

PARKS AND WILDLIFE CODE

TITLE 5. WILDLIFE AND PLANT CONSERVATION

SUBTITLE E. WILDLIFE MANAGEMENT AREAS, SANCTUARIES, AND PRESERVES

CHAPTER 83. FEDERAL-STATE AGREEMENTS

SUBCHAPTER A. FEDERAL-STATE AGREEMENTS

Sec. 83.001. FISH RESTORATION PROJECTS. The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 83.002. COMMERCIAL FISHERIES RESEARCH. (a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 56, eff. Sept. 1, 1993.

Sec. 83.003. WILDLIFE-RESTORATION PROJECTS. The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall

aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated under the act by the United States secretary of the interior.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2003, 78th Leg., ch. 536, Sec. 1, eff. June 20, 2003.

Sec. 83.004. MIGRATORY GAME BIRD RESERVATIONS. (a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 83.005. CONSERVATION AGREEMENTS FOR PROTECTION OF SPECIES. (a) Any conservation agreement between a political subdivision of the state and the United States Department of the Interior must be developed in consultation with the Parks and Wildlife Department.

(b) In this section, "conservation agreement" includes an agreement between the state or a political subdivision of the state and the United States Department of the Interior under the federal act that does not relate to a federal permit as defined by Section 83.011.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. HABITAT PROTECTION BY POLITICAL SUBDIVISIONS

Sec. 83.011. DEFINITIONS. In this chapter:

(1) "Biological advisory team" means three or more professional biologists retained to provide biological guidance to plan participants.

(2) "Endangered species" means a species listed by the United States Department of the Interior as endangered or threatened under the federal act.

(3) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.

(4) "Federal permit" means a permit issued under Section 7 or 10(a) of the federal act.

(5) "Governmental entity" means a political subdivision of the state, including:

(A) a municipality; and

(B) a county.

(6) "Habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit:

(A) that does not require the regulation of non-habitat preserve land; and

(B) for which the land to be used as habitat preserves, at the time of application for the federal permit:

(i) is owned by a plan participant; or

(ii) is subject to a contract agreed to by each owner of land in the habitat preserve or proposed habitat preserve providing that all or part of the owner's land be used or managed as a habitat preserve.

(7) "Habitat preserve" means land set aside or managed for the protection of endangered species under a federal permit.

(8) "Harm" means significant habitat modification or degradation that, by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, or migrating, is the proximate cause of:

(A) the death of a member of an endangered species; or

(B) the physical injury of a member of an endangered species.

(9) "Land development standards" means rules or ordinances regulating the development of land, including impervious cover limitations, building setbacks, zoning, floor-to-area ratios, building coverage, water quality controls and regulations, landscaping, building height, development setbacks, compatibility standards, traffic analyses, driveway cuts, impact fees, and transfer of development rights. The term does not include fire or

building codes or restrictions on the withdrawal of groundwater.

(10) "Mitigation fee" means a charge or in-kind contribution that is based on the amount of harm and is paid or provided to a plan participant in exchange for mitigation credit to be used to comply with the federal act.

(11) "Plan participant" means a governmental entity that develops, attempts to develop, adopts, approves, or participates in a regional habitat conservation plan or habitat conservation plan.

(12) "Regional habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit that requires the acquisition or regulation of land or interests in land not owned by a plan participant at the time of application for a federal permit.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.012. PURPOSE. The purpose of this subchapter is to:

(1) establish the requirements for and authority of a governmental entity to regulate wildlife through the development, financing, and implementation of a regional habitat conservation plan or a habitat conservation plan;

(2) encourage governmental entities to use the authority under this subchapter to develop and implement habitat conservation plans instead of regional habitat conservation plans;

(3) coordinate, to the greatest extent practicable, habitat preserves with lands set aside or to be set aside under local, state, or federal laws or regulations;

(4) prohibit plan participants from devaluing land containing endangered species or endangered species habitat through plan participant actions; and

(5) require plan participants of existing regional habitat conservation plans to comply with the requirements of this subchapter so that existing regional habitat conservation plans become habitat conservation plans as quickly as possible.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.013. AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION. (a) The department or a political subdivision may participate in the study and preparation for and creation of a habitat conservation plan.

(b) Subject to this subchapter, the department or a political subdivision may participate in the study and preparation for and creation of a regional habitat conservation plan.

(c) Subject to this subchapter, a political subdivision, including a municipality acting within its corporate limits or its extraterritorial jurisdiction, in order to facilitate the creation of a habitat preserve and the setting aside of land to protect a species protected under a conservation agreement, may:

- (1) purchase land, easements, or leases; and
- (2) enter into an agreement with a landowner to establish alternative land development standards for a tract of land.

(d) A plan participant may accept a federal permit in conjunction with a regional habitat conservation plan only if the qualified voters of a plan participant have authorized the issuance of bonds or other debt financing in an amount equal to the estimated cost of acquiring all land for habitat preserves within the time required by this subchapter or the plan participant has demonstrated that adequate sources of funding exist to acquire all land for habitat preserves within the time required by this subchapter.

(e) A governmental entity may not implement a regional habitat conservation plan or apply for a federal permit in conjunction with a regional habitat conservation plan if:

- (1) the federal act is repealed; or
- (2) the endangered species that are subject to conservation and protection under the federal permit cease to be listed as endangered or threatened by the United States Department of the Interior.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [388](#), Sec. 1, eff. June 17, 2005.

Sec. 83.014. LIMITATION OF POWERS. (a) A governmental entity may not impose a regulation, rule, or ordinance related to endangered species unless the regulation, rule, or ordinance is necessary to implement a habitat conservation plan or regional habitat conservation plan for which

the governmental entity was issued a federal permit. This subsection does not limit the authority of a governmental entity to adopt a rule, regulation, or ordinance restricting the withdrawal of groundwater.

(b) A governmental entity may not discriminate against a permit application, permit approval, or the provision of utility service for land that:

(1) is or has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or habitat conservation plan;

(2) is designated as critical habitat under the federal act; or

(3) has endangered species or endangered species habitat.

(c) A governmental entity may not deny or limit available water or wastewater service to land in the service area of the governmental entity that has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or in a habitat conservation plan. For purposes of this subsection, a governmental entity may not remove land from its water or wastewater utility service areas after the date established under Section 83.018(b).

(d) A governmental entity may not, as a condition for the issuance of a permit, approval, or service, require a person to:

(1) pay a mitigation fee to a plan participant;

(2) set aside, lease, or convey land as habitat preserve; or

(3) pay a mitigation fee for land set aside or restricted from development under local, state, or federal law or regulation.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.015. BIOLOGICAL REVIEW; CRITERIA. (a) Except as provided by Subsection (f), a regional habitat conservation plan, including any mitigation fee, shall be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan.

(b) Except as provided by Subsection (f), the size of proposed habitat preserves shall be based solely on the amount of harm to the endangered species to be protected in the regional habitat conservation plan.

(c) The plan participants, together with the commission and the landowner members of the citizens advisory committee, shall appoint a biological advisory team. At least one member shall be appointed by the commission and one member by the landowner members of the citizens advisory

committee. The member appointed by the commission serves as presiding officer of the team. The team shall assist in:

- (1) the calculation of harm to the endangered species; and
- (2) the sizing and configuring of the habitat preserves.

(d) Meetings of the biological advisory team are subject to the open meetings law, Chapter 551, Government Code, and all work product of the biological advisory team is subject to the open records law, Chapter 552, Government Code.

(e) For purposes of this section, "recovery criteria" means the criteria developed under a recovery plan in accordance with the federal act.

(f) After notice and hearing by the plan participants, the following may be based partly on any recovery criteria applicable to each endangered species to be protected under the plan:

- (1) a regional habitat conservation plan, including any mitigation fee; or
- (2) the size of proposed habitat preserves.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [388](#), Sec. 2, eff. June 17, 2005.

Sec. 83.016. CITIZENS ADVISORY COMMITTEE. (a) The plan participants shall appoint a citizens advisory committee to assist in preparing the regional habitat conservation plan and the application for a federal permit.

(b) At least four members or 33 percent of the citizens advisory committee, whichever is greater in number, must own undeveloped land or land in agricultural use in the regional habitat conservation plan area. A landowner member may not be an employee or elected official of a plan participant or any other local, state, or federal governmental entity.

(c) Not later than the 90th day after the initial identification of the proposed preserve system for the regional habitat conservation plan, the plan participants shall appoint one additional landowner, who owns land within the proposed habitat preserve system, to the citizens advisory committee. The additional landowner member must comply with Subsection (b).

(d) The commission shall appoint one representative to the citizens advisory committee. The commission's representative is a voting member of the committee.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.017. DEVELOPMENT OF REGIONAL HABITAT CONSERVATION

PLAN. (a) Meetings of the citizens advisory committee and meetings of the plan participants regarding planning, development, and implementation of the regional habitat conservation plan are subject to the open meetings law, Chapter 551, Government Code.

(b) All data, reports, and other information regarding the regional habitat conservation plan, including field notes, lab notes, and any other information relied on by the biological advisory team, are subject to the open records law, Chapter 552, Government Code.

(c) Not later than the 60th day after the plan participants' initial identification of the proposed habitat preserve system for the federal permit, the plan participants shall notify in writing each owner of land identified by the plan participants as habitat preserve or potential habitat preserve. The plan participants shall use the county tax rolls to identify the owners of land identified as habitat preserve or potential habitat preserve. The written notice must include at least the following information:

(1) the tax identification and parcel numbers;

(2) the owner's name and address;

(3) an explanation of the designation or possible designation of the tract as habitat preserve or potential habitat preserve under the regional habitat conservation plan;

(4) identification of the citizens advisory committee members, including telephone numbers, addresses, and the group that each committee member represents;

(5) identification of employees or agents of plan participants who can provide information about the regional habitat conservation plan;

(6) the date of the next citizens advisory committee meeting or plan participant meeting regarding the regional habitat conservation plan; and

(7) a description of the status of the regional habitat conservation plan.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [388](#), Sec. 3, eff. June 17, 2005.

Sec. 83.018. PRESERVE ACQUISITION. (a) The designation of a tract of land as habitat preserve or potential habitat preserve or the presence of endangered species or endangered species habitat may not be considered in determining the fair market value of the property for acquisition as a habitat preserve.

(b) A change to plan participant rules and regulations, including land development standards, that occurs after the earliest date that the biological advisory team, citizens advisory committee, or plan participant initially identifies a tract of land as habitat preserve or potential habitat preserve may not be considered in determining the fair market value of the land for acquisition as a habitat preserve.

(c) Except as provided by Subsection (d), the plan participants shall make offers based on fair market value to the landowners for the acquisition of fee simple or other interest in land designated in the regional habitat conservation plan as proposed habitat preserve not later than four years after the issuance of the federal permit or six years after the initial application for the federal permit, whichever is later. Except as provided by Subsection (e), acquisition of all habitat preserves designated as proposed habitat preserves in the regional habitat conservation plan must be completed not later than the sixth anniversary of the date on which the federal permit was issued. A plan participant subject to this subsection who does not meet an applicable deadline shall file an application to amend the federal permit to remove the nonacquired habitat preserve land from the regional habitat conservation plan as a habitat preserve not later than the 60th day after the expiration of the applicable deadline.

(d) If plan participants have not designated a landowner's land as proposed habitat preserve in a regional habitat conservation plan before the date on which the federal permit is issued but designate the land as proposed habitat preserve in a regional habitat conservation plan on or after that date, plan participants shall make an offer to the landowner based on fair market value for the acquisition of fee simple or other interest in the land not later than the fourth anniversary of the date on which the land is identified or designated as proposed habitat preserve.

(e) Plan participants must complete acquisition of land subject to Subsection (d) as habitat preserves not later than the fifth anniversary of the date on which the plan participants identified or designated the land as proposed habitat preserves.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [388](#), Sec. 4, eff. June 17, 2005.

Sec. 83.019. NOTICE AND HEARING REQUIREMENTS. (a) A plan participant must comply with the notice and hearing requirements of this section before adopting any regional habitat conservation plan, plan amendment, ordinance, budget, fee schedule, rule, regulation, or order to implement this subchapter.

(b) The plan participant, individually or through interlocal contract, shall publish a notice, including a brief description of the proposed action and the time and place of a public hearing on the proposed action, not later than the 30th day before the public hearing in the newspaper of largest general circulation in the county in which the plan participant proposing the action is located.

(c) A public hearing on the proposed action shall be held at the time and place specified in the notice.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.020. GRIEVANCE WITH DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. (a) An individual appointed to a citizens advisory committee under Section 83.016(b) may file a grievance with the commission regarding the development of a regional habitat conservation plan under this subchapter if the individual believes that the plan is being developed in violation of this subchapter. The individual filing the grievance must have been a member of the citizens advisory committee for the plan named in the grievance.

(b) A grievance must be filed under this section not later than the 60th day after the date the plan is approved by the plan participants. The grievance must cite each provision of this subchapter alleged to have been violated during the development of the plan and must describe each act alleged to have violated this subchapter.

(c) The commission shall review a grievance filed under this section to determine whether the plan is being developed in compliance with this subchapter. If after reviewing the grievance the commission finds that the grievance has no merit, the commission may dismiss the grievance. If the

commission finds that the grievance does have merit, the commission must hold a public hearing in accordance with Chapter 551, Government Code. The commission shall take testimony from each plan participant and from the individual filing the grievance. On conclusion of testimony, the commission shall vote on whether to approve or dismiss the grievance or to schedule a public hearing not later than the 30th day after the conclusion of the initial public hearing and to vote after the conclusion of that hearing whether to approve or dismiss the grievance.

(d) If the commission approves the grievance, the commission shall instruct the plan participant or participants to amend the plan so that it will comply with this subchapter.

(e) Repealed by Acts 2005, 79th Leg., Ch. 388, Sec. 6, eff. June 17, 2005.

(f) If an individual files a grievance under this section, that individual may not file a subsequent grievance.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [388](#), Sec. 5, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. [388](#), Sec. 6, eff. June 17, 2005.