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OPEN RECORDS DIVISION

The Honorable Greg Abbott
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Re: Request for opinion regarding use of crab traps in coastal waters.

Dear General Abbott:

Pursuant to Section 402.042 of the Texas Government Code, the Texas Parks and Wildlife Department (TPWD) requests an opinion from your office regarding the use of crab traps in coastal waters. Specifically, when privately-owned land underlies tidal water, must a licensed crab fisherman obtain permission of the owner of the submerged land in order to lawfully fish crab traps at that location?

Factual Background

Commercial crabbing is a long-standing, economically important industry in Texas. TPWD issues resident and non-resident commercial crab fishermen's licenses to qualified applicants. Non-commercial crabbing is a popular recreational activity, which can be conducted with a fishing license and saltwater stamp.

Commercial crabbers typically capture crabs by setting out baited traps in shallow waters where crabs are known to live. The traps, which rest on the bottom, are periodically checked, and lawful-sized crabs are removed and sold. Traps are also a lawful means of taking crabs for non-commercial purposes. The traps can often be set and then retrieved without leaving the boat.

In some coastal areas, private land underlies the tidal public waters as a result of dredging, subsidence, land grants, and/or other causes. TPWD believes that a crab fisherman need not obtain landowner permission to fish crab traps in public water.

Legal Background

All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of the state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters. TEX. PARKS & WILD. CODE §1.011(c). TPWD is required to regulate the taking and conservation of crabs in accordance with the authority vested in TPWD. TEX. PARKS & WILD. CODE §1.011(d).

The Wildlife Conservation Act of 1983 (the Act), now codified as Parks and Wildlife Code Chapter 61, places on the Texas Parks and Wildlife Commission (the Commission) the duty to regulate the taking of wildlife resources. Wildlife resources include aquatic animal life such as crabs. TEX. PARKS & WILD. CODE §61.005 (1). The commission has also implemented a crab license management program, as required by Parks and Wildlife Code Chapter 78, Subchapter B.

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.



Take a kid
hunting or fishing



Visit a state park
or historic site

The Honorable Greg Abbott
November 14, 2003
Page 2 of 3

The regulations of the Commission governing use of crab traps in public water are found at Title 31, Texas Administrative Code, §65.78. Those regulations provide that “[t]here are no places closed for the taking of crabs, except as listed within this section.” 31 Tex. Admin. Code §65.78(d).

According to Chapter 61, Parks and Wildlife Code, no one may hunt or catch by any means or method a wildlife resource at any place covered by Chapter 61 unless the owner of the land or water, or the owner’s agent, consents. Violation of this statute is a crime. TEX. PARKS & WILD. CODE §61.022. Chapter 61 applies to every county, place, and wildlife resource in this state, unless the Parks and Wildlife Code provides otherwise. TEX. PARKS & WILD. CODE §61.003. The water in question is owned by the state of Texas. TEX. WATER CODE §11.021.

Application of Law to Facts

It is well established that waters which are connected to, and ebb and flow with the tides in the Gulf of Mexico are public waters, subject to the state fishing and boating laws. *See, Op. Tex. Att’y Gen. No. DM-169 (1992)*. Your office has acknowledged the public’s general right to fish in public waters, subject to regulation by the state. *Op. Tex. Att’y Gen. No. M-1210 (1972)*. A person who owns land submerged by coastal waters does not have the right to regulate boating, fishing from a boat, or hunting from a boat on public waters. *Op. Tex. Att’y Gen. No. DM-169 (1992)*. In fact, a person who attempted to interfere with these activities might be guilty of the crime of harassment. TEX. PARKS & WILD. CODE §62.0125. Your office has also concluded that a person boating in public waters over submerged private property who beaches the boat, anchors it, or ties it off without leaving the boat has not entered onto the submerged private property. *Op. Tex. Att’y Gen. No. LO-97-079 (1997)*.

Although none of the opinions cited above directly addressed Section 61.022, it seems clear that as a general principle, a person fishing from a boat in public water over submerged private land need not obtain consent from the owner of the submerged land. We see nothing in the opinions issued by your office, or the authorities cited therein, which leads us to believe that Section 61.022 applies to crabbing differently than other activities involving the catching of aquatic animal life.

It could be that a crab fisherman *is* required to obtain permission from the owner of the submerged land because crabbing involves use of the bottom, unlike other forms of fishing. We believe that argument fails in light of *North American Dredging Co. v. Jennings*, 184 S.W. 287 (Tex. Civ. App. - Galveston 1916, no writ). In that case, the land in question had been granted to individuals, and lay under an inlet or small bay, forming a part of the tidewaters of Galveston Bay and the Gulf of Mexico. The court held that “the grant by the sovereignty of the title to the land under navigable waters does not carry with it the grant to the exclusive right of fishing in the waters covering the grant, unless the grant expressly includes such right.” This case is important because it involved a dispute over the taking of oysters, and the court treated the taking of oysters as a form of fishing. Oysters are taken by dragging a dredge behind a boat, or digging with hand tools. This disturbs the bottom much more than does crabbing and is arguably a more invasive use of the submerged land. It seems highly unlikely that the *North American*

The Honorable Greg Abbott
November 14, 2003
Page 3 of 3

Dredging court would have ruled differently had the dispute been about the taking of crabs instead of oysters.

Crabs in coastal water are a publicly owned resource, as are the fish, shrimp, and other forms of marine life in those waters. TPWD is authorized to regulate and license crabbing to the same extent TPWD is authorized to regulate and license fishing. Moreover, a temporary, limited use of the bottom incidental to fishing is not unique to crabbing. For example, weighting a baited hook and line to cause it to sink and rest on the bottom is a common practice to catch bottom-dwelling fish. Other fishing techniques, such as gigging flounder and trawling for shrimp involve using the bottom to some degree.

It may also be helpful to review the oyster laws (such as those found in Chapter 76, Texas Parks and Wildlife Code). The Texas Legislature has expressly provided for some riparian rights pertaining to the production of oysters. TEX. PARKS & WILD. CODE §§76.004, 76.005. The Texas Legislature has also provided for the establishment of private oyster beds in public waters, in which the private owner has the exclusive right to take oysters. TEX. PARKS & WILD. CODE, Chapter 76, Subchapter B. (In *North American Dredging*, the court noted that the landowner had failed to take advantage of the provisions of the statute.) There are no similar provisions, which would allow a landowner to obtain an exclusive right to take crabs from public water.

We do not believe the intent of the Texas Legislature was to allow a private landowner to regulate the taking of some types of aquatic animal life from a boat in public waters, but not others. Likewise, we do not believe it was the intent of the Texas Legislature to allow a private landowner to regulate the types of gear or techniques used by a saltwater fisherman in a boat. Therefore, Section 61.022 should not be read to require a crab fisherman to obtain consent from the owner of the submerged land before setting out crab traps.

Request for Opinion

Therefore, TPWD requests an opinion from your office regarding whether a licensed crab fisherman must obtain permission of the owner of submerged land in order to lawfully fish crab traps at that location.

Your consideration of this matter is appreciated. If you have any questions or comments, please do not hesitate to contact Ann Bright, TPWD General Counsel, at (512) 389-8558 or by email at

Sincerely,



Robert L. Cook
Executive Director

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