

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.103.

### **Background and Summary of the Factual Basis for the Proposed Rule**

This rulemaking would implement portions of Senate Bill (SB) 703, 87th Regular Legislature, which removed the Texas Department of Agriculture’s (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the TCEQ, the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination is codified in a Memorandum of Understanding (MOU) in 30 Texas Administrative Code (TAC) §7.103. This rulemaking would revise the MOU to remove TDA from this multi-agency coordination.

Additionally, this rulemaking would make additional updates to the MOU, based on TCEQ rule changes related to the aquaculture industry since the MOU was last adopted. These include repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O, and the issuance of the Aquaculture General Permit Number TXG130000.

### **Section Discussion**

The commission proposes revisions throughout the rule to remove all references to the TDA, in accordance with SB 703, which removed the TDA’s roles and responsibilities

related to regulation of the aquaculture industry. Additionally, the commission proposes revisions throughout the rule to change the commission's name from the Texas Natural Resource Conservation Commission to the TCEQ. The commission also proposes revisions throughout the rule to improve readability and the overall structure of the rule.

Lastly, the commission proposes revisions throughout the rule to remove references to registrations and exemptions issued by the TCEQ to the aquaculture industry because the TCEQ repealed the regulations in Chapter 321, Subchapter O, that provided for these types of authorizations. These authorization types have been replaced by the Aquaculture General Permit Number TXG130000.

The commission proposes minor clarifications and revisions to subsection (a) as noted above regarding revisions proposed throughout the rule.

The commission proposes revisions to subsection (b) to update the definition of "Aquaculture" consistent with the definition in the Aquaculture General Permit Number TXG130000 and to remove the definition of "Memorandum of Understanding" because this definition is not included in other MOUs.

The commission proposes revisions to subsection (c) to add references to additional applicable state statutes that establish TCEQ and TPWD authorities.

The commission proposes revisions to subsection (d) to establish coordination activities regarding renewal and amendment of the Aquaculture General Permit Number TXG130000. The proposed revisions would also revise procedures related to TPWD requesting additional information from applicants rather than from the TCEQ during their review of Notices of Intent (NOI) and individual permit applications. Additional proposed revisions to this subsection would revise the timing of when, in the permitting process, the TCEQ must send applications to the TPWD, and remove the TCEQ's requirement to develop guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. The report guidelines have been developed and the TCEQ's individual permit application form requires new commercial shrimp facilities located within the coastal zone to develop and submit a site assessment report.

The commission proposes removal of subsection (e) relating to the executive review committee and proposes new subsection (e) relating to other coordination activities that were previously included as part of subsection (d). The executive review committee is proposed for removal because SB 703 removed the requirement for an executive review committee. The TCEQ and TPWD would continue coordination effort via the interagency workgroup as described in proposed new subsection (e)(3).

The commission proposes amendments to subsection (f) to revise the effective date of

the MOU to coordinate with the effective date of the rule and to remove the requirement for the agency governing bodies to sign the MOU. The governing bodies will each adopt the rule to signify their agreement to the MOU requirements.

**Fiscal Note: Costs to State and Local Government**

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be coordination of regulatory oversight activities between the TCEQ and TPWD regarding aquaculture facilities. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

**Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

### **Rural Community Impact Statement**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

### **Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future

legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector 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 rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, this proposed rulemaking is

intended to implement an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities and coordinate enforcement actions in response to discharges from aquaculture facilities. The proposed rulemaking would also implement portions of SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. This proposed rulemaking should 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. Therefore, the commission finds that this proposed rulemaking is not a "Major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the proposed rulemaking does not exceed a standard set by federal law, rather it addresses the process for the TCEQ and TPWD to coordinate the regulation of

aquaculture facilities within the federal law and authority delegated to the state.

Likewise, the proposed rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement because state law expressly authorizes it. Finally, the proposed rulemaking was not developed solely under the general powers of the agency because it is also authorized under TWC, §5.104, which authorizes TCEQ to enter into an MOU with any other state agency, and Texas Agriculture Code, §134.031, which directs the TCEQ and TPWD to enter into an MOU.

Under TGC, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated the proposed rule and performed analysis of whether the proposed rule constitutes a taking under TGC, §2007.043. The specific purpose of the proposed rule is to improve coordination between the TCEQ and TPWD and facilitate an exchange of information to assist the TCEQ in making environmentally sound decisions. The proposed rule would substantially advance this stated purpose by



updating the current MOU between the TCEQ and TPWD. The proposed rule provides a formal mechanism by which the TPWD may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ and have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Thus, this rule would not impose burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there would be no reduction in value of the property as a result of this rulemaking.

#### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a virtual public hearing on this proposal on January 4, 2022, at 2:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

### **Registration**

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 3, 2022. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 3, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZjQ1MjYxMGUtMzFjMi00NTBkLTllyzQtNWQ5ZDRiYjY0Yjc2%40thead.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjQ1MjYxMGUtMzFjMi00NTBkLTllyzQtNWQ5ZDRiYjY0Yjc2%40thead.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&btype=a&role=a)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-021-007-OW. The comment period closes on January 5, 2022. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

### **§7.103**

#### **Statutory Authority**

The rule is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.104, which authorizes the Texas Commission on Environmental Quality (TCEQ) to enter into a Memorandum of Understanding (MOU) with any other state agency; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; TWC, §26.011, which establishes the commission's jurisdiction over all aspects of establishing and controlling the quality of waters of the state with all power necessary or convenient to carry out the responsibilities of that jurisdiction; and Texas Agriculture Code, §134.031, which requires the TCEQ and the Texas Parks and Wildlife Department to enter into an MOU for the regulation of matters relating to aquaculture.

The proposed rule implements portions of Senate Bill 703, 87th Regular Legislature.

**§7.103. Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ) and [Texas Natural Resource Conservation Commission (commission),] the Texas Parks and Wildlife Department (TPWD) Regarding the Regulation of Aquaculture [ , and the Texas Department of Agriculture (TDA)].**

(a) Need for agreement.

(1) The Texas Commission on Environmental Quality (TCEQ) and Texas Parks and Wildlife Department (TPWD) [commission, TPWD, and TDA] seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

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

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

(5) The TCEQ and TPWD [commission, TPWD, and TDA] seek to implement [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 TCEQ [commission] to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the TCEQ and TPWD [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 the TPWD [and TDA] may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ [commission] and that have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD [or TDA]. This exchange of information would assist the TCEQ [commission] in making environmentally sound decisions and would improve coordination between the TCEQ and TPWD [commission, TPWD, and TDA].

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

(1) Aquaculture--The business of producing or rearing aquatic species (fish, crustaceans, mollusks, or any [and] other organisms, excluding aquatic plants and algae, living in either fresh or marine waters) utilizing ponds, lakes, cages, 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.]

(2) [(3)] Application--A request submitted by an aquaculture facility to the TCEQ [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 TCEQ [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 TCEQ [commission] has general jurisdiction over the state's water quality program including issuance of wastewater [waste] discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits, under Texas Water Code, §5.013.

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

(2) [TPWD.] The responsibilities of the TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Texas Parks and Wildlife Code, §12.001 and §12.0011.

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

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

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

(F) The 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), and is responsible for review of applications and subsequent issuance of permits relating to these activities.

[(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) Coordination procedures for wastewater discharge applications and permits.  
[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 the Aquaculture General Permit Number TXG130000 and associated NOIs [, applications for registrations, and requests for exemptions].

(A) During renewal or amendment of the Aquaculture General Permit, the TCEO will provide the initial draft permit to the TPWD for review and comment prior to submitting the draft to EPA for review and approval. [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 initial draft permit, the TPWD will complete its initial assessment, and by letter shall provide the TCEO with formal written recommendations designed to protect fish and wildlife resources or indicate that it has no comments. [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 TCEQ does not receive formal written comments from the TPWD within 45 days of the date of receipt of the initial draft permit, the TCEQ will conclude that there are no comments and continue processing of the general permit renewal or amendment. [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.]

(iii) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in subsection (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Concurrent with submission of the final draft permit to EPA, the TCEQ will provide a copy of the final draft permit to the TPWD.

(B) The TCEQ will provide copies of all NOIs to the TPWD within 14 days of the date of receipt. [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 the 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.]

(i) Within 45 days of the date of receipt of the NOI by the TPWD, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the NOI.

(ii) Except as provided by paragraph (3)(B) of this subsection, if the TCEQ does not receive a response from the TPWD within 45 days of TPWD receipt of the NOI, the TCEQ will conclude that there are no comments and continue processing of the application.

(iii) Formal written comments received from the TPWD will be considered by the TCEQ in determining whether to grant authorization under the general permit or require the applicant to seek authorization under an individual permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the final disposition of the NOI.

[(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 TCEQ [executive director] will provide [notification] to the TPWD a copy [and TDA] of each individual permit application file received which requests [individual permit] authorization to [for the] discharge [or disposal of] wastewater from aquaculture facilities within 14 days of the TCEQ administrative review completion. The application file [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 the 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.]



[(ii) 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) Within 45 days of the date of receipt of the permit application file, the TPWD will complete its initial assessment, and by letter shall provide the TCEO with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEO that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the permit application file. [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) Except as provided by paragraph (3)(B) of this subsection of this section, if the TCEQ does not receive a response from the TPWD within 45 days of the TPWD receipt of the permit application file, the TCEQ will conclude that there are no comments and continue processing of the application. [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) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Upon making a preliminary recommendation regarding an application, the TCEQ will provide a response to the TPWD that contains a copy of the final draft

permit and documentation providing an explanation on why any of the TPWD's comments were not incorporated. [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 the 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 the TPWD.

(B) If the TPWD requests additional information from the applicant, the TPWD will request that the applicant provide a copy of the information to the TCEQ. If the applicant does not provide the additional information to the TPWD within 30 days of a request, the TCEQ will determine whether it is appropriate to either suspend processing the application or return it to the applicant. Upon receipt of additional information from the applicant, the TPWD will have 30 days to complete its review and either make final recommendations to the TCEQ or indicate that it has no comments. If formal written comments are not received from the TPWD within 30 days of receipt of the additional information, the TCEQ will conclude that there are no comments and continue processing of the application. [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.]

(C) [(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 TCEQ [executive director] will consider guidelines developed by the TPWD with input from the TCEQ and stakeholders identifying [the] sensitive aquatic habitat within the coastal zone [guidelines] when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(D) [(E)] The TCEQ and TPWD will strive to provide each other notification of public meetings and contested case hearings that relate to aquaculture applications. [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, public hearings, and contested case 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) Other coordination activities.

(1) The TPWD shall, within 120 days of the date of adoption of this MOU, review the wastewater discharge application forms and provide proposed changes that are necessary to obtain relevant information for the TPWD’s review. The TCEQ will solicit feedback from the TPWD each time the TCEQ revises the forms related to aquaculture facilities.

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



(3) An interagency work group will be formed, whose function will be to coordinate on matters related to aquaculture to aid in ensuring that proposed wastewater discharges will not adversely affect bays, estuaries, or other water in the state. This work group will 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 between the TCEO and TPWD 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 agency of any changes to the primary contact person.

(4) The TCEO and TPWD will coordinate studies related to applications that request authorizations for the discharge 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. The TPWD will notify the appropriate TCEO regional office and the Wastewater Permitting Section Manager. The TCEO will notify the TPWD Water Quality Program.

(5) The TCEQ and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized wastewater discharges, and compliance inspections of aquaculture facilities for wastewater discharges. The TCEQ and TPWD will provide notice to each other at least five days prior to conducting a site inspection related to wastewater discharges, so as to allow the other agency to participate if desired. The TPWD will notify the appropriate TCEQ regional office and the TCEQ will notify the TPWD Water Quality Program.

(6) The TCEQ 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 by 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 amendment or 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, including subsequent amendments. [All amendments shall also be adopted by rule.] This MOU, and any subsequent amendment, shall become effective on the effective date of the rule [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.]

(3) [(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.