

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of existing §7.103, Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (commission) and the Texas Parks and Wildlife Department (TPWD), regarding the regulation of aquaculture. In addition, the commission proposes new §7.103, Memorandum of Understanding (MOU) among the Texas Natural Resource Conservation Commission (commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA), regarding the regulation of aquaculture.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES**

Senate Bill (SB) 873, 76th Legislature, 1999, amended Chapter 134 of the Agriculture Code by adding §134.031 which directs the commission, TPWD, and TDA to develop an MOU for the coordination of the regulation of matters related to aquaculture. An existing MOU between the commission and TPWD governs some, but not all, of the activities in the legislatively-mandated MOU and does not include TDA as a participant. This proposed rulemaking would repeal the existing MOU and replace it with a new MOU that incorporates legislative changes affecting the regulation of aquaculture production facilities by the commission, TPWD, and TDA.

Senate Bill 873 requires that the agencies establish through an MOU an application review committee (ARC) to review wastewater discharge authorization applications by aquaculture facilities to ensure that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state. The committee will be comprised of one representative from each of the three agencies.

The new MOU delineates each agency's responsibilities under the MOU, outlines coordination procedures for the review of individual permit applications, registration applications, requests for exemption, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the ARC.

#### SECTION BY SECTION DISCUSSION

Existing §7.103(a) - (e), Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department, is proposed to be repealed.

New §7.103(a) sets forth the need for the MOU as a mechanism for facilitating coordination among the commission, TPWD, and TDA on issues related to the regulation of aquaculture facilities.

New §7.103(b) defines the terms "aquaculture," "MOU," and "application" as they are used within the MOU.

New §7.103(c) sets forth the responsibilities of each agency pertaining to licensing and regulation of aquaculture facilities within the state.

New §7.103(d) sets forth the coordination procedures for review of applications by aquaculture facilities for authorization to discharge wastewater under individual permits and registrations, requests for exemption, and notices of intent to be covered under a general permit to discharge wastewater.

New §7.103(e) establishes the ARC, defines the committee's authority, and establishes the committee's operating and meeting procedures. The section provides that the ARC will be comprised of one individual from each of the three agencies and has the authority to review any request by an aquaculture facility for authority to discharge wastewater or for an exemption when disputes among the agencies cannot be resolved at the staff level. The section also sets forth the right of each agency to take any action it deems necessary to protect its legal authority under state law regardless of any provision in the MOU.

New §7.103(f) sets forth general conditions including the term of the MOU and amendment procedures.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed rule is in effect, there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed rule. The proposed rule would establish a new MOU among the commission, TPWD, and TDA, regarding the regulation of aquaculture. The proposed new MOU would replace an existing MOU between the commission and the TPWD regarding the regulation of aquaculture.

Aquaculture is the business of producing and rearing aquatic species (fish, crustaceans, and other organisms in either fresh or marine waters) utilizing ponds, lakes, fabricated tanks, raceways, or other similar structures. The intent of the MOU is to ensure that issues related to the regulation of aquaculture facilities, including escape of non-native species into natural ecosystems, introduction of

disease into the ecosystem, and the control of wastewater discharges from aquaculture facilities, are all properly addressed and managed.

The proposed MOU specifies each agency's responsibilities under the MOU, outlines coordination procedures for review of individual permit applications, registration applications, requests for exemption, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the ARC as required by SB 873, 76th Legislature, 1999 (an Act relating to the regulation of aquaculture). The proposed rule would establish procedures for the ARC to review requests by aquaculture facilities for authorization to discharge wastewater or for an exemption to ensure that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state. The ARC will be comprised of one representative from each of the three agencies. The agencies intend for the ARC to operate only when the agencies' staff cannot come to agreement on the terms of the conditions required for authorization to discharge wastewater. The MOU outlines procedures for notification, document exchange, and coordination of meetings.

Since the proposed rule is not anticipated to add additional regulatory requirements on an applicant seeking certain wastewater permits, the commission anticipates there will be no additional costs to units of state and local government submitting an application for a wastewater discharge permit or authorization. The proposed rule only sets forth procedures in an MOU among the commission, TPWD, and TDA. No fiscal implications are anticipated for units of state and local government as a result of the proposed rulemaking because the MOU does not affect the substantive requirements and fees required to obtain authorization to operate a facility. The commission anticipates that no fiscal

impacts to units of state and local government will result from the repeal of the original MOU between the commission and the TPWD.

#### PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the implementation of the rulemaking will be the establishment of a process for interagency coordination of permitting issues related to aquaculture, which will ensure timely reviews of wastewater discharge permit and registration applications, requests for exemption, and notices of intent to be covered under a general permit.

The proposed rulemaking would repeal an existing MOU between the commission and the TPWD regarding the regulation of aquaculture. In addition, the proposed rule establishes a new MOU among the commission, TPWD, and the TDA, regarding the regulation of aquaculture.

The proposed MOU specifies each agency's responsibilities under the MOU, outlines coordination procedures for review of individual permit applications, registration applications, requests for exemption, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the ARC as required by SB 873. The ARC will review requests by aquaculture facilities for authorization to discharge wastewater or for an exemption to ensure that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state. The ARC will be comprised of one representative from each of the three agencies. The agencies intend for the ARC to operate only when the agencies' staff cannot come to agreement on the terms of the conditions

required for authorization to discharge wastewater. The MOU outlines procedures for notification, document exchange, and coordination of meetings.

Since the proposed rule is not anticipated to add additional regulatory requirements on an applicant seeking certain wastewater permits, the commission anticipates there will be no additional costs to individuals and businesses submitting an application for a wastewater discharge permit or authorization. The proposed rule only sets forth procedures in an MOU among the commission, TPWD, and TDA. No fiscal implications are anticipated for individuals and businesses as a result of the proposed rulemaking because the MOU does not affect the substantive requirements and fees required to obtain authorization to operate an aquaculture facility. The commission anticipates that no fiscal impacts to individuals and businesses will result from the repeal of the original MOU between the commission and the TPWD.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-business as a result of the implementation of the proposed rule because the creation of this MOU is an administrative action that has no fiscal impact. The proposed rulemaking would repeal an existing MOU between the commission and the TPWD regarding the regulation of aquaculture. In addition, the proposed rule establishes a new MOU among the commission, TPWD, and the TDA, regarding the regulation of aquaculture.

The proposed MOU specifies each agency's responsibilities under the MOU, which enhances inter-agency coordination on the regulation of aquaculture facilities in Texas, outlines coordination

procedures for review of individual permit applications, registration applications, requests for exemption, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the ARC as required by SB 873.

Since the proposed rule is not anticipated to add additional regulatory requirements on an applicant seeking certain wastewater permits, the commission anticipates there will be no additional costs to small or micro-businesses submitting an application for a wastewater discharge permit or authorization. The proposed rule only sets forth procedures in an MOU among the commission, TPWD, and TDA. No fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking because the MOU does not affect the substantive requirements and fees required to obtain authorization to operate an aquaculture facility.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposal would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule will formalize the procedures for cooperation among the commission, TPWD, and TDA on issues related to the regulation of aquaculture facilities. The proposed rule does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. Even if the proposed rule were a major environmental rule, Section 2001.0225 only

applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rule does not meet any of these four criteria and; therefore, is not subject to Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposed rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this proposed rule is to set forth the procedures by which the commission, TPWD, and TDA coordinate on issues related to the regulation of aquaculture facilities. The proposed rule will substantially advance this specific purpose by setting forth detailed procedures for such interaction including initial notification, document exchange, comments, and meetings. The proposed rule will not burden private real property and the action under the proposed rule does not constitute a taking because the MOU only sets forth procedures by which the commission, TPWD, and TDA will coordinate on issues related to the regulation of aquaculture.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking, both the proposed repeal of the existing MOU and the proposed adoption of the new MOU, and determined that the rule is neither identified in the Coastal

Coordination Act Implementation Rules, 31 TAC § 505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m. on November 13, 2000 and should reference Rule Log Number 1999-035-007-WT. For further information, please contact Frank Fuller, Policy and Regulations Division, at (512) 239-5796.

#### STATUTORY AUTHORITY

The repeal is proposed under the Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties.

The repeal implements SB 873, 76th Legislature, 1999, relating to the regulation of aquaculture.

**§7.103. Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (commission) and the Texas Parks and Wildlife Department (TPWD).**

#### STATUTORY AUTHORITY

The new section is proposed under the TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties. Additionally, the new section is proposed under TWC, §5.104, which authorizes the commission to enter into an MOU with any other state agency and requires the MOU to be adopted by rule, and Texas Agriculture Code, §134.031, which requires the commission, TPWD, and TDA to enter into an MOU for the regulation of matters related to aquaculture.

The new section implements SB 873, 76th Legislature, 1999, relating to the regulation of aquaculture.

**Chapter 7: MEMORANDA OF UNDERSTANDING**

**§7.103**

**§7.103. Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA).**

(a) Need for agreement.

(1) The commission, TPWD, and TDA seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The commission, TPWD, and TDA are concerned about issues relating to the raising of non-native aquatic species and the attendant concern about escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The commission, TPWD, and TDA are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The commission, TPWD, and TDA seek to establish an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The commission, TPWD, and TDA seek to institute an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the commission to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the commission, TPWD, and TDA to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which TPWD and TDA may review and provide feedback on aquaculture issues that are subject to regulation by the commission and that have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of TPWD or TDA. This exchange of information would assist the commission in making environmentally sound decisions and would improve coordination between the commission, TPWD, and TDA.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Aquaculture - The business of producing or rearing aquatic species (fish, crustaceans, and other organisms in either fresh or marine waters) utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) Memorandum of Understanding (MOU) - A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.

(3) Application - A request submitted by an aquaculture facility to the commission for authorization to discharge under an individual permit or registration; a Notice of Intent (NOI) to seek authorization under a general permit; or a request for an exemption.

(c) Responsibilities.

(1) The commission. The responsibilities of the commission relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The commission has general jurisdiction over the state's water quality program including issuance of waste discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits.

(B) The commission seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The commission is responsible for review of NOIs and requests for exemption, and review of applications and subsequent issuance of waste discharge permits, temporary orders, emergency orders, and registrations.

(2) TPWD. The responsibilities of TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Parks and Wildlife Code, §12.001.

(A) TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.

(E) TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.

(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.

(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.

(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.

(d) Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.

(1) Coordination procedures for NOIs, applications for registrations, and requests for exemptions.

(A) The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.

(i) Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether

it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.

(2) Coordination procedures for individual permit applications.

(A) The executive director will provide notification to TPWD and TDA of each application received which requests individual permit authorization for the discharge or disposal of wastewater from aquaculture facilities. Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that TPWD and TDA may complete an initial assessment of the proposed operation.

(i) Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(i) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether

it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.

(D) In coordination with the TPWD and TDA, the commission shall, within 120 days of the date of adoption of this MOU, establish guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. This report shall describe the existing environmental conditions at the proposed site including aquatic habitat and the conditions of water in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, and significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.

(3) Coordination procedures applicable to all applications.

(A) The scope of review by TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat); impacts of the discharge on substrate

(scouring, sedimentation) and water transparency; alteration of receiving water flow characteristics; existing or attainable biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by TPWD.

(B) The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.

(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's and TDA's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration, and documentation providing an explanation on why any of TPWD's and TDA's comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.

(D) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA. The executive director will consider the

sensitive aquatic habitat guidelines when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(E) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.

(F) A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(G) TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.

(H) An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.

(I) The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.

(J) The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other

activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.

(K) The executive director, TPWD, and TDA will strive to provide to each agency, notification of public meetings and public hearings that relate to aquaculture applications.

(L) The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

(e) Application Review Committee.

(1) Purpose.

(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.

(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.

(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences, in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.

(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.

(2) Membership.

(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.

(B) Each agency shall appoint an alternate member of the committee.

(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.

(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.

(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.

(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.

(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.

(4) Functioning of the ARC.

(A) Meetings.

(i) Meetings will be on an as needed basis.

(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.

(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.

(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.

(v) The meeting shall take place within seven calendar days of the request.

(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment of the other parties, and to provide a final version of the minutes which reflects any comments received.

(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision-making deliberations will focus on the agencies' mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.

(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.

(f) General conditions.

(1) The term of this MOU shall be from the effective date until termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties and shall be adopted by rule by all parties.

(2) Each party shall adopt the MOU by rule. All amendments shall also be adopted by rule. This MOU, and any subsequent amendment, shall become effective 20 days after the date on which the rule is filed in the Office of the Secretary of State.

(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(4) Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.