a), (b), (c).)

Source Law

Sec. 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.

Revisor's Note

(1) Section 86.012(a), Parks and Wildlife Code, authorizes the Parks and Wildlife Commission to sell marl, sand, gravel, shell, and mudshell for not less than a certain price. Chapter 86, Parks and Wildlife Code, includes multiple exceptions to the sale price limitation provided by Section 86.012(a). Those exceptions are revised in Chapter 5404 of this code, and the revised law adds a reference to the exceptions in that chapter for the convenience of the reader.

(2) Section 86.012(b), Parks and Wildlife Code, authorizes the Parks and Wildlife Commission to require other "terms and conditions" for the sale of marl, sand, gravel, shell, and mudshell. Throughout this subtitle, the revised law omits "conditions" for the reason stated in the revisor's note to Section 5055.0105.

Revised Law

Sec. 5402.0102. USE OF PROCEEDS. (a) Except as provided by Subsection (b), proceeds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used to:

(1) enforce this subtitle;

(2) pay refunds;

(3) construct and maintain fish hatcheries; and

(4) enhance, preserve, and restore fish habitats in rivers and streams.

(b) At least three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, must be used for the purposes described by Subsections (a)(3) and (4). (Parks & Wild. Code, Sec. 86.017.)

Source Law

Sec. 86.017. USE OF FUNDS. (a) Except as provided by Subsection (b), funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for:

(1) the enforcement of the provisions of this chapter;

(2) the payment of refunds;

(3) the construction and maintenance of fish hatcheries; and

(4) the enhancement, preservation, and restoration of fish habitats in rivers and streams.

(b) 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:

(1) the construction and maintenance of fish hatcheries; and

(2) the enhancement, preservation, and restoration of fish habitats in rivers and streams.

Revisor's Note

Section 86.017(a), Parks and Wildlife Code, refers to "funds" collected by the Parks and Wildlife Commission from the sale of marl, sand, gravel, shell, and mudshell. The revised law substitutes "proceeds" for "funds" because, in context, the terms have the same meaning and "proceeds" is the term used in Section 86.017(b), Parks and Wildlife Code, revised as Subsection (b) of this section.

Revisor's Note
(End of Chapter)

Section 86.016, Parks and Wildlife Code, requires that the proceeds from the sale of marl, sand, gravel, shell, and mudshell be deposited in the game, fish, and water safety account. The revised law omits that provision because it duplicates in substance Section 11.032(b)(4), Parks and Wildlife Code, revised in Section 2052.0302(15), which requires that revenue from the sale of marl, sand, gravel, shell, and

mudshell be deposited in that account. The omitted law reads:

> Sec. 86.016. DEPOSIT OF FUNDS. The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game, fish, and water safety account.

CHAPTER 5403. PERMITS

Revised Law

Sec. 5403.0101. PERMIT REQUIRED; OFFENSE. (a) Unless the person holds a permit issued by the commission authorizing the activity or is exempt as provided by Chapter 5404, a person may not 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 as necessary or incidental to navigation or dredging under state or federal authority.

(b) A person commits an offense if the person violates this section. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor. Each day's operation in violation of this section is a separate offense. (Parks & Wild. Code, Secs. 86.002, 86.022(a); New.)

Source Law

> Sec. 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) Each day's operation in violation of this section constitutes a separate offense.

> Sec. 86.022. PENALTY. (a) A person who violates Section 86.002 commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Revisor's Note

Section 86.002(a), Parks and Wildlife Code, provides that a person may not engage in certain activities "without first having acquired from the commission a permit" authorizing the activity. The

revised law substitutes "[u]nless the person holds a permit issued by the commission" for the quoted language because, in this context, the phrases are synonymous and the latter is more commonly used. Additionally, the revised law adds a reference to the exemptions provided in Chapter 5404 of this code for the reason stated in Revisor's Note (1) to Section 5402.0101.

Revised Law

Sec. 5403.0102. PERMIT APPLICATION. (a) A person may apply to the commission for a permit.

(b) The commission shall prescribe a single application form for an individual or general permit. The application must:

(1) be in writing; and

(2) describe the area in which authorization to operate is sought.

(c) The application form must require individual and general permit applicants to provide the same information, including information regarding:

(1) publication of notice in:

(A) the daily or weekly newspaper with the greatest circulation in the county or counties affected by issuance of the permit for three consecutive days, if daily; and

(B) one newspaper published for the community closest to the proposed area of disturbance, if any;

(2) proof that notice was sent by certified mail to owners of alongshore property located one river mile above and below the proposed area of disturbance described in the permit;

(3) a sedimentation impact assessment approved by the department; and

(4) any amendments to the permit if the application is for a renewal permit. (Parks & Wild. Code, Sec. 86.003.)

Source Law

Sec. 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.

(c) The commission shall prescribe a single application form for an individual or general permit. The form must require individual and general permit applicants to provide the same information, including information regarding:

(1) the publication of notice in:

(A) the daily or weekly newspaper with the greatest circulation in the county or counties affected by the issuance of the permit for three consecutive days, if daily; and

(B) one newspaper published for the community closest to the proposed area of disturbance, if any;

(2) proof that notice was sent by certified mail to alongshore property owners of property one river mile above and below the proposed area of disturbance described in the permit;

(3) a sedimentation impact assessment approved by the department; and

(4) any amendments to the permit, if the application is for the renewal of a permit.

Revised Law

Sec. 5403.0103. PERMIT ISSUANCE. (a) The commission may issue a permit to an applicant who complies with all commission requirements 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:

(A) island, reef, bar, channel, river, creek, or bayou used for navigation; or

(B) oysters, oyster beds, fish, or wildlife in or near the water used in the operation;

(2) change or injuriously affect any current that would affect navigation;

(3) significantly and injuriously change the river's hydrology;

(4) significantly increase downstream nonpoint source pollution; and

(5) significantly accelerate erosion upstream or downstream from the place where the taking occurs.

(b) In determining whether to issue a permit, the commission shall consider:

(1) the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation; and

(2) the needs of industry for marl, sand, gravel, shell, and mudshell and the relative value of the material to this state for commercial use. (Parks & Wild. Code, Secs. 86.004, 86.005.)

Source Law

> Sec. 86.004. GRANTING OF PERMIT. The commission may grant a permit to an applicant 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, fish, or wildlife in or near the water used in the operation;
>
> (2) change or injuriously affect any current that would affect navigation;
>
> (3) significantly and injuriously change the hydrology of the river;
>
> (4) significantly increase downstream nonpoint source pollution; and
>
> (5) significantly accelerate erosion upstream or downstream from the place where the taking occurs.
>
> Sec. 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.

Revisor's Note

> Section 86.004, Parks and Wildlife Code, refers to the authority of the Parks and Wildlife Commission to "grant" a permit. Throughout this chapter, the revised law substitutes "issue" for "grant" or "granted" for the reasons stated in the revisor's note to Section 5052.0407.

Revised Law

Sec. 5403.0104. DELEGATION OF AUTHORITY TO ISSUE UNCONTESTED PERMITS. (a) The commission may delegate to the executive director authority to issue uncontested permits under this section if:

(1) the permit application meets all statutory and

administrative criteria;

(2) a new issue affecting commission policy is not presented;

(3) department staff do not raise an objection; and

(4) a timely written request for hearing has not been filed or all requests for hearing have been withdrawn.

(b) The commission shall review a permit application on the request of:

(1) the applicant; or

(2) a concerned person with a justiciable interest. (Parks & Wild. Code, Sec. 86.011.)

Source Law

Sec. 86.011. DELEGATION OF AUTHORITY. (a) The commission may delegate to the director authority to grant uncontested permits under this section if:

(1) the application meets all statutory and administrative criteria;

(2) no new issues affecting commission policy are presented;

(3) no objection is raised by department staff; and

(4) no timely written requests for hearing are filed or all requests for hearing have been withdrawn.

(b) On request by the applicant or a concerned person with a justiciable interest, the commission shall review an application.

Revised Law

Sec. 5403.0105. CONTENTS OF PERMIT. (a) A permit issued under this chapter must:

(1) identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell;

(2) describe the nature of the material that may be disturbed, taken, or carried away;

(3) describe the area where the operation may occur; and

(4) state the purpose of the operation.

(b) A permit issued under this chapter may contain other terms. (Parks & Wild. Code, Secs. 86.006(a), (b), (c).)

Source Law

Sec. 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.

Revised Law

Sec. 5403.0106. TERM OF GENERAL PERMIT. A general permit issued under this chapter has a maximum term of one year. (Parks & Wild. Code, Sec. 86.006(d).)

Source Law

(d) A general permit issued under this chapter has a maximum term length of one year.

Revisor's Note

Section 86.006(d), Parks and Wildlife Code, refers to a general permit issued under Chapter 86 of that code. The pertinent parts of Chapter 86 providing for the issuance of a general permit are revised in this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 5403.0107. PERMIT BY RULE. (a) The commission by rule may establish conditions under which specified activities are authorized without issuance of an individual permit required under this chapter. An activity conducted in accordance with those conditions is considered to be conducted under a permit.

(b) Rules adopted under this section must:

(1) require a person proposing to rely on the authorization described by Subsection (a) to:

(A) notify the department; and

(B) report to the department during and after the activity, as appropriate;

(2) in addition to the requirements under Subchapter B, Chapter 2001, Government Code, require public notification of the proposed activity to provide the public with an opportunity to comment on the appropriateness of requiring an individual permit

for the activity; and

(3) establish best management practices that must be followed to minimize potential adverse effects on resources under the commission's jurisdiction.

(c) The commission may require submission of a nonrefundable processing fee with the notification required under Subsection (b)(1)(A).

(d) Rules adopted under this section may provide for a waiver of the notification required under Subsection (b)(1)(A) in an emergency.

(e) The department, in accordance with rules adopted under this section, may require an individual permit for any proposed activity. (Parks & Wild. Code, Sec. 86.007.)

Source Law

> Sec. 86.007. PERMIT BY RULE. (a) The commission by rule may establish conditions under which specified activities are authorized without the requirement of individual permits under this chapter. An activity conducted in accordance with those conditions is considered to be under a permit.
>
> (b) Rules adopted under this section shall require a person proposing to rely on the authorization provided for by this section to notify the department and, as appropriate, to report to the department during and after the activity. The rules may provide for a waiver of the requirement for advance notification in an emergency. The commission may require a nonrefundable processing fee to be submitted with the notification.
>
> (c) The department, under rules adopted under this section, may require an individual permit for any proposed activity.
>
> (d) In addition to the requirements under Subchapter B, Chapter 2001, Government Code, the rules shall require public notification of the proposed activity to provide the public with an opportunity to comment on the appropriateness of requiring an individual permit.
>
> (e) The rules must establish best management practices that must be followed to minimize potential adverse effects on resources under the commission's jurisdiction.

Revisor's Note

Section 86.007(a), Parks and Wildlife Code, refers to individual permits under Chapter 86 of that code. The pertinent parts of Chapter 86 providing for the issuance of an individual permit are revised in

this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 5403.0108. PERMIT FOR USE ON SEAWALLS AND SIMILAR STRUCTURES. (a) This section applies only to a county or municipality authorized to construct and maintain a seawall under Subchapter A, Chapter 571, Local Government Code.

(b) The commission shall issue to a county or municipality to which this section applies a permit to take marl, sand, gravel, shell, or mudshell for use in constructing, extending, protecting, maintaining, or improving a seawall, breakwater, levee, dike, floodway, or drainway.

(c) A permit issued under this section must be issued under regulations established by the commission.

(d) A county or municipality that takes marl, sand, gravel, shell, or mudshell under this section is not required to purchase the material. (Parks & Wild. Code, Sec. 86.014.)

Source Law

> Sec. 86.014. USE FOR SEAWALLS, ETC. (a) The commission shall grant to any county, city, or town that is authorized under Subchapter A, Chapter 571, Local Government Code, 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, floodway, 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.

Revisor's Note

(1) Section 86.014(a), Parks and Wildlife Code, refers to a county, city, or town authorized to "build" and maintain a seawall under Subchapter A, Chapter 571, Local Government Code. The revised law substitutes "construct" for "build" because the terms are synonymous and "construct" is the term used in Subchapter A, Chapter 571, Local Government Code.

(2) Sections 86.014(a) and (c), Parks and Wildlife Code, refer to a "city, or town." The revised law substitutes "municipality" for "city, or town" because the meaning of "municipality" includes both cities and towns and because "municipality" is the term used in the Local Government Code.

Revised Law

Sec. 5403.0109. DENIAL OF PERMIT: FINDING OF FACTS. The commission shall make a full written finding of facts explaining the reason for refusing to issue a permit to an applicant. (Parks & Wild. Code, Sec. 86.008.)

Source Law

Sec. 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.

Revised Law

Sec. 5403.0110. REMOVAL REPORT. (a) The holder of a permit issued under this chapter shall deliver to the department a report stating the amount of marl, sand, gravel, shell, or mudshell removed during the term of the permit.

(b) The commission shall adopt rules regarding the delivery and format of the report. (Parks & Wild. Code, Sec. 86.0105.)

Source Law

Sec. 86.0105. REMOVAL REPORT. A person holding a permit issued under this chapter shall deliver to the department a report stating how much marl, sand, gravel, shell, or mudshell was removed during the term of the permit. The commission shall adopt rules regarding the delivery and format of the report.

Revisor's Note

Section 86.0105, Parks and Wildlife Code, refers to a person holding a permit issued under Chapter 86 of that code. The pertinent parts of Chapter 86 providing for the issuance of a permit are revised in this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 5403.0111. INSPECTIONS. (a) In this section, "permit

holder" means a person holding a permit under this chapter.

(b) The commission by rule shall adopt a policy to guide the prioritization of inspections of permit holders based on risk to the state's natural resources.

(c) The policy adopted under this section must require that the department:

(1) determine the conditions under which an on-site inspection of a permit holder by the department is appropriate;

(2) develop an assessment tool for determining the appropriate frequency and intensity of department inspections of permit holders, based on key risk factors and indications of increased or decreased risk, such as repeated or remedied violations and failed or passed inspections; and

(3) document all inspections of permit holders and the results of those inspections and make the documentation available to all employees whose job descriptions include the regulation of permit holders.

(d) The policy adopted under this section may be combined with a policy adopted under Section 2952.9801. (Parks & Wild. Code, Sec. 86.0215.)

Source Law

Sec. 86.0215. INSPECTIONS. (a) In this section, "permit holder" means a person holding a permit under Section 86.006.

(b) The commission by rule shall adopt a policy to guide the prioritization of inspections of permit holders based on risk to the state's natural resources.

(c) The policy adopted under this section must require that the department:

(1) determine the conditions under which an on-site inspection of a permit holder by the department is appropriate;

(2) develop an assessment tool for determining the appropriate frequency and intensity of department inspections of permit holders, based on key risk factors and indications of increased or decreased risk, such as repeated or remedied violations and failed or passed inspections; and

(3) document all inspections of permit holders and the results of those inspections and make the documentation available to all employees whose job descriptions include the regulation of permit holders.

(d) The policy adopted under this section may be combined with a policy adopted under Section 12.1025.

Revisor's Note

Section 86.0215(a), Parks and Wildlife Code, defines "permit holder" as a person holding a permit under Section 86.006 of that code. Section 86.006, revised as Sections 5403.0105 and 5403.0106, pertains to the contents and term of a permit. Other provisions of Chapter 5403 of this code require a permit in order to engage in certain activities, authorize a person to apply for a permit, and authorize the Parks and Wildlife Commission to issue a permit. Because Chapter 5403 as a whole and not merely Sections 5403.0105 and 5403.0106 govern permits, the revised law substitutes "this chapter" for the reference to Section 86.006.

Revised Law

Sec. 5403.0112. TERMINATION AND REVOCATION OF PERMIT. A permit holder's failure or refusal to comply with a term of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit. (Parks & Wild. Code, Sec. 86.009.)

Source Law

Sec. 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.

CHAPTER 5404. EXEMPTIONS AND PROHIBITIONS

SUBCHAPTER A. EXEMPTIONS

Revised Law

Sec. 5404.0101. EXEMPTION FOR CERTAIN PROJECTS. (a) In this section, "unconsolidated sedimentary material" means loose gravel, sand, or other sedimentary material transported by the flow of a watercourse. The term does not include solid bedrock or earthen banks.

(b) The commission by rule shall exempt the projects listed in Subsection (c) from any permit requirement or payment to the

department for materials removed if the commission finds that:

(1) the state will not be deprived of significant revenue; and

(2) there will not be any significant adverse effects on navigation, the coastal sediment budget, riverine hydrology, erosion, or fish and wildlife resources or their habitat.

(c) Projects that may be exempted under Subsection (b) include:

(1) projects to restore or maintain the storage capacity of existing public water supplies;

(2) maintenance projects carried out by public utilities for noncommercial purposes;

(3) public road projects contracted by the Texas Department of Transportation; and

(4) projects resulting in insignificant takings or disturbances of marl, sand, gravel, shell, or mudshell.

(d) For purposes of Subsection (c)(4), a project results in an insignificant taking or disturbance of marl, sand, gravel, shell, or mudshell if:

(1) the project is noncommercial;

(2) the project takes or disturbs less than 125 cubic yards of dry unconsolidated sedimentary material during a 12-month period;

(3) the project occurs within an on-channel impoundment created by a dam originally constructed on or before December 31, 1955, and the dam crest has not been increased in height by more than six inches since initial construction; and

(4) the taking or disturbance of unconsolidated sedimentary material does not occur outside of the impoundment in areas above dam crest elevation. (Parks & Wild. Code, Secs. 86.021(a), (b), (b-1).)

Source Law

Sec. 86.021. EXEMPTIONS. (a) The commission by rule shall exempt the projects listed in Subsection (b) from any permit requirement or payment to the

department for materials removed if the commission finds that the state will not be deprived of significant revenue and there will be no significant adverse effects on navigation, the coastal sediment budget, riverine hydrology, erosion, or fish and wildlife resources or their habitat.

(b) Projects that may be exempted under Subsection (a) include:

(1) projects resulting in insignificant takings or disturbances of marl, sand, gravel, shell, or mudshell;

(2) projects to restore or maintain the storage capacity of existing public water supplies;

(3) maintenance projects carried out by public utilities for noncommercial purposes; and

(4) public road projects contracted by the Texas Department of Transportation.

(b-1) In this subsection, "unconsolidated sedimentary material" means loose gravel, sand, or other sedimentary material that has been transported by the flow of the watercourse. The term does not include solid bedrock or earthen banks. A project results in an insignificant taking or disturbance of marl, sand, gravel, shell, or mudshell for purposes of Subsection (b)(1) if:

(1) the project is noncommercial;

(2) the project takes or disturbs less than 125 cubic yards of dry unconsolidated sedimentary material within a 12-month period;

(3) the project occurs within an on-channel impoundment created by a dam originally constructed on or before December 31, 1955, and the dam crest has not been increased in height by more than six inches since initial construction; and

(4) the taking or disturbance of unconsolidated sedimentary material does not occur outside of the impoundment in areas above dam crest elevation.

Revised Law

Sec. 5404.0102. PUBLIC UTILITIES EXEMPTION; BEST MANAGEMENT PRACTICES. (a) The commission by rule shall exempt an entity from the permit and fee requirements of this subtitle for disturbing or taking marl, sand, gravel, shell, or mudshell for noncommercial purposes if the disturbance or taking occurs for a maintenance project or construction of a new utility line carried out by a public utility.

(b) A public utility shall make every reasonable effort to use best management practices established by the commission for disturbing or taking marl, sand, gravel, shell, or mudshell. (Parks & Wild. Code, Sec. 86.0191.)

Source Law

Sec. 86.0191. EXEMPTION. (a) The commission shall, by rule, exempt entities from the requirements of this chapter regarding permits and fees required

for disturbing or taking marl, sand, gravel, shell, and mudshell for noncommercial purposes when such disturbances or takings occur for maintenance projects or construction of new utility lines carried out by public utilities.

(b) Public utilities shall make every reasonable effort to use best management practices established by the commission.

Revisor's Note

Section 86.0191(b), Parks and Wildlife Code, requires public utilities to use best management practices established by the Parks and Wildlife Commission. The revised law adds "for disturbing or taking marl, sand, gravel, shell, or mudshell" because it is clear from the context that the best management practices established by the commission concern the disturbing or taking of those materials.

Revised Law

Sec. 5404.0103. EXEMPTION FOR MATERIALS TAKEN FROM SAN JACINTO RIVER BY CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to the following political subdivisions:

(1) the San Jacinto River Authority; and

(2) the Harris County Flood Control District.

(b) A political subdivision to which this section applies may take marl, sand, gravel, shell, and mudshell from the San Jacinto River or a tributary of the San Jacinto River to restore, maintain, or expand the capacity of the river or the tributary to convey storm flows without:

(1) obtaining a permit to take the material;

(2) paying a fee to take the material; or

(3) purchasing the material.

(c) A political subdivision acting under this section may deposit marl, sand, gravel, shell, or mudshell taken in accordance with Subsection (b) on private land. (Parks & Wild. Code, Sec. 86.0192.)

Source Law

Sec. 86.0192. EXEMPTION FOR CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to the following political subdivisions:

(1) San Jacinto River Authority; and

(2) Harris County Flood Control District.

(b) A political subdivision may take sand, gravel, marl, shell, and mudshell from the San Jacinto River and its tributaries to restore, maintain, or expand the capacity of the river and its tributaries to convey storm flows.

(c) A political subdivision acting under this section is not required to:

(1) obtain a permit or pay a fee to take sand, gravel, marl, shell, or mudshell under Subsection (b); or

(2) purchase sand, gravel, marl, shell, or mudshell taken under Subsection (b).

(d) A political subdivision acting under this section may deposit sand, gravel, marl, shell, or mudshell taken under Subsection (b) on private land.

Revised Law

Sec. 5404.0104. OIL AND GAS LESSEE EXEMPTION. The holder of an oil and gas lease executed by this state is not required to obtain a permit from the commission under Chapter 5403 to exercise any right granted under the lease or other laws of this state. (Parks & Wild. Code, Sec. 86.019.)

Source Law

Sec. 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.

Revisor's Note

Section 86.019, Parks and Wildlife Code, provides that Chapter 86 of that code does not require the holder of an oil and gas lease executed by the state to obtain a permit from the Parks and Wildlife Commission to exercise certain rights. The pertinent parts of Chapter 86 authorizing the commission to issue permits are revised in Chapter 5403 of this code, and the revised law is drafted accordingly.

Revised Law

Sec. 5404.0105. NAVIGATION DISTRICT PATENT EXEMPTION. A person may remove marl, sand, gravel, shell, and mudshell without payment to the commission if the material is removed from land or flats patented to a navigation district by this state for use on the land or flats or adjoining land or flats for any purpose for which

the land or flats may be used under the authority of the patent. (Parks & Wild. Code, Sec. 86.012(d) (part).)

Source Law

> (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 . . . .

Revised Law

Sec. 5404.0106. BOAT RAMP ACCESS EXEMPTION. A person may remove marl, sand, gravel, shell, and mudshell without payment to the commission if the material is removed to provide access to a boat ramp under Section 4901.0102(c). (Parks & Wild. Code, Sec. 86.012(d) (part).)

Source Law

> (d) Marl, sand, gravel, shell, and mudshell may be removed without payment to the commission . . . if removed to provide access to a boat ramp under Section 31.141(c) of this code.

Revised Law

Sec. 5404.0107. PURCHASE EXEMPTION FOR USE ON ROADS; REFUNDS. (a) A county, subdivision of a county, or municipality that holds a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase the material if it is taken and used for a road or street.

(b) A county, subdivision of a county, or municipality that purchases marl, sand, gravel, shell, or mudshell for use on a road or street from a permit holder who 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, or municipality.

(c) A refund described by Subsection (b) must be approved by the commission and paid by the comptroller.

(d) The Texas Transportation 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 transportation

commission on a public road.

(e) The commission may adopt regulations for the payment of refunds under this section. (Parks & Wild. Code, Sec. 86.013.)

Source Law

> Sec. 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 Texas Transportation 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 transportation commission on public roads.
>
> (d) The commission may make regulations for the payment of refunds under this section.

Revisor's Note

(1) Sections 86.013(a) and (b), Parks and Wildlife Code, refer to a "city, or town." The revised law substitutes "municipality" for "city, or town" for the reasons stated in Revisor's Note (2) to Section 5403.0108.

(2) Section 86.013(b), Parks and Wildlife Code, requires the comptroller of public accounts to pay certain refunds "by warrant." The revised law omits "by warrant" as unnecessary because it duplicates in substance provisions contained in Chapter 2103, Government Code, which is a comprehensive law covering procedures for withdrawing money from the state treasury.

Revised Law

Sec. 5404.0108. PURCHASE EXEMPTION FOR MATERIAL FROM CORPUS CHRISTI BAY AND NUECES BAY. A person, without payment to the commission, may take from Corpus Christi Bay or Nueces Bay sand and

other deposits with no commercial value to fill and raise the grade of:

(1) the salt flats in the northern part of the city of Corpus Christi; or

(2) the lowlands 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. (Parks & Wild. Code, Sec. 86.015.)

Source Law

> Sec. 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.

Revised Law

Sec. 5404.0109. FEE EXEMPTION FOR USE IN OPENING CERTAIN PASSAGES. (a) In this section, "nonprofit corporation, fund, or foundation" means a nonprofit corporation, fund, or foundation exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

(b) A nonprofit corporation, fund, or foundation may take marl, sand, gravel, 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.

(c) A political subdivision of this state or nonprofit corporation, fund, or foundation may take marl, sand, gravel, shell, and mudshell from Cedar Bayou in Aransas County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and Mesquite Bay.

(d) A political subdivision or nonprofit corporation, fund, or foundation that takes marl, sand, gravel, shell, or mudshell under this section:

(1) is not required to pay a fee required under Section 5402.0101; and

(2) may deposit that material on private land. (Parks & Wild. Code, Secs. 86.0151, 86.0152.)

Source Law

Sec. 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.

Sec. 86.0152. USE TO OPEN CEDAR BAYOU. (a) A nonprofit corporation, fund, or foundation exempted from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 501(c)(3)), or a political subdivision of the state may take sand, gravel, marl, shell, and mudshell from Cedar Bayou in Aransas County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and Mesquite 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.

Revisor's Note

(1) Section 86.0151(a), Parks and Wildlife Code, refers to 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))," and Section 86.0152(a), Parks and Wildlife Code, refers to a nonprofit corporation, fund, or foundation "exempted from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 501(c)(3))."

The revised law substitutes "1986" for "1954" because Section 501(c)(3) was incorporated into the Internal Revenue Code of 1986. The revised law omits

"as amended" for the reason stated in Revisor's Note (2) to Section 5002.0103.

Additionally, the revised law substitutes "exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code" for "exempted from federal income taxes under Section 503(c)(3), Internal Revenue Code of [1986]" and "exempted from federal income taxes under Section 501(c)(3), Internal Revenue Code of [1986]," respectively, for the reasons stated in the revisor's note to Section 5203.0102. Although Section 86.0151(a), Parks and Wildlife Code, refers to Section "503(c)(3)," it is clear from the context that the reference is a typographical error and that the legislature intended to refer to Section 501(c)(3). Section 501(c)(3) lists types of organizations that are exempt from federal income taxes. Section 503 provides that certain organizations are not exempt from taxation if they engage in certain prohibited transactions. That section does not contain a Subsection (c)(3). Furthermore, Section 86.0152(a), Parks and Wildlife Code, a provision nearly identical to Section 86.0151(a), refers to Section 501(c)(3).

(2) Sections 86.0151(b) and 86.0152(b), Parks and Wildlife Code, refer to the fee required under Section 86.012 of that code. Section 86.012 is revised in pertinent part as Section 5402.0101, and the revised law is drafted accordingly.

SUBCHAPTER B. PROHIBITIONS

Revised Law

Sec. 5404.0201. PROHIBITION ON TAKING FROM CERTAIN AREAS; OFFENSE. (a) Except as necessary for or incidental to navigation or dredging under state or federal authority, a person may not take

marl, sand, gravel, shell, or other material:

(1) from between a seawall and the water's edge;

(2) from a beach or shoreline within 300 feet of the mean low tide; or

(3) within one-half mile of the end of a seawall.

(b) A person commits an offense if the person violates this section. An offense under this subsection is a Class C Parks and Wildlife Code misdemeanor. (Parks & Wild. Code, Secs. 86.018, 86.022(b).)

Source Law

Sec. 86.018. TAKING FROM CERTAIN AREAS PROHIBITED. 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.

[Sec. 86.022]
(b) A person who violates Section 86.018 commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

CHAPTER 5449. ENFORCEMENT

Revised Law

Sec. 5449.0101. CIVIL PENALTY. A person who violates this subtitle or a rule, permit, or order of the department issued, adopted, or entered into under this subtitle is subject to a civil penalty of not less than $100 or more than $10,000 for each violation and each day of violation. (Parks & Wild. Code, Sec. 86.024.)

Source Law

Sec. 86.024. CIVIL PENALTY. A person who violates this chapter or a rule, permit, or order of the department issued or adopted under this chapter is subject to a civil penalty of not less than $100 or more than $10,000 for each act of violation and for each day of violation, to be recovered as provided in this chapter.

Revisor's Note

(1) Section 86.024, Parks and Wildlife Code, provides that a person who violates Chapter 86 of that

code or a rule, permit, or order of the Parks and Wildlife Department "issued or adopted" under that chapter is subject to a civil penalty. The revised law substitutes "issued, adopted, or entered into" for the quoted language to provide consistency in terminology used in this subtitle and because under Section 86.025(a), Parks and Wildlife Code, revised in pertinent part as Section 5449.0103(a)(2), the executive director of the department is authorized to bring a suit to recover a civil penalty under Section 86.024 for a violation of Chapter 86 or a rule, permit, or order of the department "issued, adopted, or entered into" under that chapter.

(2) Section 86.024, Parks and Wildlife Code, provides for a civil penalty for certain violations and for each day of violation, "to be recovered as provided in this chapter." The revised law omits the quoted language as unnecessary because the provisions of Chapter 86, Parks and Wildlife Code, prescribing the manner of recovery of the penalty apply on their own terms.

Revised Law

Sec. 5449.0102. LIABILITY FOR VALUE OF MATERIAL OR OTHER NATURAL RESOURCE. A person who takes marl, sand, gravel, shell, or mudshell under the jurisdiction of the commission in violation of this subtitle or a rule adopted under this subtitle is liable to this state for the value of:

(1) the material taken; and

(2) any other natural resource under the department's jurisdiction that is damaged or diminished in value. (Parks & Wild. Code, Sec. 86.023.)

Source Law

Sec. 86.023. LIABILITY FOR VALUE OF MATERIAL TAKEN. A person who takes marl, sand, gravel, shell, or mudshell under the jurisdiction of the commission

in violation of this chapter or a rule adopted under this chapter is liable to the state for the value of:

(1) the material taken; and

(2) any other natural resource under the department's jurisdiction that is damaged or diminished in value.

Revised Law

Sec. 5449.0103. ENFORCEMENT SUIT. (a) If a person has violated, is violating, or is threatening to violate this subtitle or a rule, permit, or order of the department issued, adopted, or entered into under this subtitle, the executive director may bring suit:

(1) to restrain the person from continuing the violation or threat of violation;

(2) to recover a civil penalty under Section 5449.0101;

(3) to recover the value of material taken in violation of this subtitle; or

(4) for any appropriate combination of the remedies described by this subsection.

(b) On request of the executive director, the attorney general or the county attorney of the county in which the violation or threat of violation occurred shall bring suit:

(1) for injunctive relief;

(2) to recover a civil penalty under Section 5449.0101;

(3) to recover the value of material taken in violation of this subtitle; or

(4) for any appropriate combination of the remedies described by this subsection.

(c) Money recovered under this section shall be credited to the game, fish, and water safety account. (Parks & Wild. Code, Secs. 86.025(a), (c) (part).)

Source Law

Sec. 86.025. ENFORCEMENT. (a) If a person has violated, is violating, or is threatening to violate this chapter or a rule, permit, or order of the department issued, adopted, or entered into under this chapter, the director may bring suit to restrain the

person from continuing the violation or threat of violation, to recover the civil penalty under Section 86.024, to recover the value of material taken in violation of this chapter, or for any appropriate combination of these remedies.

(c) At the request of the director, the attorney general or the county attorney of the county in which the violation or threat of violation occurred shall bring suit for injunctive relief, to recover a civil penalty, to recover the value of material taken in violation of this chapter, or for any appropriate combination of these remedies. Amounts recovered under this section shall be credited to the game, fish, and water safety fund. . . .

Revisor's Note

(1) Section 86.025(c), Parks and Wildlife Code, provides that a suit may be brought to recover a "civil penalty." Section 86.025(a), Parks and Wildlife Code, allows for a suit to be brought to recover a civil penalty under Section 86.024 of that code, which is revised as Section 5449.0101. For clarity and the convenience of the reader, the revised law adds a reference to Section 5449.0101 because it is clear from the context that the civil penalty described by Section 86.025(c) is the same as the one described by Section 86.025(a).

(2) Section 86.025(c), Parks and Wildlife Code, refers to "amounts" recovered under Section 86.025 of that code. Throughout this chapter, the revised law substitutes "money" for "amounts" when the meaning is the same in context because "money" is the more commonly used term.

(3) Section 86.025(c), Parks and Wildlife Code, provides that money recovered under Section 86.025 of that code must be credited to a specific fund. Section 86.025 is revised in pertinent part as this section, and the revised law is drafted accordingly.

(4) Section 86.025(c), Parks and Wildlife Code, requires that money recovered under Section 86.025 of that code be credited to the "game, fish, and water

safety fund." The revised law substitutes "game, fish, and water safety account" for the quoted language because the game, fish, and water safety account is the official name of the account created under Section 11.031, Parks and Wildlife Code, revised in Section 2052.0301 of this code, and it is clear from the context that the legislature intended to refer to that account.

Revised Law

Sec. 5449.0104. CERTAIN COSTS RECOVERABLE. (a) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees may also be recovered in a suit brought under Section 5449.0103.

(b) Money recovered under this section shall be credited to the same operating fund from which the expenditures occurred. (Parks & Wild. Code, Sec. 86.025(c) (part).)

Source Law

> (c) . . . The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees also may be recovered, and those recovered amounts shall be credited to the same operating funds from which expenditures occurred.

Revised Law

Sec. 5449.0105. COURT ACTION FOR INJUNCTIVE RELIEF. On application for injunctive relief under Section 5449.0103 and a finding that a person is violating or threatening to violate a provision of this subtitle or a rule, permit, or order of the department under this subtitle, a court shall grant the injunctive relief warranted by the facts, without requirement for bond. (Parks & Wild. Code, Sec. 86.025(b).)

Source Law

> (b) On application for injunctive relief and a finding that a person is violating or threatening to violate a provision of this chapter or a rule, permit, or order of the department under this chapter, a court shall grant the injunctive relief the facts may warrant, without requirement for bond.

Revised Law

Sec. 5449.0106. JOINT AND SEVERAL LIABILITY. If more than one defendant is named in an action under this subtitle, each defendant against whom judgment is rendered is jointly and severally liable for the recovery provided by this subtitle. (Parks & Wild. Code, Sec. 86.026.)

Source Law

> Sec. 86.026. MORE THAN ONE DEFENDANT. If more than one defendant is named in an action under this chapter, each defendant against whom judgment is rendered is jointly and severally liable for recovery provided by this chapter.

Revised Law

Sec. 5449.0107. BOTH CIVIL ACTION AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a civil action brought under this subtitle or a criminal prosecution for the same violation does not bar the other action. (Parks & Wild. Code, Sec. 86.027.)

Source Law

> Sec. 86.027. CIVIL SUIT AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a civil action brought under this chapter or a criminal prosecution for the same violation does not bar the other action.