



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

October 15, 1975

The Honorable Clayton T. Garrison
Executive Director
Texas Parks and Wildlife Department
John H. Reagan Building
Austin, Texas 78701

Opinion No. H-717

Re: Status of regulatory
authority of Parks and
Wildlife Department in
several counties with
respect to fish, aquatic
life and marine animals.

Dear Mr. Garrison:

You have requested our opinion concerning the regulatory authority of the Parks and Wildlife Department regarding fish, aquatic life and marine animals in Aransas, Brazoria, Cameron, Calhoun, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange and Refugio counties. You note that the special game laws governing these counties were repealed by section 2 of House Bill 1186 of the 64th Legislature, Acts 1975, 64th Leg., ch. 545, p. 1405 at 1804, which is the Parks and Wildlife Code.

The Code revised and codified the laws pertaining to parks and wildlife. Section 1 of House Bill 1186 contains the new Code and section 2 repeals various laws including all special laws cited in article 978j (note), Penal Auxiliary Laws, other than those excepted by section 2(c). Section 1.001 of the Code and section 3 of the Bill provide that the purpose of the codification is not to make substantive changes in the law. Thus, you have asked what the effect is of the repeal of the special laws pertaining to these counties.

Section 1.001(b)(3) of the Code provides that one purpose of the codification is to:

eliminat[e] repealed, duplicative, unconstitutional,
expired, executed, and other ineffective provisions.

...

In our view the Legislature understood the special laws which were repealed to be ineffective in light of sections 1, 1A and 18 of the Uniform Wildlife Act, V. T. C. S., art. 978j-1. Section 1A was added by Acts 1973, 63rd Leg., ch. 220, p. 515, and made the Uniform Wildlife Act applicable to fish, aquatic life, and

marine animals other than shrimp and oysters in all coastal waters of the State except in Harris, Galveston, Chambers, and Victoria Counties. Section 1 made the Act generally applicable to all but four counties involved in your request. Thus the Uniform Wildlife Act was applicable to all fish, aquatic life, and marine animals in these counties except shrimp and oysters in Kenedy, Kleberg, Nueces, and Refugio Counties.

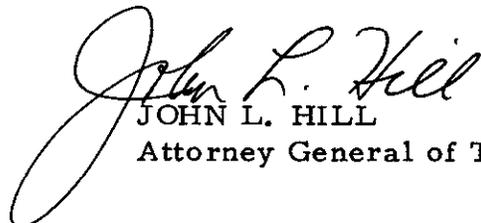
Section 18 of article 978j-1 provides that the Parks and Wildlife Commission may promulgate regulations and that all game laws, special or general, shall remain in effect until such regulations are issued. Thus, these special laws would have been ineffective upon the issuance of regulations by the Commission. There is therefore no necessary conflict between the repeal of these special laws and the expressed purpose of House Bill 1186.

Section 61.052 of the Code, formerly article 678j-1, section 2, authorizes the Commission to regulate the time, place, means, manner, and method by which wildlife may be captured. Chapters 101-354 of the Code contain special laws governing the applicability of the Commission's regulatory authority to particular counties. The repealed special laws are no longer of any effect whatsoever. Accordingly, in our opinion the Parks and Wildlife Commission has full regulatory authority over fish, aquatic life, and marine animals in the subject counties except as limited by the applicable special provisions contained in Chapters 101-354 of the Code.

S U M M A R Y

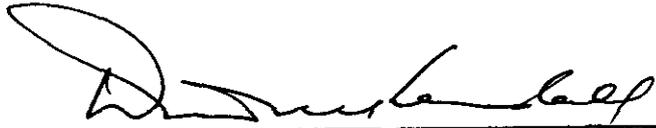
The Parks and Wildlife Commission may exercise its regulatory authority under section 61.052 of the Parks and Wildlife Code in the subject counties except as limited by the applicable special provisions contained in Chapters 101-354 of the Code.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

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APPROVED:

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DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script, appearing to read "C. Robert Heath", written over a horizontal line.

C. ROBERT HEATH, Chairman
Opinion Committee