

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 29, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Earl Lott, Director
Office of Water

Docket No.: 2021-0765-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 7, Memoranda of Understanding
SB 703: Memorandum of Understanding Relating to Regulation of the
Aquaculture Industry
Rule Project No. 2021-021-007-OW

Background and reason(s) for the rulemaking:

This rulemaking would implement portions of Senate Bill (SB) 703, 87th Legislature, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the Texas Commission on Environmental Quality (TCEQ or commission), the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination was codified in a Memorandum of Understanding (MOU) in Chapter 7, §7.103. This rulemaking would revise the MOU to remove the TDA from this multi-agency coordination.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

This rulemaking would amend §7.103 to remove the TDA from the multi-agency coordination on regulating the aquaculture industry.

B.) Scope required by federal regulations or state statutes:

None required.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommend making additional updates to the MOU, based on rule changes related to the aquaculture industry since the MOU was last adopted. These include but are not limited to repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O and the development of the Aquaculture General Permit Number TXG130000.

Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission;

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- TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding;
- TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and
- TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

Effect on the:

A.) Regulated community:

This rulemaking is not expected to affect the regulated community.

B.) Public:

This rulemaking is not expected to affect the public.

C.) Agency programs:

This rulemaking would remove the Water Quality Division's (WQD) coordination with TDA regarding regulation of the aquaculture industry. The WQD would still be required to coordinate with TPWD regarding regulation of the aquaculture industry.

Stakeholder meetings:

This rulemaking would be discussed at the quarterly Water Quality Advisory Workgroup meetings.

Potential controversial concerns and legislative interest:

There is no known controversial concerns or legislative interest at this time.

Would this rulemaking affect any current policies or require development of new policies?

No policy issues are anticipated.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

This rulemaking is required to implement portions of SB 703 related to removing TDA's coordination with TCEQ and TPWD regarding regulation of the aquaculture industry.

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Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 17, 2021

Anticipated *Texas Register* publication date: December 3, 2021

Anticipated public hearing date: January 4, 2022

Anticipated public comment period: December 2021 - January 2022

Anticipated adoption date: April 27, 2022

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Attachments: SB 703

cc: Chief Clerk, 2 copies
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