

PARKS AND WILDLIFE CODE

TITLE 5. WILDLIFE AND PLANT CONSERVATION

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

CHAPTER 86. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

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.

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

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.

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. 105, eff. Sept. 1, 1985.

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.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 1, eff. September 1, 2019.

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.

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

Amended by Acts 1995, 74th Leg., ch. 923, Sec. 1, eff. Sept. 1, 1995.

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.

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

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.

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

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 2, eff. September 1, 2019.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 923, Sec. 2, eff. Sept. 1, 1995.

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.

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

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.

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

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.

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

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.

Added by Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. [2805](#)), Sec. 3, eff. September 1, 2019.

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.

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

Amended by Acts 1995, 74th Leg., ch. 923, Sec. 3, eff. Sept. 1, 1995.

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.

(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.

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

Amended by Acts 1979, 66th Leg., p. 1069, ch. 499, Sec. 2, eff. Aug. 27, 1979.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(67), eff. Sept. 1, 1995.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.364, eff. Sept. 1,

2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 3.77(21), eff. April 1, 2009.

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.

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

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.

Added by Acts 1979, 66th Leg., p. 911, ch. 419, Sec. 1, eff. Aug. 27, 1979.

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.

Added by Acts 1985, 69th Leg., ch. 771, Sec. 1, eff. June 14, 1985.

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.

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

Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 57, eff. Sept. 1, 1993.

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.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1286 (H.B. [1824](#)), Sec. 1, eff. September 1, 2019.

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.

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. 106, eff. Sept. 1, 1985.

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.

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

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.

Added by Acts 1995, 74th Leg., ch. 61, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 596, Sec. 1, eff. Sept. 1, 1999.

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.

Added by Acts 2019, 86th Leg., R.S., Ch. 1286 (H.B. 1824), Sec. 2, eff. September 1, 2019.

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.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 107, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 923, Sec. 4, eff. Sept. 1, 1995.

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.

(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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 4, eff. September 1, 2019.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 13, eff. September 1, 2021.

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.

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

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 794 (H.B. 2038), Sec. 1, eff. June 10, 2019.

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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

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.

(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.

(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. 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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

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.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.