

By: Hegar

S.B. No. 1480

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of exotic aquatic species by the Parks and Wildlife Department; providing penalties.

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

SECTION 1. The heading to Chapter 66, Parks and Wildlife Code, is amended to read as follows:

CHAPTER 66. FISH AND AQUATIC PLANTS

SECTION 2. The heading to Subchapter A, Chapter 66, Parks and Wildlife Code, is amended to read as follows:

SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER

FISHING AND AQUATIC PLANTS

SECTION 3. The heading to Section 66.007, Parks and Wildlife Code, is amended to read as follows:

Sec. 66.007. EXOTIC HARMFUL OR POTENTIALLY HARMFUL FISH AND ~~SHELLFISH~~ ~~AND AQUATIC PLANTS~~.

SECTION 4. Subsections (a), (b), (c), (e), (j), (k), and (l), Section 66.007, Parks and Wildlife Code, are amended to read as follows:

(a) No person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or ~~shellfish~~ ~~or aquatic plants~~ except as authorized by rule or permit issued by the department.

(b) The department shall publish a list of ~~(1)~~ exotic fish and exotic shellfish for which a

1 permit under Subsection (a) is required~~[, and~~

2  ~~[(2) exotic aquatic plants, as provided by this~~  
3  ~~section, that are approved for importation into or possession in~~  
4  ~~this state without a permit].~~

5 (c) The department shall make rules to carry out ~~[the~~  
6  ~~provisions of]~~ this section. ~~[In adopting rules that relate to~~  
7  ~~exotic aquatic plants, the department shall strive to ensure that~~  
8  ~~the rules are as permissive as possible without allowing the~~  
9  ~~importation or possession of plants that pose environmental,~~  
10  ~~economic, or health problems.]~~

11 (e) In this section:

12 (1) ~~["Approved list" means the list published by the~~  
13  ~~department under Subsection (b)(2) of exotic aquatic plants that a~~  
14  ~~person may import into or possess in this state without an exotic~~  
15  ~~species permit issued by the department.~~

16  ~~[(2) "Exotic aquatic plant" means a nonindigenous~~  
17  ~~aquatic plant that is not normally found in aquatic or riparian~~  
18  ~~areas of this state.~~

19  ~~[(3)]~~ "Exotic fish" means a nonindigenous fish that is  
20 not normally found in the public water of this state.

21 (2)  ~~[(4)]~~ "Exotic shellfish" means a nonindigenous  
22 shellfish that is not normally found in the public water of this  
23 state.

24 (3) "Public water" has the meaning assigned by Section  
25 66.015.

26 (j) Except as provided in Subsection (k), an operator of an  
27 aquaculture facility under quarantine condition may not discharge

1 waste or another substance from the facility except with approval  
2 of the department and a wastewater discharge authorization from the  
3 Texas [~~Natural Resource Conservation~~] Commission on Environmental  
4 Quality.

5 (k) Even if under quarantine condition, an aquaculture  
6 facility shall discharge wastewater or another substance as  
7 necessary to comply with an emergency plan that has been submitted  
8 to and approved by the department and incorporated into a  
9 wastewater discharge authorization issued by the Texas [~~Natural~~  
10 ~~Resource Conservation~~] Commission on Environmental Quality.

11 (1) On receiving notice from an owner of the observance of  
12 manifestations of disease, the department shall immediately:

13 (1) notify the Department of Agriculture, the Texas  
14 [~~Natural Resource Conservation~~] Commission on Environmental  
15 Quality, and the Texas Animal Health Commission; and

16 (2) advise the Department of Agriculture, the Texas  
17 [~~Natural Resource Conservation~~] Commission on Environmental  
18 Quality, and the Texas Animal Health Commission regarding the  
19 appropriate action to be taken.

20 SECTION 5. Section 66.0071, Parks and Wildlife Code, is  
21 amended to read as follows:

22 Sec. 66.0071. REMOVAL OF HARMFUL AQUATIC PLANTS. On  
23 leaving any public or private body of water in this state, a person  
24 shall immediately remove and lawfully dispose of any exotic aquatic  
25 plant [~~not included~~] on the [~~approved~~] list of prohibited plants  
26 adopted [~~published~~] under Section 66.0072 [~~66.007(b)(2)~~] that is  
27 clinging or attached to the person's:

1 (1) vessel or watercraft; or

2 (2) trailer, motor vehicle, or other mobile device  
3 used to transport or launch a vessel or watercraft.

4 SECTION 6. Subchapter A, Chapter 66, Parks and Wildlife  
5 Code, is amended by adding Section 66.0072 to read as follows:

6 Sec. 66.0072. EXOTIC HARMFUL OR POTENTIALLY HARMFUL AQUATIC  
7 PLANTS. (a) In this section:

8 (1) "Exotic aquatic plant" means a nonindigenous  
9 aquatic plant that is not normally found in the public water of this  
10 state.

11 (2) "Public water" has the meaning assigned by Section  
12 66.015.

13 (b) A person may not import, possess, sell, or place into  
14 the public water of this state an exotic harmful or potentially  
15 harmful aquatic plant except as authorized by commission rule or a  
16 permit issued by the department.

17 (c) The commission by rule shall adopt a list of exotic  
18 aquatic plants that may not be imported into or possessed in this  
19 state without a permit.

20 (d) The commission may enact an emergency rule as provided  
21 by Chapter 2001, Government Code, to add an exotic aquatic plant to  
22 the list of prohibited plants if the plant is determined to be  
23 harmful or potentially harmful.

24 (e) This section does not apply to any microalgae imported,  
25 possessed, used, or sold for biofuel, academic, or research and  
26 development purposes. The department shall consult with the  
27 Department of Agriculture as necessary to administer this section

1 and may not adopt rules or permits for microalgae imported,  
2 possessed, used, or sold for biofuel, academic, or research and  
3 development purposes without written approval from the Department  
4 of Agriculture of the rules or permits.

5 (f) The commission shall adopt rules to implement this  
6 section.

7 SECTION 7. Subsections (b), (c), (d), (e), and (f), Section  
8 66.012, Parks and Wildlife Code, are amended to read as follows:

9 (b) A person who violates Section 66.003, 66.004, 66.005,  
10 66.006(c), [~~66.007,~~] 66.009, 66.015, 66.021, or 66.0091 of this  
11 code commits an offense that is a Class B Parks and Wildlife Code  
12 misdemeanor.

13 (c) An offense under [~~If it is shown at the trial of the~~  
14 ~~defendant for a violation of~~] Section 66.004, 66.006(c), [~~66.007,~~  
15 or 66.015 is [~~of this code that the defendant has been convicted~~  
16 ~~once before the trial date of a violation of the same section, on~~  
17 ~~conviction the defendant shall be punished for~~] a Class A Parks and  
18 Wildlife Code misdemeanor if it is shown at the trial of a person  
19 for the offense that the person has been previously convicted one  
20 time of a violation of the same section.

21 (d) An offense under [~~If it is shown at the trial of the~~  
22 ~~defendant for a violation of~~] Section 66.004[~~, 66.007,~~] or 66.015  
23 is [~~of this code that the defendant has been convicted two or more~~  
24 ~~times before the trial date of a violation of the same section, on~~  
25 ~~conviction the defendant shall be punished for~~] a Parks and  
26 Wildlife Code felony if it is shown at the trial of a person for the  
27 offense that the person has been previously convicted two or more

1 times of a violation of the same section.

2 (e) An offense under [~~If it is shown at the trial of the~~  
3 ~~defendant for a violation of~~] Section 66.007, 66.0072, 66.020(f),  
4 or 66.020(g) [~~of this code~~] or a proclamation adopted by the  
5 commission under those sections is [~~that the defendant has been~~  
6 ~~convicted within five years before the trial date of a violation of~~  
7 ~~the section for which the defendant is being prosecuted, on~~  
8 ~~conviction the defendant shall be punished for~~] a Class B Parks and  
9 Wildlife Code misdemeanor if it is shown at the trial of a person  
10 for the offense that the person has been previously convicted one  
11 time of a violation of the same section.

12 (f) An offense under [~~If it is shown at the trial for a~~  
13 ~~violation of~~] Section 66.007, 66.0072, 66.020(f), or 66.020(g) [~~of~~  
14 ~~this code~~] or a proclamation adopted by the commission under those  
15 sections is [~~that the defendant has been convicted two or more times~~  
16 ~~within five years before the trial date of a violation of the~~  
17 ~~section for which the defendant is being prosecuted, on conviction~~  
18 ~~the defendant shall be punished for~~] a Class A Parks and Wildlife  
19 Code misdemeanor if it is shown at the trial of a person for the  
20 offense that the person has been previously convicted two or more  
21 times of a violation of the same section.

22 SECTION 8. Subsections (m) through (s), Section 66.007,  
23 Parks and Wildlife Code, are repealed.

24 SECTION 9. (a) On the effective date of this Act, the list  
25 of harmful or potentially harmful plants that was in effect  
26 immediately before the publication of the list of approved plants  
27 required by Subsection (b), Section 66.007, Parks and Wildlife

1 Code, as amended by Section 14, Chapter 952 (H.B. 3391), Acts of the  
2 81st Legislature, Regular Session, 2009, is the list of exotic  
3 aquatic plants required by Section 66.0072, Parks and Wildlife  
4 Code, as added by this Act, and shall be the list in effect until  
5 amended by the Parks and Wildlife Department.

6 (b) The Parks and Wildlife Department may not enforce the  
7 permit requirements or prohibited actions regarding exotic aquatic  
8 plants that are on the list under Section 66.0072, Parks and  
9 Wildlife Code, as added by this Act, before the effective date of  
10 this Act.

11 (c) After the effective date of this Act, the Parks and  
12 Wildlife Department is not required to maintain or publish the list  
13 of approved exotic aquatic plants for which a permit is not required  
14 under Section 66.007, Parks and Wildlife Code, as that section  
15 provided before the effective date of this Act.

16 (d) Section 66.012, Parks and Wildlife Code, as amended by  
17 this Act, applies only to an offense that occurs on or after the  
18 effective date of this Act. An offense that occurs before the  
19 effective date of this Act is governed by the law in effect  
20 immediately before that date, and that law is continued in effect  
21 for that purpose. For purposes of this subsection, an offense is  
22 committed before the effective date of this Act if any element of  
23 the offense occurs before that date.

24 SECTION 10. This Act takes effect immediately if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2011.