
**HOUSE COMMITTEE ON STATE RECREATIONAL RESOURCES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

**EDMUND KUEMPEL
CHAIRMAN**

**COMMITTEE CLERK
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Committee On
State Recreational Resources

November 27, 2002

Edmund Kuempel
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on State Recreational Resources of the Seventy-Seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

Edmund Kuempel, Chairman

Robert L. "Robby" Cook

Clyde Alexander

Myra Crownover

Mark Homer

Dan Ellis

William "Bill" Callegari

Lois Kolkhorst

Elizabeth Ames Jones

TABLE OF CONTENTS

INTRODUCTION	1
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS	2
SUBCOMMITTEE ON WATER SAFETY	4
BACKGROUND	5
FINDINGS	8
RECOMMENDATIONS TO THE 78TH LEGISLATURE	11
SUBCOMMITTEE ON GAME WARDENS	13
BACKGROUND	14
FINDINGS	20
RECOMMENDATIONS TO THE 78TH LEGISLATURE	22
SUBCOMMITTEE ON GAME FISH POPULATIONS	23
BACKGROUND	24
FINDINGS	25
RECOMMENDATIONS TO THE 78TH LEGISLATURE	26
SUBCOMMITTEE ON WATERWAYS	27
AQUATIC VEGETATION BACKGROUND	28
AQUATIC VEGETATION FINDINGS	29
VEHICULAR TRAFFIC IN STREAMBEDS BACKGROUND	31
VEHICULAR TRAFFIC IN STREAMBEDS FINDINGS	33
RECOMMENDATIONS TO THE 78TH LEGISLATURE	36
SUBCOMMITTEE ON OVERSIGHT	37
FINDINGS	38
APPENDIX A	39
APPENDIX B	41
APPENDIX C	44
APPENDIX D	51
APPENDIX E	56
APPENDIX F	63
APPENDIX G	75
APPENDIX H	81

INTRODUCTION

At the beginning of the 77th Legislature, the Honorable James E. “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on State Recreational Resources. The committee membership included the following: Representatives Edmund Kuempel (Chairman), Robert L. “Robby” Cook (Vice-Chairman), Clyde Alexander, William “Bill” Callegari, Myra Crownover, Dan Ellis, Mark Homer, Elizabeth Ames Jones, and Lois Kolkhorst.

During the interim the Committee was assigned five charges by the Speaker:

1. Review Chapter 31, Parks and Wildlife Code, relating to water safety, as well as rules and regulatory procedures implemented by the Department of Parks and Wildlife to ensure that the purposes of the chapter are carried out consistently and efficiently.
2. Examine and evaluate the critical role of game wardens in accomplishing the mission of the Parks and Wildlife Department. Review all aspects of the training and duties of game wardens and assess the support provided to achieve maximum benefit from their efforts.
3. Review the results of studies involving the impact of removing non-game fish on game fish populations. Monitor any field studies of non-game fish removal by the Texas Department of Parks and Wildlife, including the latest techniques for such removal.
4. Review policies and actions of the Texas Parks and Wildlife Department in maintaining healthy waterways, including, but not limited to, policies related to aquatic vegetation management and vehicular traffic in streambeds.
5. Actively monitor agencies and programs under the committee’s oversight jurisdiction, including the implementation of HB 3123 related to taxation of real property under a wildlife management plan.

In order to undertake the charges efficiently and effectively, Chairman Kuempel appointed subcommittees to study the charges. The subcommittees have completed their hearings and investigations. The State Recreational Resources Committee has adopted and approved the following report.

Finally, the members of the Committee wish to express their appreciation to all who participated in the interim studies, the resource witnesses who submitted testimony and general comments, and the Texas Parks and Wildlife Department who assisted the Committee by providing pertinent background information.

HOUSE COMMITTEE ON STATE RECREATIONAL RESOURCES

INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

SUBCOMMITTEE ON WATER SAFETY

CHARGE Review Chapter 31, Parks and Wildlife Code, relating to water safety, as well as rules and regulatory procedures implemented by the Department of Parks and Wildlife to ensure that the purposes of the chapter are carried out consistently and efficiently.

Lois Kolkhorst, Chairwoman
Dan Ellis
Elizabeth Ames Jones
Edmund Kuempel

SUBCOMMITTEE ON GAME WARDENS

CHARGE Examine and evaluate the critical role of game wardens in accomplishing the mission of the Parks and Wildlife Department. Review all aspects of the training and duties of game wardens and assess the support provided to achieve maximum benefit from their efforts.

Robert L. "Robby" Cook, Chairman
Lois Kolkhorst
Clyde Alexander
Mark Homer

SUBCOMMITTEE ON GAME FISH POPULATIONS

CHARGE Review the results of studies involving the impact of removing non-game fish on game fish populations. Monitor any field studies of non-game fish removal by the Texas Department of Parks and Wildlife, including the latest techniques for such removal.

Mark Homer, Chairman
Elizabeth Ames Jones
Edmund Kuempel

SUBCOMMITTEE ON WATERWAYS

CHARGE Review policies and actions of the Texas Parks and Wildlife Department in maintaining healthy waterways, including, but not limited to, policies related to aquatic vegetation management and vehicular traffic in streambeds.

Dan Ellis, Chairman
Elizabeth Ames Jones
Myra Crownover
Bill Callegari

SUBCOMMITTEE ON OVERSIGHT

CHARGE Actively monitor agencies and programs under the committee’s oversight jurisdiction, including the implementation of HB 3123 related to taxation of real property under a wildlife management plan.

Myra Crownover, Chairwoman
Clyde Alexander
Robert L. “Robby” Cook
Bill Callegari

SUBCOMMITTEE ON WATER SAFETY

BACKGROUND

In 2001, following the 77th Legislature, Regular Session, the State Recreational Resources Committee was charged with reviewing Chapter 31, Parks and Wildlife Code, relating to water safety, to ensure that the purposes of the chapter are carried out consistently and efficiently. The review focused on issues relating to participants in the boat industry as addressed by the 77th Legislature in S.B. 305, Parks and Wildlife Sunset Bill, and on administrative processes associated with boat registration and boat titling.

In 1959, the Texas Legislature passed the first comprehensive Water Safety Act requiring the State Highway Department, now Texas Department of Transportation (TxDOT), to administer boat registration and numbering for undocumented motorboats in Texas. Included in this initial Water Safety Act was a provision that allowed any dealer or manufacturer of motorboats in this State to, instead of securing a Certificate of Number (registration) for each motorboat that may be shown, demonstrated, or tested on public waters, procure a Dealer's and Manufacturer's number. A dealer was defined at this time as a person, firm, or corporation engaged in the business of selling motorboats. A Dealer/Manufacturer Number was valid for three (3) years and cost twenty-five dollars (\$25). In 1965, the Texas Legislature provided that a Dealer/Manufacturer Number was valid for two (2) years.

In 1969, the 61st Legislature transferred the responsibility of administering dealer/manufacturer numbers and boat registration and titling to Texas Parks and Wildlife (TPW). This transfer of responsibility also included the transfer of all funds associated with administering the program and the responsibility for the maintenance of all water safety records.

In 1977, the 65th Legislature amended the definition of a dealer to mean a person customarily engaged in the business of buying, selling, or exchanging motorboats or outboard motors at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products.

In 1983, the 68th Legislature changed the fee for a dealer/manufacturer number from twenty-five dollars (\$25) to forty-five dollars (\$45). In 1985, the 69th Legislature changed the fee for a dealer/manufacturer number from forty-five dollars (\$45) to forty-five dollars (\$45) or an amount set by the TPW Commission, whichever is higher.

In 1993, the 73rd Legislature amended the definition of dealer to mean a person customarily engaged in the business of buying, selling, or exchanging vessels or outboard motors at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products. Additionally, the 73rd Legislature amended the application process for a dealer/manufacturer number to provide that the application must be accompanied by photographs of the business sufficient to show the required sign and space and must be accompanied by a copy of the tax permit of the dealer or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer or manufacturer has a tax permit.

In 1995, the 74th Legislature amended the application process for a dealer/manufacturer number to provide that the application must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain and must be accompanied by a copy of the tax permit of the dealer or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer or manufacturer has a tax permit.

In 1997, the 75th Legislature amended the definition of dealer to mean a person customarily engaged in the business of buying, selling, or exchanging at least five vessels or outboard motors during a calendar year at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display products.

The history of the legislative changes to the definition of a dealer and the application process for acquiring a dealer number indicate a continued attempt to accurately identify legitimate participants in the boat industry and an attempt to keep illegitimate individuals or businesses from using the dealer/manufacturer number to defraud the State of taxes and registration fees due, to defraud constituents by failing to process registration and title transfers or performing skip transfers, and from handling and selling stolen boats and motors. The current statutes which define a dealer and which set forth the application process for acquiring a dealer/manufacturer number still do not adequately prevent these problems.

Currently, §31.003, Parks and Wildlife Code, defines a “Dealer” as a person customarily engaged in the business of buying, selling, or exchanging at least five vessels or outboard motors during a calendar year at an established or permanent place of business in this state and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display products.

Currently, §31.041, Parks and Wildlife Code, provides:

- (a) A dealer or manufacturer of vessels in this state may obtain a dealer’s and manufacturer’s number for vessels the dealer or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. The number shall be attached to any vessel that the dealer or manufacturer sends temporarily on the water.
- (b) The application for a number must state that the applicant is a dealer or manufacture within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. The application must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain. The application must be accompanied by a copy of the tax permit of the dealer or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer or manufacturer has a tax permit. The two-year fee for a dealer’s and manufacturer’s number is \$45 or an amount set by the commission, whichever is more. No number may be issued until the provisions of this section have been satisfied.

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- (c) A dealer or manufacturer holding a dealer's and manufacturer's number may issue a reasonable temporary facsimile of the number which may be used by any authorized person. A person purchasing a vessel may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display shall be prescribed by the department.
- (d) A dealer or manufacturer holding a dealer's and manufacturer's number may transfer a certificate of number or a certificate of title to a vessel or outboard motor without securing a certificate of number or certificate of title in the dealer's or manufacturer's name if the vessel or outboard motor is sold in the normal course of the dealer's or manufacturer's business. Any other person transferring a vessel or outboard motor must secure a certificate of number or certificate of title in the person's name before transferring the certificate of number or the certificate of title.

FINDINGS

Within recent years, boat and motor theft and fraud has become an all-important issue for Texas Parks and Wildlife and the Law Enforcement Division. The Department has been made aware of the growing problems within the recreational marine industry through increased constituent complaints and investigative efforts of game wardens. In an effort to determine the scope of this problem, Parks and Wildlife recently implemented a Marine Theft Special Investigation Unit, consisting of two game wardens, to investigate boat theft and fraud cases. The results of the game wardens' efforts uncovered significant fraudulent dealer activity which has led to the collection of hundreds of thousands of dollars in unpaid fees and taxes.

The industry currently has 1,709 total boat and motor dealer licenses. Of the 1,577 active dealer licenses in the state, only 1,102 reported payment of sales tax between the year 2000 and 2001, indicating a significant amount of boat sales tax and registration fees uncollected by the State and the Department. In one investigation completed by the Marine Theft Investigative Unit, \$68,000.00 in unpaid sales tax and penalties to the state, \$9,000.00 in unpaid registration fees to Parks and Wildlife, and \$225,000.00 in unpaid funds to private boat owners from consignment sales were discovered. Since the Investigative Unit has been in place, 64 cases for registration, titling and tax law violations have been filed, and \$3,800.00 in registration fees have been collected. The Unit has also recovered stolen boats and motors valued at over \$155,000.00. These unpaid dollars reveal a significant need to enhance the ability of the Department to better protect constituents' interest and ensure the payment of funds owed to the State.

A significant number of small dealers, used car dealers, boat repair shops and consignment dealers fail to acquire a dealer number. Those dealers that choose not to purchase a license contribute to falsification of documents to avoid tax penalties and violations such as title skip transfers. Mandatory licensing of vessel and outboard motor dealers by Texas Parks and Wildlife, along with mandatory reporting and retention of documents and reports and clarification of penalties for regulations promulgated by the Commission, would provide the Department with the necessary means to ensure compliance with statutory regulations and collection of funds owed to the State.

Most of the time, investigations of dealer fraud do not come to light without a constituent complaint. In order to prevent fraudulent activity within the industry and ensure statutory compliance, a proactive inspection approach by the Department is vital. Inspection authority for Texas Parks and Wildlife Game Wardens to investigate and inspect vessel and motor transaction records, as well vessels and motors on the premises of dealers, manufacturers and distributors, would enable wardens to ensure compliance with registration, titling, tax and fee regulations and regulations regarding hull identification and serial numbers. Currently, inspection of dealer records requires a court order, which involves lengthy detailed investigations before issuance. Because of this tedious requirement, many non-compliance instances go un-investigated.

The additional revenue recovered through the investigative efforts of the Marine Theft Investigative Unit would contribute to an increase in the overall collection of related sales tax and penalties to the State. Texas Parks and Wildlife and the Office of the Comptroller of Public Accounts are currently discussing and working together to set forth expectations for the collection of delinquent taxes.

Under current law, Chapter 31.041, Parks and Wildlife Code, a dealer or manufacturer of vessels in this state may obtain a dealer's and manufacturer's number for vessels the dealer or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. Many Dealers, Manufacturers, and individuals use the AA Dealer number to circumvent state sales tax on vessels that are sold. Legitimate dealers encounter restrictions when using new vessels as advertisement or promotional products because the vessel must be titled and registered in the business name. Confusion among the industry, as well as constituents, of the legislative intent for the AA Dealer Number exists and warrants clarification from the Legislature.

Many U.S. Coast Guard documented vessels are home ported in Texas and contribute to the need for water safety enforcement without contributing to the cost. Vessels documented by the U.S. Coast Guard are exempt from titling and registration requirements of Texas Parks and Wildlife. There is no requirement to provide documentation or notice to TPW or any other state agency of these sales and collection of taxes not voluntarily paid is not pursued. There are approximately 12-13,000 documented vessels home ported in Texas, many which are large in size and sales tax amounts are significant. Twenty one states, AL, CT, FL, GA, IL, IN, IA, LA, MI, MO, NH, NJ, NM, NY, NC, OH, OK, OR, RI, TN, WA, and WI, require registration from documented vessels and applicable sale and use taxes are collected from the respective states. This requirement not only ensures that sales and transfers of documented vessels are reported to the state and taxes are collected, but it provides an additional revenue to each state.

Under existing Parks and Wildlife law, an individual who encounters an abandoned boat on their property can contact their local law enforcement agency to have the vessel removed or pay a towing service to remove the vessel. In the case that law enforcement is not responsive to the request, individuals are forced to seek solutions through the court system, a burdensome and time consuming process. Chapter 683, Transportation Code, allows individuals with abandoned "motor vehicles", as defined in Chapter 501, to salvage and in some situations, title and use the vehicles. Chapter 501 does not include vessels in its definition. Chapter 683 allows law enforcement to seize and auction abandoned vessels, but does not require law enforcement to take into custody any abandoned vessels reported to them. The lack of alternatives for individuals encountering abandoned vessels results in routine problems for TPW and citizens.

Texas Parks and Wildlife experiences numerous situations where a lack of documents results in incomplete title transfers. Vessels and outboard motors require the same titling and registration requirements as motor vehicles. When customers fail to realize the titling and registration requirements for vessels, this results in lost or never transferred documents, improper titling, and the sell of vessels by lienholders without completing necessary statutory requirements. TPW denies countless good faith purchasers a certificate of title because they lack the necessary evidence to prove they are entitled to one. Under Section 501.053, Transportation Code, TxDOT has the authority to issue motor vehicles titles upon the filing of a bond. Granting authority to TPW to issue a title upon the filing of a bond would alleviate the high number of rejection while protecting owners and lienholders from fraudulent activity. In addition, eliminating the requirement to issue a non-negotiable title to the owner of the vessel, and instead, issue one original certificate of title to the first lienholder, would bring the agency into the same practice as TxDOT and eliminate administrative costs.

Ownership records kept by Texas Parks and Wildlife under the Water Safety Act are considered public records. Only requests for 50 copies or more incur personnel and overhead costs. Aside from two exceptions to this rule, for 50 copies or less, a governmental body can only charge for photocopying costs of \$.10/page. The Department of Public Safety utilizes a statute that provides specifically for the cost of copies of accident reports, Section 550.065(D), Transportation Code. TPW experiences numerous requests for copies of boat accident reports and boat ownership reports. Administrative fees for copies of reports and ownership records would cover TPW overhead costs.

When applying for a certificate of title, TPW requires a description of the vessel in its Manufacturer's Statement of Origin (MSO). To allow for better identification of vessel and motors, Section 31.047, Parks and Wildlife Code, TPW would like to include the model year of vessel or motor and year built to the existing required descriptions.

RECOMMENDATIONS TO THE 78TH LEGISLATURE

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation requiring mandatory licensing of participants in the vessel and outboard motor industry and expand TPW Commission authority granted in S.B. 305 (TPW Sunset Bill) to:

- identify and define participants;
- establish license fees;
- establish record keeping and reporting requirements; and
- other rules as necessary to administer the licensing program and ensure compliance.

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation to expand the current inspection authority of game wardens to provide that game wardens, during normal business hours may:

- inspect all documents and records associated with vessel and outboard motor transactions in order to ensure compliance with registration and titling statutes, ensure payment of fees and penalties, and ensure payment of state taxes, and;
- inspect any vessel and outboard motor on the premises of participants in the vessel and outboard motor industry to ensure compliance with hull identification and serial number statutes and enhance vessel and outboard motor theft deterrence.

The Committee on State Recreational Resources recommends that the 78th Legislature direct the Comptroller's Office and Texas Parks and Wildlife enter into a Memorandum of Understanding regarding the collection of unpaid sales and use taxes on vessels and outboard motor that will:

- provide a portion of the additional revenues to the state resulting from the efforts of the TPW Law Enforcement Unit to TPW in amounts sufficient to cover additional costs incurred by TPW; and
- set forth expectations for tax fraud discovery and duties between TPW and the Comptroller's Office.

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation to require the issuance of a Certificate of Number to vessels currently having a certificate of documentation issued by the United States Coast Guard. This requirement would:

- provide a process to ensure that sales and transfers of documented vessels are reported to the state and that applicable sales and use taxes are collected; and
- provide an additional revenue stream for the Game, Fish, and Water Safety Account.

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation that would clarify the legal use of Vessel Dealer and Manufacturer numbers. The Committee recommends that provisions of Chapter 503, Transportation Code, Dealer's and Manufacturer's License Plates, be used as a template for recommended changes.

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation that would assist with streamlining and simplifying the vessel and motor registration and titling process for TPW and constituents and results in reduced administrative costs associated with this program. The Committee recommends that the legislation:

- clarify provisions of Chapter 683, Transportation Code, dealing with abandoned vessels;
- provide authority, similar to that in Section 501.053, Transportation Code, for TPW to issue vessel and outboard motor titles upon the filing of a bond;
- repeal the requirement to issue duplicate vessel and outboard motor titles to owners to bring TPW into the same practice used by TxDOT for motor vehicle titles that was provided in H.B. 642 enacted by the 77th Legislature;
- provide authority to TPW Commission to set administrative fees, similar to those assessed by the Department of Public Safety under the authority of Section 550.065(d), Transportation Code, for copies of boat accident reports and vessel and motor ownership records; and
- provide for changes to the required information to be included on a Manufacturer's Statement of Origin as provided for in Section 31.047, Parks and Wildlife Code.

SUBCOMMITTEE ON GAME WARDENS

BACKGROUND

Following the 77th Legislative Session, the State Recreational Resources Committee was charged with (1) examining and evaluating the critical role of game wardens in accomplishing the mission of the Parks and Wildlife Department; (2) reviewing all aspects of the training and duties of game wardens, and; (3) assessing the support provided to achieve the maximum benefit from the efforts of game wardens.

With the passage of the first wildlife resource law in 1861, Texas took its first step towards protecting, conserving, and managing the wildlife resources of the state. It was not until thirty-four years later, 1895, that it was recognized that law enforcement is a valid part of the conservation equation, and the precursor of the modern day game warden was created with the appointment of the first Fish and Oyster Deputy Commissioners.

These first “game wardens” were confined to coastal counties and authorized to enforce only fish and oyster laws. With their appointment, two questions were born regarding wildlife resource enforcement that continue to be asked today without clear and concise answers. How many game wardens are needed to effectively enforce the law and ensure compliance in Texas, and where should they be assigned? In an effort to assist with answering these questions, two game warden manpower assessment studies have been conducted. The first, *State-wide Game Warden Manpower Study*, was conducted by Mr. Glen Boydston in 1972. Mr. Boydston was a Programmer-Analyst for Texas Parks and Wildlife at the time. The second study, *Texas Game Warden Manpower Assessment Study*, was conducted by Dr. Clark Adams, Department of Wildlife and Fisheries Sciences, Texas A & M University in 1997.

The first two statewide “game wardens” were appointed in 1907 and the authority of game wardens was expanded to include enforcement of wild game and bird statutes. By 1919 there were six statewide game wardens. As more wildlife resource statutes were enacted during ensuing legislative sessions, the number of game wardens in the state increased from forty-five in 1923 to a high of 541 in 1993. As a result of the combined impact of retirement incentives enacted by the 74th Legislature and the Full Time Equivalent (FTE) cap implemented by the 75th Legislature, the number of game wardens was capped at 485. Due to budgetary constraints and a cumbersome hiring process, Texas Parks and Wildlife was not able to replace the game wardens lost to the retirement incentives before the FTE cap was implemented. With the graduation of the 48th Game Warden Cadet Class on August 31, 2002, the number of game wardens is 475, ten below the budgeted number of 485.

The 77th Legislature reviewed the issue of game warden full-time equivalent positions and the process utilized to hire game warden cadets. As a result of their continuing interest in these issues, two riders were included in S.B. 1 (General Appropriations Act) directing Texas Parks and Wildlife to submit reports to the Legislative Budget Board and the Governor relating to these issues.

Rider 28. **Reporting Requirements: Full-Time Equivalent Positions.** The department shall submit a monthly report (Appendix A) to the Legislative Budget Board and the Governor which lists the number of authorized, budgeted, and filled positions in Strategy C.1.1, Law Enforcement. The report must include the classification of each position.

Rider 29. **Reporting Requirements: Game Warden Academies.** The department shall submit an annual plan to ensure the fulfilment of the agency’s FTEs for Game Wardens. The department shall submit a report (Appendix B) to the Legislative Budget Board and the Governor within 30 days of the completion of a Game Warden Academy which lists the total number of applicants, the number selected to attend the academy, and the number who successfully complete the academy. The report shall include the race, ethnicity, gender, prior law enforcement experience, and educational background of all applicants; the applicants selected to attend the academy; the graduates of the academy; and those graduates who accepted positions with the agency.

Texas Game Wardens patrol 1.7 million surface acres of public freshwater lakes, 80,000 miles of public freshwater streams and rivers, 4 million surface acres of public saltwater, and 261,914 square miles of land within the boundaries of the state. Since 1895, with each successive legislative session, the role of the game warden has expanded from just fish and oyster enforcement in coastal counties to the following areas of enforcement, response, and education responsibilities.

GAME WARDEN DUTIES

Water Safety	Boat Accident Investigation	Boat Theft Investigation
Commercially Protected Finfish	Game Animal & Game Bird	Sport Fishing
Commercial Fishing	Shrimping	Oystering
Mussel Fishing	Sand, Shell & Gravel	Aerial Wildlife Management
Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants	Introduction of Fish, Shellfish and Aquatic Plants	Marine Safety Enforcement Officer Certification
Sale of Non-Game Fish	Collection of Broodfish	Marking of Vehicles (Fish & Deer)
Crab Fishing	Public Lands Hunting	Triple T Permits
Deer Management Permits	Threatened Non-game Species	Endangered Species
Bobcat Pelts	Migratory Game Birds	Sale of Non-game Wildlife
Raptors	Alligators	Fur-Bearing Animals

Scientific Deer Breeders	Protected Native Plants	Scientific & Zoological Permits
Educational Display Permits	Rehabilitation Permits	Coastal Floating Cabin Permits
Criminal Trespass	Environmental Regulations	Penal Code Violations
Boating While Intoxicated	Litter Abatement Act	Antiquities Code
State Disaster Plan Response	Public Information Programs	Civil Restitution
License Revocation/Denial	Operation Game Thief	Homeland Security Responsibilities

The first Game Warden Training Academy was held at Texas A&M University in 1946. The Game Warden Training Academy remained at Texas A&M University through the 32nd Cadet Class in 1975. At this time the Training Academy was moved to Austin to a Texas Parks and Wildlife facility at 100 W. 50th Street and the 33rd Cadet Class, which started in September 1978, was the first held at this facility. The current curriculum at the Game Warden Training Academy consist of twelve hundred (1200) training hours and takes approximately six and one-half months to complete. Five hundred seventy-six (576) of the training hours are mandated by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and make up the Basic Peace Officer Course. The remaining six hundred twenty-four (624) hours are training specific and aid in preparing a cadet for the duties and responsibilities of being a Texas Game Warden (e.g. fish identification, wildlife identification, swift water rescue, boat operation and maintenance, firearms training, patrol and contact procedures, public speaking, etc.). Upon graduation from the Game Warden Training Academy, cadets are licensed by TCLEOSE as Texas Peace Officers and commissioned by the Texas Parks and Wildlife Executive Director as a Game Warden.

A Texas Game Warden is unique among state peace officers in that it is the only position for which the successful completion of a Bachelors level degree from an accredited college or university is the minimum education eligibility requirement. The degree must have major course work in Natural Resource Conservation, Environmental Science, Fish and/or Wildlife Management, Parks and Recreation, Criminal Justice, or other closely related field of resource conservation and management. In addition to a Bachelors degree, a Texas Game Wardens must meet a number of job requirements to be considered for the position (Appendix C). The Texas Game Warden, once commissioned and assigned to a field station, is charged with enforcing all of the statutes regarding wildlife resource conservation and water safety and, by being statutorily defined as a peace officer, is required to respond to penal code violations just as any other peace officer of the State (Appendix D). As such, the game warden is required to be highly trained and knowledgeable of search and seizure authority.

In addition to search and seizure authority, as the enforcement arm of a regulatory agency, game wardens are responsible for ensuring compliance with regulatory management regimens designed to conserve the wildlife resource populations of this state while at the same time allowing for constituent utilization of the resources. The legislature, in an effort to ensure game wardens could have a positive impact on compliance, has given statutory inspection authority to game wardens in specific circumstances to inspect wildlife and aquatic resources, plants, records, facilities, vessels, and places of business to determine regulatory compliance.

In Fiscal Year 2002, Texas Parks and Wildlife had a budget of \$230,146,805 for salary, operating, grant and capital expenditures. For Fiscal Year 2002, the Law Enforcement Division was budgeted \$36,611,752 for salary and operating expenditures.

In Fiscal Year 2003, Texas Parks and Wildlife had a budget of \$255,168,922 for salary, operating, and capital expenditures. For Fiscal Year 2003, the Law Enforcement Division was budgeted \$36,403,681 for salary, operating, and capital expenditures.

Each year, Texas Parks and Wildlife receives approximately \$20,000,000 in federal funding from the Sportfish Restoration Program (Dingle-Johnston) and Wildlife Restoration Program (Pitman-Robertson). A condition of this funding is that hunting and fishing license dollars received by the agency can be utilized only for those functions required to manage fish and wildlife resources of the state. The Law Enforcement Division, which does not receive any of these federal funding dollars, is funded almost totally by Fund 009 dollars, which includes hunting and fishing license dollars.

The mission of Texas Parks and Wildlife is *“To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations.”* The Law Enforcement Division supports the agency’s efforts to accomplish its mission by providing a comprehensive statewide enforcement program to protect Texas’ natural and wildlife resources and provide safe boating and recreational water safety on public waters by ensuring compliance with applicable state laws and regulations. Through a program of education, prevention, and apprehension, the Law Enforcement Division works to ensure compliance with wildlife resource statutes and regulations.

A study done by Texas Tech University in 2001, *Texas Parks and Wildlife For The 21st Century*, indicates that constituents and stake holders feel law enforcement is one of the most important activities conducted by Texas Parks and Wildlife. For the public opinion phase of this study, the University contracted with Responsive Management, a Virginia-based polling and research firm, with a long and successful track record of conducting public opinion surveys on the subject of natural resources. In a rank order of Texas Parks and Wildlife programs in terms of percentage of respondents that rated the program as very important, two of the top four programs were law enforcement programs; enforcing fishing, hunting and boating laws and regulations (81%) and enforcing laws that protect fish and wildlife habitat (79%).

Information from survey respondents indicated that there are high levels of interaction between game wardens and Texas Parks and Wildlife constituents and stakeholders. Within the five years previous to this study, fifty percent of freshwater anglers, sixty percent of saltwater anglers, forty-one percent of hunters, and sixty-one percent of boaters had some type of personal contact with a game warden while participating in their recreational activity. Fifty-four percent of landowners had some type of personal contact with a game warden during the previous five years.

Respondent information also indicated that Texas Parks and Wildlife constituents and stakeholders think very highly of game wardens. Considering the enforcement nature of a game warden’s duties, the job approval ratings of Texas Parks and Wildlife game wardens when compared to similar public opinion surveys in other states is incredible. Ninety-two percent of freshwater anglers, ninety-three percent of saltwater anglers, ninety-three percent of hunters, ninety-six percent of boaters, and ninety-seven percent of landowners who had come in contact with a game warden strongly agreed or somewhat agreed that the game warden was professional and courteous.

Similarly, respondent information indicated that Texas Parks and Wildlife constituents and stakeholders feel the efforts of game wardens are effective in controlling illegal activity in Texas. Seventy-eight percent of freshwater anglers and eighty-one percent of saltwater anglers agreed that the efforts of game wardens are effective in controlling illegal fishing in Texas.

Seventy-nine percent of hunters agreed that the efforts of game wardens are effective in controlling illegal hunting in Texas. Eighty-four percent of landowners stated that game wardens were effective in controlling illegal activities on their land.

In 1998, Texas A&M University conducted a public opinion survey (Texas Outdoors: A Vision for the Future: Technical Report on the Statewide Survey of the Public, 1998) designed to assess opinions on state governments spending priorities for recreational and natural resources. Respondent information indicated that two of the top four areas that should receive a high priority for government spending were law enforcement related, enforcement of boating safety laws (63.5%) and enforcement of hunting, fishing and wildlife protection laws (59.6%).

FINDINGS

Under the Texas Code of Criminal Procedure, Article 2.12, law enforcement officers commissioned by the Texas Parks and Wildlife Commission are peace officers. As a peace officer, a Game Warden's duty is to preserve the peace within his jurisdiction. A Game Warden is required to use all lawful means, and to interfere without warrant, to prevent or suppress crime. Game Wardens, as State Conservation Officers, are required to enforce all state and federal hunting, fishing, and water safety regulations, Penal Code provisions and environmental regulations.

Two primary roles of game wardens are ensuring compliance with bag limits, possession limits, size limits and methods established to provide the best opportunity for management schemes for wildlife resources to succeed, as well as, compliance with license requirements in order to maintain a positive revenue stream for Fund 009, the Game, Fish and Water Safety Fund. Additionally, through their information and education efforts with constituents, conservation organizations, landowners, schools, and civic organizations, game wardens enhance public awareness of conservation issues and work to recruit new constituents into outdoor recreational activities. Ensuring compliance can often be a difficult responsibility without the authority to inspect certain wildlife resources, licenses, tags and devices used to take wildlife resources. Under existing law, Section 12.104, Parks and Wildlife Code, game wardens are delegated authority to search a game bag, vehicle, vessel, or other receptacle if the game warden has a reasonable, articulable suspicion that the item contains a wildlife resource that has been unlawfully killed or taken. Inspection of the wildlife resource may only take place if it is discovered during the authorized search. Currently, inspection authority for game wardens is found in several other areas throughout the Parks and Wildlife Code. For example, under Section 47.035, Parks and Wildlife Code, an authorized employee of TPW may inspect aquatic products found at the dealer's or handler's place of business during normal business hours. In addition, the employee is authorized to inspect aquatic products handled by or in the possession of a commercial fisherman while pursuing his trade or at a reasonable hour.

In a survey conducted by Texas Parks and Wildlife, twenty two states have statutes similar to Texas in which search must be based on probable cause to believe evidence of violation will be found. Of these 22, several states are silent on the subject of field investigation of hunters or anglers. Twenty one states are found to have inspection authority. An illustration of such authority is Arkansas law which requires a person to surrender for inspection any wildlife and any weapon, fishing tackle, or device to take wildlife. California statute requires hunters and anglers to show wildlife upon demand and authorizes wardens to inspect game, while Georgia considers hunting a privilege activity and therefore, any person exercising a privilege must allow a game warden to inspect and count wildlife.

Compliance with registration and titling statutes, payment of fees and penalties, and payment of taxes among marine dealers has become a growing problem for the Department. Not requiring mandatory licensing of marine dealers has led to numerous problems such as document falsification and marine theft. Under current law, game wardens do not have the authority to inspect records related to vessel and outboard motor transactions. Inspection of vessels and motors on the premises of dealers, manufacturers, and distributors would ensure compliance with hull identification and serial number statutes. Currently, many instances of dealer non-compliance are not addressed since a court order requiring lengthy investigations before issuance is required. In addition, inspection authority would allow game wardens to provide support for criminal

investigations of boat and motor theft and dealer fraud and enable the Department to take a more proactive approach in preventing boat and motor theft.

Game wardens, by virtue of being peace officers (Art. 2.12, CCP) are required to fulfill the duties and powers of a peace officer (Art. 2.13, CCP), and having to meet other state mandated enforcement and response obligations, do, at times, conduct activities that are not Fund 009 activities (e.g. Emergency Management response, enforcement of provisions of Chapters 49, 30, 42, 38, 37, and 46 of the Penal Code). Game wardens primary responsibilities are enforcement of hunting, fishing, and boating regulations, however, as result of that enforcement effort, on occasion have to transition into non-Fund 009 activity to meet their state-mandated responsibilities. As a result of this, the federal government, when auditing the expenditure of federal funding dollars, may interpret that certain Law Enforcement activity constitutes a diversion of hunting and fishing license dollars, placing the agency in a position of reversion regarding it's federal funding. The reversion of federal dollars by the Department could be avoided if General Revenue Funding were allocated to TPW, so to cover those non-Fund 009 activities that game wardens are responsible for.

Effective management of the state's wildlife resources requires that the illegal taking of such resources be punishable in such a manner as to prevent such unlawful behavior. Section 62.017 of Texas Parks and Wildlife Code allows for the disposition of seized property, with vehicles, aircrafts, and vessels not being applicable, if a person is convicted of hunting from a vehicle, hunting at night, hunting with a light, or wasting of game. Upon conviction, the court may order any weapon or personal property used in the commission of the offense to be destroyed or forfeited to the department. Under current law, hunting or fishing of wildlife resources without landowners consent is a Class A misdemeanor under Parks and Wildlife Code and is punishable, in addition, by the revocation or suspension of license and permits. The amendment of Section 61.022, to allow for the seizing and forfeiture by the court of property when hunting or fishing without the consent of the landowner, along with the definition of contraband in Section 12.101(2)(D), would serve as a deterrent to discourage criminal behavior when participating in these Department regulated activities.

RECOMMENDATIONS TO THE 78TH LEGISLATURE

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation to expand the current inspection authority of game wardens to provide that when encountering a person engaged in an activity regulated by the Parks and Wildlife Code or a Commission proclamation issued under the authority of the Parks and Wildlife Code, the game warden has the authority to:

- inspect any license, permit, tag, or other document required by the Parks and Wildlife Code or a proclamation issued under the authority of the Parks and Wildlife Code;
- inspect any device which may be used to take or attempt to take any wildlife or aquatic resource;
- inspect any wildlife or aquatic resources in the persons possession; and
- inspect the contents of any receptacle in which a wildlife or aquatic resources may be stored.

The Committee on State Recreational Resources recommends that the 78th Legislature enact legislation to expand the authority of courts, granted in H.B. 2526 in the 76th Legislature, to order the forfeiture of any weapon or other personal property used to commit certain hunting violations to apply to a violation of Section 61.022, Parks and Wildlife Code, Taking Wildlife Resources Without Consent of Landowner Prohibited and amend the definition of contraband in Section 12.101(2)(D) accordingly.

The Committee on State Recreational Resources recommends that the Texas Parks and Wildlife Department continue the review and modification of the game warden selection and training process to ensure a more timely and effective filling of vacant budgeted game warden full-time equivalent positions.

The Committee on State Recreational Resources recommends that the 78th Legislature dedicate general revenue resources to Texas Parks and Wildlife to authorize additional game warden full-time equivalents to enhance the law enforcement compliance effort and bring the game warden force closer to the pre-retirement incentive program level of 541 in 1995. Additionally, the dedication of general revenue resources to fund state mandated non game and fish enforcement activity by game wardens would offset the potential conflict with federal law.

SUBCOMMITTEE ON GAME FISH POPULATIONS

BACKGROUND

Large-scale removal of non-game fish during the 1960s and 1970s was permissible by the Texas Parks and Wildlife Department, but because of the extreme costs associated with such removal and the failure to measurably improve game fish populations, a ban on all contract netting was imposed by the Department in the late 1970s. Exceptions to this ban were Wright Patman Reservoir and Sulphur River drainage. The Southern regions of the United States conducted numerous studies measuring the benefits of removal of non-game fish on game fish populations. Perception among many citizens is that this large scale removal of non-game fish benefits game fish populations. The results of studies conducted revealed that effective control of rough fish through net fishing is seldom achieved, even in massive net control projects.¹

Commercial and sport net fishing were legal methods of harvesting rough fishes and catfishes in 32 of the 254 counties in Texas until September 1, 1991.² Prior to September 1, 1991 commercial and sport fisherman could legally use entanglement gear consisting of gill, trammel and flag nets, and entrapment gear or hoop nets. A resident commercial fishing license was required for fishermen in order to sell their harvest. In addition, commercial fishermen had to purchase a fresh water commercial fishing boat license and net tags. Sport fishermen who harvested rough fishes and catfish for personal consumption were required to purchase a resident freshwater fishing license.

Concerns of possible negative impacts to the sport fishery from netting arose, and consequently, the Texas Parks and Wildlife Commission responded with a ban on net fishing in both Wright Patman Reservoir and Sulphur River drainage. Texas Parks and Wildlife does not oppose the commercial sale and harvest of important rough fishes, but views the losses incurred as a result of net fishing conflictive with current sport fish management strategies. This ban became effective September 1, 1991. In March of 2002, Texas Parks and Wildlife Inland Fisheries provided this Committee and the Legislature with a complete report on the studies, findings, and impacts of the removal of non-game fish on game fish populations.

FINDINGS

The Inland Fisheries Division of Texas Parks and Wildlife continues to support the ban on net fishing in state water bodies based on the numerous studies and findings that have suggested removal of non-game fish will not measurably benefit game fish populations. The belief of boaters and sport fisherman that netting interferes with the ability to participate in their activities has created user conflict among these three recreationists. Net fisherman argue that rough fish removal will benefit sport fishes by reducing interspecific competition and create a biological void in which sport fish can expand. Studies conducted have shown just the opposite. Many times, the void created in fish communities after removal of rough fish is filled with less desirable rough fish. In most cases, a proposed change in net fishing regulations to benefit one user group will have negative effects on other user groups.

The biological, sociological and economical disadvantages of rough fish removal are apparent, and effective control of rough fish is seldom achieved with netting. It is the belief of the Texas Parks and Wildlife Department that it is inconsistent, as a managing agency, to impose stricter harvest regulations on recreational anglers to sustain stocks of quality sizes of sport fishes while allowing other fishing activities that result in losses of these fish to that recreational fishery.² The unintended take of trophy fish as bycatch in gill nets would be considered counterproductive to Parks and Wildlife's efforts.

RECOMMENDATIONS TO THE 78TH LEGISLATURE

The State Recreational Resources Committee has no recommendation to present to the 78th Legislature. The Committee has confidence in the current regulations imposed by the Texas Parks and Wildlife Department in the management of non-game and game fish populations. The Committee will continue to monitor the Department's ban on fish netting, as well as any effects or changes on future non-game and game fish populations.

SUBCOMMITTEE ON WATERWAYS

AQUATIC VEGETATION BACKGROUND AQUATIC VEGETATION

The State Recreational Resources Committee was charged with reviewing policies in maintaining healthy waterways, including aquatic vegetation and vehicular traffic in streambeds.

The Legislature, as well as the Texas Parks and Wildlife Department, realize the importance of plant and animal diversity and are committed to maintaining healthy aquatic ecosystems. Aquatic vegetation is an important component of freshwater systems and provides vital habitat, refuge and food for a wide variety of organisms including fish and waterfowl. In order to assure healthy and productive aquatic ecosystems, prevent detrimental affects to fishery and wildlife resources, and offer access for fishing, hunting and other recreational activities, the 76th Legislature directed Texas Parks and Wildlife to develop, finance, and adopt a Statewide Aquatic Vegetation Management Plan (Appendix E) with the passage of HB 3079. The purpose of the aquatic vegetation plan is to provide for the coordination, oversight, guidance, and where applicable, public notice and enforcement of all activities related to the management of nuisance aquatic vegetation on public bodies of water, as stated in Section 57.932, Administrative Code. The protection of state fish, wildlife resources and habitat, and preventing unreasonable risk from the use of aquatic herbicide are included in the plan.

The aquatic vegetation management plan is based on the principles of integrated pest management and requires herbicides to be used in accordance with Environmental Protection Agency and Texas Department of Agriculture standards. Treatment proposals are required to be submitted for review by Texas Parks and Wildlife and local controlling entities. Local governments may adopt aquatic vegetation plans, but a proposed local plan must first be approved before implementation by a governing entity can occur. In February of 2001, the State Aquatic Vegetation Management Plan became effective.

AQUATIC VEGETATION FINDINGS

AQUATIC VEGETATION

Texas' most problematic plants are water hyacinth, hydrilla and giant salvinia. One hundred thirty four (134) public water bodies in Texas are invaded by a combination of water hyacinth, hydrilla and giant salvinia. Estimated acreage of water hyacinth is currently 5,000-7,500, 75,000-100,000 of hydrilla, and less than 500 acres of giant salvinia. The tools commonly available to control nuisance vegetation include biological control, mechanical control, and chemical control. Biological control, including triploid grass carp and water hyacinth weevils, uses living organisms that are capable of controlling particular plant species. Though grass carp offer long term control and have no effect on drinking water, problems with grass carp involve consumption of non-target plant species and leaving the treatment target area. Contrary to grass carp, water hyacinth weevils are species specific, but unfortunately, weevils cannot reduce vegetation to below nuisance levels. Mechanical control includes shredding or cutting and removing nuisance vegetation directly or exposing plants to unfavorable environmental conditions. The majority of mechanical methods do not introduce chemicals into the waters or encounter unrestricted use by drinking water sources. Most mechanical methods are very labor intensive and only offer a short term solution to the problem. The final method, chemical control, uses herbicides toxic to specific plants to eliminate vegetation. Because human health and safety are always a concern when aquatic herbicides are applied to vegetation in water supplies, Parks and Wildlife rules (§ 57.932(b)(2)(D)) prohibit aquatic herbicide use unless the individual proposing to apply the herbicide use includes, with the notice of proposed herbicide use, "information demonstrating that the proposed application will not result in exceeding: (I) the maximum contaminant level of the herbicide in finished drinking water as set by the TNRCC and the EPA; or (ii) if the aquatic herbicide does not have an MCL established by the TNRCC and the EPA, the maximum label rate". Though the use of chemicals on nuisance vegetation is fast acting, offering quick results, careful health and environmental considerations must be taken into account when approving such chemicals.

Each water body in Texas is unique, and the level of concern should be determined based on its individual characteristics, taking into account native flora and fauna, primary and secondary uses, water quality parameters and recreational use of reservoirs. A multi-tier system provides a strong, commonsensible method of classifying reservoirs with nuisance aquatic vegetation.³ Texas Parks and Wildlife has adopted a three tier system and uses this system to classify aquatic vegetation problems into one of three management response categories. Tier I bodies of water experience limited, controllable nuisance aquatic vegetation and demand prompt response. An appropriate management strategy is designed to reduce or eliminate the nuisance vegetation, as well as prevent future spread and growth. Because of its extreme growth rate and highly invasive tendencies, any infestation of giant salvinia warrants a Tier I response. Water bodies that have a substantial occurrence of nuisance aquatic vegetation, and are nearly impossible or impractical to fully control, are categorized as Tier II. Management and maintenance are both key components of the Tier II response, and close monitoring of the water bodies is necessary to continue to provide fishing and boating access. Situations where control of nuisance aquatic vegetation is highly attainable given adequate resources, and plants are stable or declining and have a minimal chance of spreading to nearby water bodies, are categorized as Tier III. Tier III reservoirs should have a plan in place if expansion occurs and such control becomes necessary. When the appropriate response to situations categorized under the three tier system occurs promptly, this management system has the ability to be highly effective in controlling nuisance aquatic vegetation.

Aquatic vegetation management on Lake Austin has been a concern since before the 1960s. For over 50 years, the City of Austin, TPW and the Lower Colorado River Authority (LCRA) have monitored the vegetation in Lake Austin. Texas Parks and Wildlife has conducted numerous quantitative aquatic vegetation surveys on Lake Austin, discovering existing plant species and changes in coverage and species composition. Lake Austin's dominant species was discovered in a vegetation survey conducted in July of 1999. Hydrilla has quickly expanded in Lake Austin and currently threatens access, safety, and environmental degradation in the lake. Hydrilla's rapid growth and spread from 23 acres in 1999 to over 200 acres in 2002 illustrates the need for prompt, efficacious response. In 1999, Lake Austin was classified as a Tier 1 response lake. Due to the rapid expansion and growth of hydrilla, Lake Austin warrants management beyond Tier 1.

The City of Austin, LCRA, TPW, and Friends of Lake Austin are working in conjunction to bring relief to Lake Austin and its recreational users. Responsible agencies and involved citizens are currently devising a management plan in accordance with the State Aquatic Vegetation Management Plan to bring Lake Austin to a pre-hydrilla condition. If successful, the efforts to control and eliminate exotic invasive plant species in Lake Austin will serve as a template for future waters with invasive vegetation.

The key to an effective program of controlling nuisance aquatic vegetation is prevention. Precluding the colonization of exotic aquatic plants into new waters requires thorough understanding of the core causes of nuisance aquatic vegetation, the assistance of all citizens to aid in early detection and in providing relative information regarding appropriate management techniques, ongoing research regarding ecology and the management of aquatic vegetation, educating water managers, water resource users, and merchants (such as fishing clubs, water gardeners, boaters and commercial nurseries) about the problems associated with the transportation and introduction of non-native aquatic plants, and the strengthening of coordination of law enforcement activities.³

VEHICULAR TRAFFIC IN STREAMBEDS BACKGROUND

VEHICULAR TRAFFIC IN STREAMBEDS

Off-highway vehicle (OHV) use in Texas streambeds has been present for decades and has both a cultural and agricultural history in Texas. However, motorized vehicle operation in streambeds has recently become the concern of numerous landowners and environmental organizations when organized "4x4" events became popular activities and destinations on the recreational landscape of Texas. Despite the public support and recommendations of major vehicle manufacturers to adhere to "Tread Lightly" principles and avoid water resources, the specter of motor vehicle use in river beds has risen. The issue first began to gain public awareness with the Nueces and Llano Rivers, but as state agencies, recreationists and landowners began to study the matter further, it became apparent that numerous waterways in Texas were experiencing similar problems.

Under Texas Constitution, Art. XVI, § 59, navigation of its inland and coastal waters are public rights. Citizens, gaining access at public points, can legally travel up and down public waters in motorized vehicles. Throughout history, the Texas Supreme Court has guarded the public's ownership of riverbeds. State v. Bradford, 121 Tex.515, 538, 50 S.W.2d 1065, 1073 (1932). **Bradford** held that the riverbeds, unlike most public lands, had not been transferred to the public school fund (PSF), in part because transfer to the PSF could have resulted in these lands being sold and passing out of the public domain. The issue of "use" vs. "abuse" has arisen throughout the last few years among river users and landowners. Determining "use" vs. "abuse" is contingent on the notion of "traditional use" of streambeds with a portion of stakeholders suggesting that motor vehicle use in streambeds is not a traditional use while others believe that motor vehicles have been used for recreational and agricultural purposes for decades.

Legal accessibility of Texas waterways has become limited in areas due to the large amount of private property in Texas. In addition, the current legal means of defining private property, known as the gradient boundary, is complex and is a large contributor to the confusion of private versus public property boundaries. Texas courts have adopted the "gradient boundary" as the usual dividing line between public ownership of a stream's bed and lower bank area, and private ownership of the higher bank area and the uplands beyond. Thus, there is generally no question as the public's right to use the bank area up to the gradient boundary. The "mean" gradient boundary, is located midway between the lower level of the flowing water that just reaches the so-called "cut bank," and the higher level of the flowing water that just does not overtop the cut bank. The complexity of determining the gradient boundary makes this a task performable only by specially trained persons.

The environmental impact and effects of OHVs on riparian habitats in Texas have just recently been studied, and definitive studies on the resources are incomplete. Staff experts in wildlife, fisheries and stream ecology from the Texas Parks and Wildlife Department have completed preliminary evaluations. While numerous other states have investigated and studied the impacts of OHV activity in waterways, Texas-specific information is insufficient at this time. Nonetheless, the initial studies and evaluations performed by Texas Parks and Wildlife and the in-depth studies conducted by other states suggest that OHV activity does cause ecological damage to resources and negatively effects water quality, fish and wildlife and their habitats.

Laws regarding littering, water pollution, inappropriate public behavior and trespassing currently exist and provide law enforcement officials with means for addressing abuses of public and private resource, although, the task of enforcement is sometimes neither easy or straightforward. Because of the frequency and magnitude of OHV rallies in Texas streambeds over the last decade, concerned citizens assisted in the introduction of a bill during the 77th Texas Legislature that would have banned OHV use in streambeds. Although the bill failed, the Joint Interim Committee on Water Resources and this committee were charged with studying the protection of streambeds and OHV use in streambeds, respectively. As a result of an abundance of testimony presented to the Texas Parks and Wildlife Commission during their August 2001 meeting, the “Motorized Vehicle in Navigable Streambeds Task Force” was formed. Task Force members were selected to represent identifiable stakeholder groups and included State Agencies such as :GLO, TNRCC, TDA, and TPWD; River Authorities such as: Nueces, LCRA and GBRA; Landowners, Local River Users, Recreational Vehicle Enthusiasts, and Environmental Groups. The Commission charged the task force with the following charge:

“The objective of the Task Force is to bring together a broad spectrum of stakeholders to provide perspective to the Texas Parks and Wildlife Department and Commission regarding the issue of motorized vehicles in navigable streambeds.”

VEHICULAR TRAFFIC IN STREAMBEDS FINDINGS

VEHICULAR TRAFFIC IN STREAMBEDS

A review of the sales and demographic data of ATVs suggest that this form of recreation is increasing in popularity. In the year 2000, 734,000 ATVs were sold nationwide and the industry predicts that by the year 2004, one million ATVs will be sold annually. Since 1997, the sale of ATVs has increased 127%. With an increase in urban population, access to public lands outside of the city will be significantly more desirable. It is apparent that the ATV industry is growing rapidly and, in turn, producing a significant increase in economic activity.

The lack of a simple mechanism to delineate public and private lands poses to be a significant hindrance for determining private and public lands. Private property rights should be respected and protected by users, but the difficulty of determining the boundary between private and public property makes it difficult for users to know if they are trespassing. The gradient boundary is the legal boundary between public and private lands, but in many cases, the gradient boundary has never been surveyed on most streambeds or has changed due to a flood.

Private landowners report a dramatic increase in trespassing incidents as the number of motor vehicle recreationists increase, although they do recognize not all motor vehicle operators contribute to trespassing. In addition to trespassing, concerns of resource impacts, poaching, hunting safety issues, inappropriate public behavior, drugs and alcohol lie in the forefront of landowner's and local streambed user's minds. Local access concerns have been brought to the attention of the Task Force, and using motor vehicles to reach certain destinations, such as swimming holes and picnic areas, rather than a recreational activity represents a significant and important recreational access strategy for local users. Many citizens rely on motor vehicles to access their sole opportunity of outdoor recreational activity. River access is inadequate to support the user demand, and many access points lack sufficient parking areas, trash receptacles and restroom facilities.

In addition to streambeds being impacted by OHV activity, natural events also have an effect on the waterways. Natural events such as floods redistribute sediment, gravel and even boulders while often changing the course of the stream. Agricultural use and activity on privately owned land and the rivers adjacent to it also have an effect on resources to some degree. Landowners recognize that much of the visible trash does not come from organized motor vehicle outings but rather from the groups who congregate at bridge crossings. Nonetheless, landowners and environmental organizations point out that there is a considerable amount of litter in areas away from bridges and water pollution resulting from releases of automotive fluids. Conversely, streambed users attribute much of the physical and chemical pollution to poor land stewardship. Education seems to be a critical component to effective streambed management. Educating public users, as well as private landowners, on pollution, littering, trespassing, effects on wildlife habitat, and "Tread Lightly" principles will have a positive impact on both the resources and recreational users.

Representatives of OHV user groups point out that when "Tread Lightly" principles are followed and outings are correctly conducted, damage to stream habitat is non-existent. Owners of OHVs maintain their vehicles on a regular basis so to minimize any break downs which would in turn cause pollution to the water courses and surrounding habitat. On the other hand, long term effects of motor vehicle usage in and along the streambeds should also be considered. Vehicular traffic in increasing numbers may result in the acceleration of erosive processes.

It remains a complex and difficult task to ascertain which state agency has oversight and regulatory authority to manage recreational usage of state owned streambeds. The General Land Office (GLO) is responsible for managing lands and minerals that have been dedicated to the Permanent School Fund, to include leasing the minerals under the approximately one million acres of state-owned streambeds. This acreage figure does not represent all lands available for motor vehicle use. The GLO is also authorized to issue right-of-way easements across navigable streambeds for projects such as pipelines, utilities and roads. The GLO must determine which streambeds are state-owned and/or navigable, and other state agencies such as the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission, and the Office of the Attorney General all look to the GLO for assistance in making state ownership and navigability assessments. The Texas Natural Resource Conservation Commission is delegated the control of diversion and consumption of water through a water rights system and the control of pollutant discharge into the waters of the state. The Texas Parks and Wildlife Department has regulatory authority over fish and wildlife in public waters and the disturbance of sand and gravel in the beds of navigable streambeds.

In the absence of alternative recreational sites for OHV use, public streambeds are one of the few venues for operation of motor vehicles. The National Recreational Trails Fund, (Appendix F) which lies under the direction of the Texas Parks and Wildlife Department, administers the allocation of portions of the federal gas tax generated by off-highway recreational vehicles available for construction or renovation of recreational trails. The program has funded 242 trail projects to date, but the biggest challenge is finding sponsors for motorized trail projects.

The Task Force members developed two legislative options, Option I and Option II (Appendix G), that were based on the report to the Commission that summarized previous work of the Task Force. A combination of Option I and a Task Force member's proposal was developed as the "Hybrid Option" (Appendix G). In addition, several alternatives to these options have been presented, including: establishing a new agency or commission; creating a permitting system; and establishing special management districts

Texas statute provides models for future legislation regarding vehicular traffic in streambeds, with The Open Beaches and Dune Protection laws in the Natural Resources Code being a preferred model. There are several legislative models that exist in surrounding states that address the concerns of motor vehicle activity in streambeds. Many states have delegated authority to state agencies to explicitly address this issue. Montana has among the broadest range of statutory powers to control off-road vehicle use. Montana statute prohibits OHV traffic in public waterways and also addresses public and private rights on all surface waters capable of recreational use. A specific provision dealing with motorized vehicles states: "Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department [of Natural Resources and Conservation] to be open to motorized vehicle use." In addition, the law specifically provides that "the right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner, the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water...or use of a streambed as a right-of-way for any purpose when water is not flowing therein." New Mexico has authorized the New Mexico state land office to regulate all state land. Both New Mexico and Arizona have "Habitat Protection Acts" that control motor vehicle use on public lands, giving the Land Commission authority to implement the Act. Louisiana's Natural and Scenic Rivers law, which includes rivers designated

by the Legislature, charges the Administrator of the Department of Wildlife and Fisheries to adopt and implement a management plan for the rivers and allows for the prohibition of off-road vehicle traffic to be authorized by the Administrator.

RECOMMENDATIONS TO THE 78TH LEGISLATURE

The State Recreational Resources Committee encourages Texas Parks and Wildlife Department to review their current procedures involving situations that warrant a Tier I response so that effective management actions can be executed in a manner to provide for prompt eradication and or control of nuisance aquatic vegetation.

The State Recreational Resources Committee recommends to the 78th Legislature to monitor the response and actions taken by the City of Austin, Texas Parks and Wildlife, Lower Colorado River Authority and other involved parties in dealing with the management of Lake Austin's aquatic vegetation to determine the effectiveness of the current aquatic management response system and plan.

The Legislature and the State Recreational Resources Committee realize the importance of recreational activities in Texas and their biological, economical and sociological impacts in this State. The preliminary studies and evaluations completed by TPW have offered valuable information on the affects that off-highway vehicle activity has on aquatic and riparian vegetation, aquatic species and wildlife resources. The State Recreational Resources Committee recommends to Texas Parks and Wildlife to further study the impacts that vehicular traffic in streambeds has on the State's waterways and resources.

The State Recreational Committee recommends to the 78th Legislature to appoint a single state agency with oversight authority to monitor and establish regulations regarding vehicular traffic in state owned streambeds.

The State Recreational Resources Committee also recommends that the Parks and Wildlife Department and the General Land Office work in conjunction with one another to determine lands available for use by off-highway vehicles and funding sources to develop these lands for motorized vehicle activity.

SUBCOMMITTEE ON OVERSIGHT

FINDINGS

The Committee on State Recreational Resources has conducted active oversight of the Texas Parks and Wildlife Department during this legislative interim, and in particular, House Bill 3123, authored by Representative Clyde Alexander and joint sponsored by Representative Bob Turner, which was enacted during the 77th Legislature.

Prior to the 77th Legislature, the Comptroller of Public Accounts had the authority to develop guidelines for determining whether land qualifies for wildlife management use. House Bill 3123 amended the Tax Code, Chapter 23, Subchapter D, §23.52(1) to require Texas Parks and Wildlife to develop guidelines and standards (Appendix H), in cooperation with the Comptroller of Public Accounts, for the qualification of open space land used for wildlife management. The Texas Agricultural Extension is charged with assisting the department in the development of these guidelines, upon the Department's request.

The Texas Parks and Wildlife Department and Comptroller's office held several stakeholder meetings to obtain input from the public during the development of the guidelines. The guidelines that resulted from the meetings were presented to the Texas Parks and Wildlife Commission on January 16, 2002. Standards for subdivided tracts of land were developed and allow for subdivided tracts that are in current agricultural use, or qualify for agricultural use under the tax code, to switch to wildlife management use. Previously qualifying subdivided tracts that are in current agricultural use for the purpose of wildlife management open space valuation are required to meet a ratio determined by the county that requires the bulk of an area be devoted to wildlife management use. All properties with an appraisal based on wildlife management as of tax year January 1, 2001 that do not meet the standards will be grandfathered. These amended guidelines, rules and application form were filed with the Secretary of State on March 15, 2002 and published in the Texas Register for adoption on March 29, 2002. Rule 9.4003, relating to open-space land valuation, was adopted by the Comptroller and is effective July 15 for the 2002 tax year.

The Committee has been made aware of a lack of consistency of application between County Tax Appraisers in implementing wildlife management open space valuation. Though the guidelines and standards are apparent, discrepancy in county appraisals has been noted. Outside expensive court remedies, landowners have no avenue of appeal for County Tax Collector's assessments. Although it has no specific recommendations to the Legislature at this time, the Committee will continue to monitor County Tax Appraiser's application of the adopted regulations and standards, as well as other issues of local and state concern.

APPENDIX A



APPENDIX B



APPENDIX C







APPENDIX D

APPENDIX E

APPENDIX F















APPENDIX G





APPENDIX H



ENDNOTES

1. A Report to the State Recreational Resources Committee, Texas House of Representatives on Impacts of Non-game Fish Removal on Game Fish Populations:1.
2. Ryan, Michael J. and Janssen, Frederick W., “Evaluation of an Entanglement Gear Fishery in East Texas Mainstream Reservoir” Southeast Association Fish and Wildlife Agencies 47:657-665.
3. Durocher, Philip P. and McKinney, Dr. Larry D., “Aquatic Vegetation Management in Texas: A Guidance Document”:12