

PARKS AND WILDLIFE CODE
TITLE 5. WILDLIFE AND PLANT CONSERVATION
SUBTITLE D. CRUSTACEANS AND MOLLUSKS
CHAPTER 78. MUSSELS, CLAMS, AND CRABS

SUBCHAPTER A. MUSSELS AND CLAMS

Sec. 78.001. DEFINITIONS. In this chapter:

(1) "Commercial purposes" includes sale, barter, or exchange, or any other commercial use.

(2) "Mussels and clams" includes all freshwater and marine bivalve mollusks except species covered under other chapters of this code.

(3) "Nonresident" has the meaning assigned under Section 47.001 of this code.

(4) "Soft tissue" means mussel and clam body parts, exclusive of the shell, and pearls.

(5) "Resident" has the meaning assigned under Section 47.001 of this code.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.002. LICENSE REQUIRED; FEES. (a) No person may take any mussels, clams, or their shells from the public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.

(b) The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. All licenses issued under the authority of Chapter 78 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(c) The license fee for a resident commercial mussel and clam fisherman's license is \$30 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident commercial mussel and clam fisherman's license is \$800 or an amount set by the commission, whichever amount is more.

(e) The department may grant permission to use a dredge in a designated area for an additional fee of \$30 or an amount set by the commission, whichever amount is more.

(f) Repealed by Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Sec. 71.001 and 71.002 and amended by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 76, 80, eff. June 16, 1995.

Sec. 78.003. SHELL BUYER LICENSE. (a) No person may purchase for commercial use mussel or clam shells that have been taken from the public water of the state without a resident or nonresident shell buyer's license, except as allowed under Section [78.005](#) of this code.

(b) The license form shall be prescribed by the department.

(c) The license fee for a resident shell buyer's license is \$100 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident shell buyer's license is \$1,500 or an amount set by the commission, whichever amount is more.

(e) The holder of a shell buyer's license shall file with the department a report of activities performed under the license in a form and manner specified by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 77, eff. June 16, 1995.

Sec. 78.004. EXPORT FEE. The commission may charge a fee of three cents a pound or an amount set by the commission, whichever amount is more, for mussels or clams or mussel or clam shells that

are harvested from the public water of the state for export. Funds collected from shell export fees may be used only for research and mitigation and management activities associated with mussels and clams.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.005. EXEMPTION FOR PERSONAL USE AND CONSUMPTION. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Section 46.002 of this code may take or harvest from the public water of the state, for personal use and consumption only, not more than 25 pounds a day of whole mussels and clams, including shell and soft tissue, or 12 pounds a day of mussel and clam shells.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.006. REGULATION OF TAKING, POSSESSION, PURCHASE, AND SALE OF MUSSELS AND CLAMS. (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of mussels and clams. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent the depletion of mussels and clams;

(2) measures based on the best scientific information available;

(3) measures to manage mussels and clams;

(4) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(5) measures that will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking mussels and clams.

(d) A proclamation of the commission under this section prevails over a proclamation of the commission issued under Chapter 61 of this code.

(e) A proclamation of the commission under this section does not prevail over:

(1) an order, rule, or regulation adopted by the commissioner of health; or

(2) a proclamation of the commission issued under Chapter 66 of this code.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.007. UNLAWFUL ACTS. A person who violates the provisions of this chapter commits a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 88, eff.

Sept. 1, 1985. Renumbered from Sec. 78.004 and amended by Acts

1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. CRAB LICENSE MANAGEMENT

Sec. 78.101. CRAB LICENSE MANAGEMENT PROGRAM. To promote efficiency and economic stability in the crabbing industry and to conserve economically important crab resources, the department shall implement a crab license management program in accordance with proclamations adopted by the commission under Chapter 61 and this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.102. DEFINITIONS. In this subchapter:

(1) "Crab" means all species in the families Portunidae and Xanthidae.

(2) "Commercial crab fishing" means pursuing, taking, attempting to take, or landing crabs in this state for pay or for the purpose of sale, barter, or exchange.

(3) "License" means a commercial license issued in

accordance with a proclamation under this subchapter that authorizes commercial crab fishing or the operation of a commercial crab boat.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.103. CRAB LICENSE MANAGEMENT REVIEW BOARD. (a) The license holders under this chapter shall elect a crab license management review board with an odd number of members greater than four and fewer than 12.

(b) A member of the review board must be a license holder under this subchapter or a wholesale fish dealer as defined by Section 47.001 with knowledge of the commercial crab fishing industry.

(c) A majority of the members of the review board may not be residents of the same county.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the crab licensing program, including the definition of flagrant offenses, and hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(e) The executive director shall adopt procedures for determining the size and operations of the review board and the election and terms of board members. The executive director shall solicit and consider recommendations regarding these procedures from persons who purchased crab trap tags after September 1, 1995, and before August 31, 1996, or from holders of licenses issued under this subchapter.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

(g) A member of the review board serves without compensation or a per diem allowance.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.104. LICENSING. (a) If the commission adopts one

or more licenses to be issued under this subchapter, a person may not engage in commercial crab fishing without a license adopted by the commission. If the commission adopts a commercial crab boat license to be issued under this subchapter, a person may not operate a boat for the purpose of commercial crab fishing without having a boat license as prescribed by the commission.

(b) A proclamation under this section requiring a license must contain findings by the commission that support the need for the proclamation. In determining the need for a license requirement, the commission shall consider:

(1) measures to prevent waste or depletion of crabs while achieving, on a continuing basis, the optimum yield for the fishery;

(2) the best scientific information available;

(3) the effect a licensing program would have on the management of crabs throughout the jurisdictional range;

(4) the need to promote, where practicable, efficiency in using crabs; and

(5) the need to enhance enforcement.

(c) A proclamation issued under this section may:

(1) establish a license that is issued to a person, to a person and limited to a vessel, or to a person according to the equipment used in commercial crab fishing, including issuing tags for crab traps placed in public waters under Section [66.018](#);

(2) establish eligibility requirements for a license, including the use of historical participation in the industry or participation in the industry after August 31, 1995, and before November 14, 1996;

(3) establish requirements for license transfer;

(4) prohibit license transfer during certain time periods; and

(5) establish a lottery or an auction for issuing licenses.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.105. LICENSE FEE. The fee for a license is \$500, or

an amount set by the commission, whichever amount is more. All fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.106. LICENSE RENEWAL. A person seeking to renew a license established by this subchapter must have held the license during the preceding license year.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.107. LIMIT ON NUMBER OF LICENSES HELD. (a) A person may not hold or directly or indirectly control more than three licenses issued under this subchapter other than an equipment license.

(b) A license issued to a person other than an individual must designate an individual in whose name the license will be issued.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.108. EXPIRATION OF LICENSE. A license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Each period is one year beginning on September 1 or another date set by the commission.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.109. LICENSE TRANSFER. (a) The commission by rule may set a fee for the transfer of a license. The amount of the fee may not exceed the amount of the license fee.

(b) The commission shall send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account.

(c) The commission by proclamation shall allow a license to be transferred beginning not later than September 1, 2001. The commission shall annually review the decision regarding license transfer.

(d) Notwithstanding Subsection (c), a license may be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.110. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice to a license holder and the opportunity for a hearing, may suspend or revoke a license if the license holder or any other operator of a licensed vessel is shown to have been convicted of one or more flagrant offenses defined by a proclamation of the commission during a period described by the proclamation of the commission.

(b) A license suspension does not affect the license holder's eligibility to renew the license after the suspension expires.

(c) The same flagrant offense may not be counted for more than one suspension under this section.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.111. LICENSE BUYBACK. (a) The department may implement a license buyback program as part of the crab license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director

must consult with the crab license management review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the crab fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside at least 20 percent of the fee from commercial crab licenses and transfer fees. That money shall be sent to the comptroller for deposit to the credit of the commercial license buyback subaccount in the game, fish, and water safety account.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

Sec. 78.112. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.113. DISPOSITION OF FUNDS. Money received for a license issued under this subchapter or fines for violations of this subchapter shall be remitted to the department by the 10th day of the month following the date of collection.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.114. PROCLAMATION; PROCEDURES. Subchapter D, Chapter 61, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.115. CRAB TRAPS; REMOVAL OF ABANDONED TRAPS. (a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed season established by the commission under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

- (1) enforcement of this chapter;
- (2) the cleanliness of the beds and bottoms of the public water of this state;
- (3) boating safety; and
- (4) the conservation and management of crab resources.

(d) Abandoned crab traps are litter for purposes of Section 365.011, Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code. Section 12.1105 does not apply to the removal and disposal of an abandoned crab trap under this section.

(e) A proclamation made by the commission under this section prevails over a conflicting commission proclamation made under Chapter 47, 61, or 66.

Added by Acts 2001, 77th Leg., ch. 278, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 858, Sec. 1, eff. June 20, 2003.