

## CHAPTER 741

H.B. No. 2052

## AN ACT

relating to licensing for the sale and purchase of mussels and clams; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 78, Parks and Wildlife Code, is amended to read as follows:

CHAPTER 78. ~~[CLAMS,] MUSSELS AND CLAMS~~  
~~[, SPONGE CRABS, AND BLUE CRABS]~~

~~[SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS]~~

Sec. 78.001. *DEFINITIONS. In this chapter:*

- (1) "Commercial purposes" includes sale, barter, or exchange, or any other commercial use.
- (2) "Mussels and clams" includes all freshwater and marine bivalve mollusks except species covered under other chapters of this code.
- (3) "Nonresident" has the meaning assigned under Section 47.001 of this code.
- (4) "Soft tissue" means mussel and clam body parts, exclusive of the shell, and pearls.
- (5) "Resident" has the meaning assigned under Section 47.001 of this code.

Sec. 78.002. *LICENSE REQUIRED; FEES. (a) No person may take any mussels, clams, ~~[or naiads]~~ or their shells from the public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.*

~~[Sec. 78.002. LICENSE FORM; EXPIRATION.]~~

(b) The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. ~~[The license expires one year after the date of issuance.]~~

(c) The license fee for a resident commercial mussel and clam fisherman's license is \$30 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident commercial mussel and clam fisherman's license is \$800 or an amount set by the commission, whichever amount is more.

(e) The department may grant permission to use a dredge in a designated area for an additional fee of \$30 or an amount set by the commission, whichever amount is more.

(f) A commercial mussel and clam fisherman's license expires on August 31 following the date on which the license was issued, regardless of the date on which the license was issued.

Sec. 78.003. *SHELL BUYER LICENSE ~~[LICENSE FEE]~~. (a) No person may purchase for commercial use mussel or clam shells that have been taken from the public water of the state without a resident or nonresident shell buyer's license, except as allowed under Section 78.005 of this code.*

(b) The license form shall be prescribed by the department.

(c) The license fee for a resident shell buyer's license is \$100 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident shell buyer's license is \$1,500 or an amount set by the commission, whichever amount is more.

(e) A shell buyer's license expires on August 31 following the date on which the license was issued, regardless of the date on which the license was issued.

(f) The holder of a shell buyer's license shall file with the department a report of activities performed under the license in a form and manner specified by the department [~~The license fee is \$20, payable to the department, with an additional \$45 fee for permission to use a dredge. In lieu of those fees, the commission may set the fees in greater amounts.~~].

Sec. 78.004. **EXPORT FEE.** The commission may charge a fee of three cents a pound or an amount set by the commission, whichever amount is more, for mussels or clams or mussel or clam shells that are harvested from the public water of the state for export. Funds collected from shell export fees may be used only for research and mitigation and management activities associated with mussels and clams.

Sec. 78.005. **EXEMPTION FOR PERSONAL USE AND CONSUMPTION.** A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Section 46.002 of this code may take or harvest from the public water of the state, for personal use and consumption only, not more than 25 pounds a day of whole mussels and clams, including shell and soft tissue, or 12 pounds a day of mussel and clam shells.

Sec. 78.006. **REGULATION OF TAKING, POSSESSION, PURCHASE, AND SALE OF MUSSELS AND CLAMS.** (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of mussels and clams. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

- (1) measures to prevent the depletion of mussels and clams;
- (2) measures based on the best scientific information available;
- (3) measures to manage mussels and clams;
- (4) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and
- (5) measures that will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking mussels and clams.

(d) A proclamation of the commission under this section prevails over a proclamation of the commission issued under Chapter 61 of this code.

(e) A proclamation of the commission under this section does not prevail over:

- (1) an order, rule, or regulation adopted by the commissioner of health; or
- (2) a proclamation of the commission issued under Chapter 66 of this code.

Sec. 78.007 [78.004]. **UNLAWFUL ACTS.** A person who violates the provisions of this chapter [~~Section 78.001 of this code~~] commits a Class C Parks and Wildlife Code misdemeanor.

**SECTION 2.** This Act takes effect September 1, 1993, and applies to all mussels, clams, and their shells taken from the public water of the state on or after that date.

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

**Ch. 741, § 3**

**73rd LEGISLATURE—REGULAR SESSION**

Passed by the House on April 30, 1993, by a non-record vote; passed by the Senate on May 22, 1993, by a viva-voce vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.