

## **Chapter 57. FISHERIES**

### **Subchapter K. SCIENTIFIC AREAS**

#### **31 TAC §57.921**

The Texas Parks and Wildlife Commission adopts an amendment to §57.921, concerning the Redfish Bay State Scientific Area (RBSSA), with changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6239).

The change to subsection (c) alters the provisions of paragraph (1) to exclude the property of the Port of Corpus Christi Authority from the boundaries of Redfish Bay State Scientific Area.

The change to subsection (e) establishes an effective date of May 1, 2006, for the subsection. The change also makes nonsubstantive syntactic changes to enhance readability, clarity, and sense.

The change to subsection (e) also makes explicit allowance for the usage of anchors and trolling motors within the Redfish Bay State Scientific Area.

The change excludes proposed subsections (g) and (h), which proposed no-propeller zones, specific ingress and egress lanes where operation of submerged propellers would be allowed, and set forth exceptions.

The rules are necessary because submerged seagrass meadows are a dominant, unique subtropical habitat in many Texas bays and estuaries and there is concern over damage accumulating in these meadows from the improper use of propeller driven vessels (Pulich et al. 1997). Seagrasses are highly evolved marine flowering plants which play critical roles in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes (Brown-Peterson et al. 2002, Perez-Dominguez and Holt 2003, Stunz et al. 2003). Recent studies show that seagrasses are sensitive to physical stress from human disturbances (Montagna et al. 1998). As a result, many Texas scientists, resource managers and environmentally aware citizens have concerns about the health of these seagrass resources.

In January 1999, TPWD, the Texas General Land Office (GLO) and the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality-TCEQ) published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan (Plan) recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Plan and previous studies (Montagna et al. 1998) have identified propeller scarring as a factor in seagrass destruction. This conclusion mirrored findings in Florida, where prop-scarring is a major environmental concern; and the Plan's management options reflected

management actions that Florida had successfully implemented to prevent scarring (Sargent et al. 1995, Ehringer and Anderson 2002, Stowers et al. 2002). Florida has enacted mandatory measures to prevent propeller scarring of seagrasses in its bays and estuaries.

TPWD created the RBSSA by rule in 2000 to study seagrass resources and protect them from the effects of boat propellers. The rule TPWD adopted for the RBSSA in 2000 focused on education and voluntary compliance as the principal means of protecting seagrass resources. Unfortunately, despite extensive and costly efforts by TPWD over the past five years, the voluntary approach proved ineffective.

The proposed amendment to §57.921 consisted of two different, but complementary, regulatory approaches to conserve seagrasses within the RBSSA. Of the two, only one was adopted during the November 3, 2005 meeting of the Texas Parks and Wildlife Commission. The approach that was adopted (proposed §57.921(d) - (e)) prohibits the uprooting of seagrasses throughout the entire area of the RBSSA by submerged propellers, and defines "seagrass plant" to include the five species prevalent within the RBSSA. Further, the rule as adopted clarifies that it is not a violation to operate an electric trolling motor or anchor a vessel within the RBSSA. The rule as adopted also expands the list of purposes for which signs may be placed in RBSSA to include signs that mark special zones within the area. The rule as adopted prohibits the uprooting or digging out of seagrasses by submerged propeller except as allowed under a GLO coastal lease, or as may result from: (1) using an electric trolling motor, (2) anchoring a vessel within the area, or (3) other activities permitted under state law. The prohibition would apply throughout the entire RBSSA (32,144 acres) starting May 1, 2006.

In summary, TPWD in 2000, after extensive research into the issues surrounding seagrass resources in Texas, complied with the "Seagrass Conservation Plan in Texas" by establishing the RBSSA and using a voluntary approach to the protection of seagrass in the area. Through observation of boaters in the area from TPWD staff it was determined that the voluntary prop-up areas (zones) were not effective in getting boaters to change their behavior. Additionally, bottom scarring is still very visible in the area. The lack of compliance and the inability to see improvement in the area in regards to bottom scarring led the department to consider other options to protect seagrass in the area. This led to the adoption of the current rule which prohibits seagrass uprooting in the RBSSA.

#### Literature Cited

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Stunz, G. W., T. J. Minello, and P. S. Levin. 2003. Selection of estuarine nursery habitats by wild-caught and hatchery-reared juvenile red drum. Annual Proceedings of the Texas Chapter of the American Fisheries Society. page 1. TPWD Publication. 1999. The Seagrass Conservation Plan for Texas. PWD BK R0400-041. 84pp.

Comments made by the public concerning the proposed rules were presented to the Texas Parks and Wildlife Commission (TPWC). Three public hearings were held October 19 and 20, 2005 in addition to the hearing at the TPWC meeting on November 3, 2005. The department received comments from the following coastal organizations that were in support of the proposal: Port Aransas Boatmen, Inc., and the Coastal Bend Guides Association. The department received comments from the following coastal organizations that opposed the proposal: Recreational Fishing Alliance, Save Cedar Bayou, The Port of Corpus Christi Authority, and City By The Seas Property Owner's Association. The department received comments from the following coastal organizations that opposed the "no-prop zones," but supported the other portions of the proposal: Coastal Conservation Association of Texas, and the Rockport Chamber of Commerce. The department received a total of 232 comments on the proposed regulations which include the organization comments listed above. Each comment category was totaled individually even when a single individual may have commented on more than one category (e.g., a single individual may have been accounted for in 3 separate comment categories). However, most of the comments received only addressed a portion of the proposal package. Of those that addressed the complete regulation package 43 were in support of the complete proposal and 42 expressed that there was no need for the regulations. Additionally, 10 supported only the seagrass and damage definitions while 41 disagreed with that portion

of the proposal. The "no-prop zone" portion of the proposal received 70 comments in support and 26 disagreed.

Of the 109 that opposed all or part of the proposal, 53 did not elaborate upon their opposition or give alternatives to the published proposals. The agency's response to general, non-specific opposition to the rule as proposed has been addressed earlier in this preamble and is summarized as: TPWD disagrees with the comments, continues to see the need for protection of seagrass in the RBSSA, and sees the rules as adopted (which prohibit uprooting of seagrass in the area) as a reasonable approach to protecting seagrass while continuing to allow the greatest access to the area.

Of the 109 that opposed all or part of the proposal, 56 offered a specific reason or reasons for their opposition. Those comments and the agency's response follow.

**COMMENT:** Seventeen persons opposed adoption of the rules, stating that the destruction of seagrass in RBSSA was primarily because the department failed to conduct an adequate education program for boaters and fishermen in the area.

**AGENCY RESPONSE:** The agency disagrees and responds that the education program for boaters and fishermen is ongoing and will always be an important aspect of the efforts to protect seagrass. Throughout the history of the RBSSA many educational efforts have been undertaken. Signage on the water and at key boat ramps was established and maintained as a key educational tool. A boating video was produced and many groups were contacted and given various educational materials regarding the need for protection of seagrass in the RBSSA. The continued accumulation of prop-scars within RBSSA suggests that regardless of the form taken by the education program, individuals continued to ignore the conservation needs of the seagrass meadows. The voluntary aspect of the program was not working. The department agrees to work with organizations within the community to enhance existing education programs and develop new ones. No changes were made as a result of these comments.

**COMMENT:** Twelve persons opposed adoption of the rules, stating that the destruction of seagrass in RBSSA was primarily because the department failed to maintain adequate signage for boaters and fishermen in the area.

**AGENCY RESPONSE:** The agency disagrees and responds that damage to seagrass is not related to how well a no-prop zone was marked. Early in the history of RBSSA considerable effort and expense was expended to provide and maintain signage on the voluntary no-prop zones within the area. However, Beau Hardegree (formerly with TPWD) currently with U. S. Fish & Wildlife Service, unpublished data) found that there was no compliance with the voluntary no-prop zones where there was adequate signage regardless of the zone (n=212 vessels observed). Nonetheless, the department intends to work with organizations within the community to improve signage warning the public of shallow water where seagrass meadows are most vulnerable. No changes were made as a result of these comments.

COMMENT: Two persons opposed adoption of the rules, stating that a mandatory boating license should be required of anyone operating a vessel in Texas waters and that license should require a minimum of 8 hours of educational programs about boating safety and the vulnerability of seagrass meadows in shallow water.

AGENCY RESPONSE: The agency disagrees and responds that damage to seagrass is a concern of the department and the focus of these rules. However, regulation of boating licensing and safety is outside the scope of authority provided in Parks and Wildlife Code, Chapter 81, Subchapter F, which is related to the creation and regulation of State Scientific Areas and, thus, falls outside the scope of these rules. No changes were made as a result of these comments.

COMMENT: Two persons opposed adoption of the rules, stating that the department inadequately studied the problem and used inadequate science in concluding that action was needed.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, GLO, and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999) The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the department evaluated numerous studies that have concluded that seagrass meadows play a critical role in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that the shuffling feet of wade fishermen produced as much damage to seagrass meadows as did submerged propellers.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the continued damage to seagrass in the RBSSA area and the lack of compliance among

boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that jet skis sucking grass into their intakes when running in shallow water produced as much damage to seagrass meadows as did submerged propellers.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that this approach had been tried elsewhere and it did not produce the desired results.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. The conclusion that propeller scarring is a factor in seagrass destruction mirrored findings in Florida, where prop-scarring is a major environmental concern; and the Plan's management options reflected management actions that Florida had successfully implemented to prevent scarring (Sargent et al. 1995, Ehringer and Anderson 2002, Stowers et al. 2002). And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that lower fishing limits and closed seasons should be used to reduce boating traffic in the area.

AGENCY RESPONSE: The agency disagrees and responds that PWC Chapter 61 directs the Commission to provide reasonable and equitable access to wildlife resources and to deal effectively with changing conditions to prevent depletion or waste. In this chapter,

"Waste" means the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would allow, promote, or optimize a healthy and self-sustaining population of a species. The agency believes that damage to seagrass meadows is the result of the way vessels are operated in RBSSA and can be addressed without reducing bag limits and closing seasons. If the bag limits in the area were reduced and it resulted in fewer people fishing in the area, there would be economic losses to the local economy that would not be justified based on protection of seagrass or based on the biological productivity of fish in the area. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that instead the department should reduce or stop the dumping of dredge spoil into seagrass meadows.

AGENCY RESPONSE: The agency disagrees and responds that the department does not have the authority to regulate the deposition of spoil. Dredging and deposition of spoil is regulated by the U. S. Corps of Engineers (CORPS) under the Rivers and Harbors Act and under section 404 of the Clean Water Act, and by the GLO (i.e., which is the owner of the bay bottom), or, in certain bays and channels, a navigational district or harbor/port authority who owns the bottom in lieu of the GLO. TPWD's role in the process is only to review and comment on permits issued by the CORPS. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations should be promulgated for a much smaller area than RBSSA.

AGENCY RESPONSE: The agency disagrees and responds that seagrass meadows exist in discontinuous patches along the whole Texas coast. The management strategy protects seagrass throughout the entire RBSSA which constitutes the largest concentration of this type of marine habitat found anywhere along the coast. Through protecting the larger area of the RBSSA the rule will also protect smaller more concentrated patches of seagrass within the RBSSA. The department responds that protecting only a small portion of the area would be inadequate and inappropriate when concern is for the meadows of the whole area. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that the public was inadequately notified to develop and make comments on the proposals.

AGENCY RESPONSE: The agency disagrees and responds that discussions in the area predate the publication of the "The Seagrass Conservation Plan" (TPWD 1999) and the establishment of the RBSSA in 2000. The results of the information gathered from 2000 until now were scoped with stakeholders in the area beginning April 2005 and with the Seagrass Advisory Committee in May 18, 2005. Additionally, the proposal was publicly presented to the Regulations Committee August 24, 2005, published in the *Texas Register* September 20, 2005, and distributed through a news release September 26, 2005 describing the proposals and notifying the public of Public Hearings to be held in San Antonio, Rockport, and Corpus Christi. The news release further gave contact names and

other alternative ways in which the public could comment on the proposals. The fact that 232 comments were made suggests that there was adequate notification of the proposed action. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants would force fishermen to use only jet skis and air boats.

AGENCY RESPONSE: The agency disagrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. While one way of avoiding such uprooting would be to use a jet ski or air boat, it certainly isn't the only way. Use of deep water channels within seagrass meadows as run lanes; drifting, poling, or trolling with an electric trolling motor between deep water channels; and tilting a motor to prevent contact with the bottom are all proven methods of avoiding uprooting of seagrass without needing to resort to using jet skis or air boats. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants would require certain disabled individuals to buy specialized equipment in order to navigate the RBSSA.

AGENCY RESPONSE: The agency disagrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Use of deep water channels within seagrass meadows as run lanes; drifting, poling, or trolling with an electric trolling motor between deep water channels; and tilting a motor to prevent contact with the bottom are all proven methods of avoiding uprooting of seagrass. This is true regardless of whether a fisherman had a disability or not. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants were not needed because there was more seagrass now than there ever had been.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 2000). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. The fact that propeller scarring is accumulating, means that there is more exposed bottom without seagrass so that there cannot be, therefore, more seagrass than there was before there was propeller scarring. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that if staff would inspect seagrass meadows at night they would find them full of fish.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the department evaluated numerous studies that have concluded that seagrass meadows play a critical role in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. There is no dispute that seagrass meadows are important to marine life and that fish would be expected to use these areas. The issue is the damage done to these seagrass meadows from submerged propellers. No changes were made as a result of these comments.

COMMENT: One individual representing the Port of Corpus Christi Authority (PCCA) opposed adoption of the rules, stating that land belonging to PCCA had been inappropriately included in RBSSA and should be removed from the regulation.

AGENCY RESPONSE: The agency agrees and responds that the department was unaware that (a) the land in question belonged to the PCCA; (b) that PCCA would be opposed to protecting seagrass meadows on their property; or that (c) the designation of RBSSA in anyway inhibited any other use of the land to PCCA. PCCA did not comment on the 2000 proposal or the renewal proposal of RBSSA in 2005, both of which included this submerged land. In response to the comment, the coordinates on the south boundary of RBSSA have been amended to exclude this land.

COMMENT: One individual opposed adoption of the "general definitions" portion of the rules, stating that regulations prohibiting uprooting of seagrass plants were too vague and needed to include "submerged propeller" to clarify specifically what was prohibited.

AGENCY RESPONSE: The agency agrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Language was added to exempt trolling motors and anchoring, and to specifically identify damage done by a "submerged propeller" as the focus of the prohibitions as a result of this comment.

COMMENT: One individual opposed adoption of the "general definitions" portion of the rules, stating that regulations prohibiting uprooting of seagrass plants were too vague and would prevent vessel operators from anchoring in the RBSSA.

AGENCY RESPONSE: The agency agrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Language was added to exempt trolling motors and anchoring, and to specifically identify damage done by a "submerged propeller" as the focus of the prohibitions as a result of this comment.

COMMENT: Nine individuals opposed adoption of the "no-prop zones" portion of the rules, while stating various reasons why they should not be implemented.

AGENCY RESPONSE: The "no-prop zones" were not adopted by the TPWC.

The amendment is adopted under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value, §81.502(c), which authorizes adoption of rules and regulations necessary for the management and protection of scientific areas, and Chapter 13, Subchapter B, which authorizes the commission to adopt regulations governing state scientific areas.

*§57.921.Redfish Bay State Scientific Area.*

(a) Purpose: The Redfish Bay State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.

(b) Term: July 1, 2005 through June 30, 2010.

(c) Boundaries:

(1) 27 59.538N; 097 3.858W (Northern extremity of island forming northern boundary of Estes Cove);

(2) 27 59.232N; 097 4.434W (Intersection of Gulf Intracoastal Waterway (GIWW) and Mouth of Cove Harbor);

(3) 27 55.986N; 097 6.804W (GIWW at Rocky Ridge);

(4) 27 53.880N; 097 8.088W (intersection of GIWW and Aransas Pass Shrimp Boat Channel);

(5) 27 53.058N; 097 8.502W (Intersection of GIWW and Brown and Root Channel);

(6) 27 52.32N; 097 9.486W (Intersection of GIWW and mouth of Redfish Bay Terminal);

(7) 27 49.483N; 097 11.255W (A point near the southern extremity of Dagger Island where the Corpus Christi Ship Channel and the GIWW intersect);

- (8) 27 50.489N; 097 6.619W (A point north of the southwest arm of Harbor Island);
- (9) 27 50.613N; 097 6.614W (A point northwest of the previous point , north of the southwest arm of Harbor Island);
- (10) 27 50.860N; 097 5.315W (A point north of the southeast portion of Harbor Island);
- (11) 27 50.439N; 097 4.841W (A point in the Corpus Christi Channel southeast of Harbor Island);
- (12) 27 50.745 N; 097 3.66 W (A point on Harbor Island at the intersection of Aransas Shrimp Boat Channel and Corpus Christi Ship Channel);
- (13) 27 52.420 N; 097 2.470 W (A point in Lydia Ann Channel);
- (14) 27 55.020 N; 097 03.460 W (East of the mouth of Corpus Christi Bayou).

(d) No person may move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department to delineate boundaries of the Redfish Bay State Scientific Area or to designate specific zones within the area.

(e) This subsection is effective May 1, 2006.

(1) In this section, "seagrass plant" means individuals from the following marine flowering plant species: Clover Grass (*Halophila engelmanni*), Manatee Grass (*Syringodium filiformis*), Shoalgrass (*Halodule beaudettei*), Turtle Grass (*Thalassia testudinum*), and Widgeon Grass (*Ruppia maritima*).

(2) Within the Redfish Bay State Scientific Area, no person shall cause or allow any rooted seagrass plant to be uprooted or dug out from the bay bottom by a submerged propeller, except as may be permitted by a coastal lease issued by the Texas General Land Office or otherwise permitted under state law.

(3) Notwithstanding paragraph (2) of this subsection, it is not a violation to:

(A) anchor a vessel within the Redfish Bay State Scientific Area; or.

(B) use electric trolling motors within the Redfish Bay State Scientific Area.

(f) The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2006.

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Ann Bright

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Texas Parks and Wildlife Department

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