

ZEBRA MUSSEL CONTROL
EMERGENCY ADOPTION PREAMBLE

1. Introduction.

The Texas Parks and Wildlife Commission adopts, on an emergency basis, an amendment to §57.972, concerning General Rules. The emergency action adds Lake Ray Roberts and Lake Lewisville to the list of water bodies under special regulations intended to control the spread of zebra mussels (*Dreissena polymorpha*).

The department earlier this year amended §57.972 to implement special regulations to control the spread of zebra mussels from the Red River and Lake Lavon (37 TexReg 3602). Under ordinary circumstances, the department would consider any person in possession of zebra mussels (including veligers) to be in violation of Chapter 57, Subchapter A, which prohibits the possession of exotic aquatic shellfish, including zebra mussels. The special regulation provides that the department will not consider a person in possession of veligers to be in violation of the exotic species rules, provided all live wells, bilges, and other receptacles or systems capable of retaining or holding water as a consequence of being immersed in a waterbody have been completely drained prior to the use of a public roadway. The rule also provided that a person traveling on a public roadway via the most direct route to another access point located on the same body of water would not be required to drain or empty water. The emergency action would extend the applicability of the current regulation to all impounded and tributary waters of the Elm Fork of the Trinity River above the Lake Lewisville dam. Zebra mussels were confirmed in Lake Ray Roberts on July 17, 2012 and in the Elm Fork of the Trinity River upstream of Lake Lewisville on July 18, 2012.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is considered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s and within ten years had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems.

Zebra mussels live and feed in many different aquatic habitats, breed prolifically, and cannot be controlled by natural predators. Adult zebra mussels colonize all types of living and non-living surfaces including boats, water-intake pipes, buoys, docks, piers, plants, and slow moving animals such as native clams, crayfish, and turtles. The U.S. Fish and Wildlife Service has estimated the potential economic impact of zebra mussels to be in the billions of dollars.

Zebra mussels affect natural ecosystems both directly and indirectly. The greatest direct impact relates to the mussel's feeding behavior. Zebra mussels are filter feeders and process up to one liter of water per day/mussel. During this process, every particle in the water column is removed and either eaten by the mussels or coated in mucus and ejected. Unfortunately, the material removed from the water consists of other live animals and algae that supply food for larval fish and other invertebrates. In response to this changing food supply, indigenous populations of some animals decline and food webs are disturbed or eliminated. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

What makes zebra mussels particularly difficult to control is that they have a free-floating, microscopic larval stage called a veliger. Because young zebra mussels are so small, they are spread easily by water currents and can drift for miles before settling. After settling, the mussels attach to hard objects and remain stationary as they grow. They often attach to objects involved in human activities, such as boats and boat trailers, and are inadvertently moved from one water body to another by people. Any water collected from waterbodies where zebra mussels are present could contain veligers; thus, water transported from waterbodies with known zebra mussel populations is a vector for the spread of zebra mussels.

For these reasons, the Executive Director of the Texas Parks and Wildlife Department finds that zebra mussels present an immediate danger to species of wildlife regulated by the department (specifically, all indigenous aquatic species whose food supply and/or habitat quality could be altered by zebra mussels, which includes game and nongame fish, nongame aquatic wildlife such as turtles, and mussels). The need to prevent the spread of zebra mussels from Lake Ray Roberts and Lake Lewisville to additional impoundments and drainages creates an imperative necessity to engage in

emergency rulemaking. The Executive Director also finds that due to the potential for the rapid spread of zebra mussels, it is necessary to adopt the rules with fewer than 30 days notice. As a result, the emergency rules will take effect immediately.

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which provides that if the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by the department, the commission or the executive director may adopt emergency rules as provided by Government Code, §2001.034. This rule will continue for no more than 120 days from the date this notice is filed with the *Texas Register*. It is the intent of the department to also propose a non-emergency rule addressing the subject matter of this rule, pursuant to the provisions of Chapter 2001 that, if adopted, would go into effect before the expiration of the emergency rule.

2. Text.

§57.972. General Rules.

- (a) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.
- (b) Game fish may be taken only by pole and line, except as provided in this subchapter.
- (c) The bag and possession limits set forth in this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Subchapter C of this chapter (relating to Introduction of Fish, Shellfish, and Aquatic Plants).
- (d) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.
- (e) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish

(Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(f) There is no open season on porpoises, dolphins (mammals), whales, or sawfishes (*Pristis perotteti*).

(g) It is unlawful:

(1) for any person to take or attempt to take fish by any means, or at any time or place, other than as permitted under this subchapter;

(2) for any person to possess fish within a protected length limit or in greater numbers than as permitted under this subchapter;

(3) for any person, while fishing on or in public waters, to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(4) for any person to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(5) for any person to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this paragraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source;

(6) for any person to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water (salt water or fresh water) that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(7) for any person to use any vessel to harass fish;

(8) for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to

produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish;

(9) for any person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas;

(10) for any person to knowingly take or possess a diamondback terrapin (*Malaclemys terrapin*) or their eggs unless the person is authorized to do so under a permit issued under Chapter 69, Subchapter J of this title (relating to Scientific, Educational, and Zoological Permits);

(11) for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass;

(12) for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail; or

(13) for any person to:

(A) purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006;

(B) use the same finfish tag for the purpose of tagging more than one finfish;

(C) use a finfish tag in the name of another person;

(D) use a tag on a finfish for which another tag is specifically required;

(E) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(F) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or saltwater stamp holder;

(G) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or saltwater stamp holder;

(H) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(I) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(h) Harvest Log.

(1) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(2) A person who takes a red drum in excess of the maximum length limit shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(i) Alternative Licensing System.

(1) The requirements of this title that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for red drum. A properly executed wildlife resource document must accompany any red drum in excess of maximum size limits until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(2) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

(j) No person may leave a body of water listed in this subsection while in possession of a live nongame fish:

(1) the Red River below Lake Texoma downstream to the Texas/Arkansas border;

- (2) Big Cypress Bayou downstream of Ferrell's Bridge Dam on Lake O' the Pines, including the Texas waters of Caddo Lake; and
- (3) the Sulphur River downstream of the Lake Wright Patman dam to the Texas/Arkansas border.

(k) A person who leaves a water body listed in this subsection while in possession of a harmful or potentially harmful species listed in §57.111 of this title (relating to Definitions) that is invisible to the unaided human eye is not in violation of §57.112 of this title (relating to General Rules), provided that:

- (1) all live wells, bilges, and other similar receptacles and systems that are capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway; or
- (2) the person is travelling on a public roadway via the most direct route to another access point located on the same body of water.
- (3) This subsection applies to the following bodies of water:

(A) the Red River from the I-44 bridge in Wichita County to the Texas/Arkansas border, including the Texas waters of Lake Texoma; [and]

(B) Lake Lavon; and

(D) all impounded and tributary waters of the Elm Fork of the Trinity River above the Lewisville Dam, including Lake Lewisville and Lake Ray Roberts.

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

Issued in Austin, Texas, on