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THE GAME,  
FISH AND OYSTER LAWS

OF THE

STATE OF TEXAS

CODIFIED SEPTEMBER 1st, 1913

W. G. STERETT, Commissioner

J. D. COX, Chief Deputy



AUSTIN, TEXAS

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THE STATE OF TEXAS

COUNTY OF [illegible]

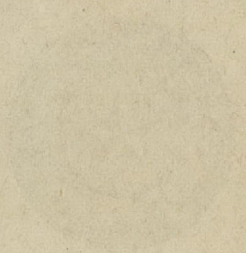
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STATE OF TEXAS

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# GAME, FISH AND OYSTER LAWS

## STATE OF TEXAS

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### THE CREATION OF THE OFFICE OF GAME, FISH AND OYSTER COMMISSIONER.

ARTICLE 3974. The office of Game, Fish and Oyster Commissioner is hereby created, and the Governor is hereby authorized to appoint a competent person as Game, Fish and Oyster Commissioner for the State of Texas. (Act 1895, p. 70.)

ARTICLE 3975. *Qualifications of.*—The person appointed to the office of Game, Fish and Oyster Commissioner shall be a citizen of the United States and a resident of the State of Texas. He must be familiar with the habits of game, fish and oysters and have some knowledge of navigation. (Acts 1899, p. 312. Acts 1895, p. 70.)

ARTICLE 3976. *Office, Where Kept.*—The Game, Fish and Oyster Commissioner shall have his office in the State Capitol in the city of Austin, Texas, during the term of his office, which shall be for two years.

ARTICLE 3977. *Oath and Bond.*—The Game, Fish and Oyster Commissioner shall file with the Secretary of State a good and sufficient bond, to be approved by the

Secretary of State, in the sum of ten thousand dollars, with two or more good and sufficient sureties, conditioned that he will faithfully perform the duties of his office; and he shall take the oath prescribed for sheriffs; and, when he shall have filed said bond and taken said oath, he shall enter upon the duties of said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the State or any person injured until the whole amount has been recovered. (Acts 1895, p. 70.)

ARTICLE 3978. *Seal.*—The said commissioner shall have a seal consisting of a star with five points, together with the words "Game, Fish and Oyster Commissioner of Texas." (Acts 1895, p. 70.)

ARTICLE 3979. *General Duties and Powers.*—The duties of the Game, Fish and Oyster Commissioner are the execution of the game, fish and oyster laws of this State. In the execution of these laws, he shall exercise the power and authority given to sheriff by the laws of this State. (Acts 1895, p. 70. Acts 1905, pp., 128-129.)

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## REGULATIONS PERTAINING TO FISH AND OYSTERS.

ARTICLE 3980. *Public Rivers, etc., Property of State, etc.; Under Jurisdiction of Commissioner, etc.*—All of the public rivers, bayous, lagoons, lakes, bays and inlets in this State and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall be, continue and remain the property of the State of Texas, except so far as their use shall be permitted by the laws of this State. So far as this use shall relate to the fish and oyster industry, the State Game, Fish and Oyster Commissioner shall have jurisdiction and control thereof according to the authority vested in him by the fish and oyster laws of this State. (Acts 1905, p. 129.)

ARTICLE 3981. *Private and Public Oyster Beds Defined.*—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public, and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Game, Fish and Oyster Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. (Acts 1907, p. 236. Acts 1899, p. 314. Acts 1895, p. 70.)

ARTICLE 3982. *Riparian Rights Prescribed.*—Whenever any creek, bayou, lake or cove shall be included within the metes and bonds of any original grant or

location in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou, or cove for gathering, planting, or sowing oysters within the metes and bounds of the official grant or patent of said land. Provided, that the Fish and Oyster Commissioner may require the owner of oysters produced on such lands, when offered for sale to make an affidavit that such oysters were produced on his land. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than 100 yards from the shore,

ARTICLE 3983. *Special Tax on Fish, Terrapin, Oyster, and Shrimp Taken From the Public Coast Waters.*—For the purpose of protecting the fish and improving the natural oyster reefs and protecting both the natural reefs and private oyster beds and to carry out the fish and oyster laws of the State of Texas, and as one of the conditions upon which the State consents to the taking or removing of fish from her waters, or to the fishing or removal of oysters from her natural reefs, or the use and rental of her water bottoms for oyster propagating purposes there shall be and is hereby levied a special tax of one-fifth of one per cent per pound on all fish, turtle, terrapin and shrimp taken for market from the public waters within the jurisdiction of this State and a tax of two cents per barrel on each and every barrel of oysters gathered from the said waters of this State, whether from the natural reefs or private oyster beds for sale or shipment; provided that oysters taken from any waters for bedding purposes shall not be subject to this Act until again taken up for sale or shipment. This special tax shall be paid to the Fish and Oyster Commissioner or his deputy by the persons bringing said fish, turtle, terrapin, shrimp or oysters to market, whether he be the person who

fished said products or his agent before he shall be allowed to sell same or to consign same to any other party for sale, shipment or storage, and the Fish and Oyster Commissioner may fix times of the day at which inspection and permits shall be made and granted. For all purposes mentioned in this title a barrel of oysters shall be deemed and taken to consist of three boxes of oysters of the following dimensions: ten inches wide, by twenty inches long and thirteen and one-half inches deep inside measurement and rounded off to a height of two and one-half inches in center above the top of the box.

ARTICLE 3984. *Registration of Fish Boats, Etc., in Public Waters, Applications, Certificate, Fees, Marking Boats, and Providing Who Shall Fish.*—Any person who is a citizen of the United States wishing to use a boat in catching or taking fish, green turtle, terrapin or shrimp or gathering oysters for market in the public waters of this State, in accordance with the provisions of the fish and oyster laws of this State, shall apply to the Game, Fish and Oyster Commissioner or his deputies for permission to do so. Such applicant will furnish said officer under oath, his name, place of residence, the name and kind of boat to be used by him, together with the number of men to be employed by him, thereupon the officer shall register such boat which register number shall be distinctly painted on each side of the bow of such boat, for which registration he shall pay the said officer one dollar and fifty cents and the said officer shall furnish the applicant with a certificate of such registration.

ARTICLE 3985. *Permit to Sell, With Receipts of Seizure and Sale; Proceeds How Disposed of.*—When the special tax provided for in Article 3983 of this chapter has been paid, it shall be the duty of the Game, Fish and Oyster Commissioner, or his deputy receiving

the tax, to give a receipt for same, together with a permit authorizing the holder thereof to dispose of the products on which the special tax has been paid. A duplicate of which receipt and permit shall be retained in the office of said commissioner issuing same. This permit shall be given by the person delivering said products to the person, firm or corporation to whom the products mentioned therein shall be sold or delivered for sale, shipment or storage. Any fish, turtle, terrapin, shrimp, or oysters found in the possession of any packer, buyer or commission man, for the disposition of which he can not show the State's permit, shall continue the property of the State, and may be seized by the Game, Fish and Oyster Commissioner, or any of his deputies, and sold, the proceeds thereof to go to the fish and oyster fund of the State.

ARTICLE 3986. *Captain's License, Qualifications and Requirements.*—Any captain or master of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp or oysters from the waters of the State for market shall, before engaging in such business, secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting to him permission to take from the waters of the State, fish, turtle, terrapin, shrimp or oysters; provided, that the licensee in exercising the privilege named in this license shall at all times be governed by the fish and oyster laws of this State. For the purpose of obtaining this license the person desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he, the applicant, shall set forth under oath, that he is a citizen of the United States, the name, class and register number of his boat. If the application be for a license to use seines and nets, the applicant shall state the number, class and length of the seines and nets



to be used by him and if the application be for a license to gather oysters, he must state the number of tongs to be used by him, and the applicant shall also agree—that because of the privilege he shall receive from the State of Texas, of taking fish, turtle, terrapin, shrimp or oysters from her waters, all such products at all times, shall be subject to inspection by the Game, Fish and Oyster Commissioner, or any of his deputies and that said application shall authorize said Commissioner, or any of his deputies, to enter at any time the boat or any house where he, the applicant, may have such products stored and inspect same; and he, the applicant, shall further agree to pay to the State of Texas a special tax provided for in Article 3983 of the fish and oyster laws. This application having been duly executed and handed to the Game, Fish and Oyster Commissioner, or any of his deputies, accompanied by the applicant's registration certificate and the fee for the license applied for, it shall thereupon be the duty of the Game, Fish and Oyster Commissioner, or the deputy receiving the same, to issue to the applicant a license to engage in the business set forth in his application, and license shall be subject to such limitations and control as is herein prescribed and as is or may be prescribed by the criminal laws of this State. Said license must be signed by the Game, Fish and Oyster Commissioner, or his deputy, stamped with the seal of office and state the name of the licensee, name and class of his boat and the date of issuance. Such license shall be for twelve months if for fishing for fish, turtle or shrimp and from September the first to April the first, following the date of license, if for gathering oysters; and from August the first to May the first, if granted for the purpose of catching terrapins, and for said license the applicant shall pay the the sum of one dollar. The license so issued shall be kept on the boat subject to the inspection of the Game,

Fish and Oyster Commissioner or any of his deputies, and it shall not be good for any other person nor on any other boat than the original named therein without the consent of the Game, Fish and Oyster Commissioner, or one of his deputies, having first been had, which consent or assignment shall be written across the face of said license; provided, that if at any time such licensed captain or master of a boat shall violate any of the fish and oyster laws of this State, or shall at any time refuse to comply with any provisions made in his application for license, the Game, Fish and Oyster Commissioner is authorized to cancel said license and the boat registration certificate, notice of which shall be given by the Fish and Oyster Commissioner in writing and delivered to the licensee. Any person wishing to engage in the taking or catching of any fish, turtle, terrapin, shrimp, or oysters for market as the employee of a crew of any registered boat, shall procure a license in the same manner and character as the captain or master of any registered boat engaged in taking or catching fish, turtle, terrapin, shrimp or oysters for market; provided, that one license so issued under this Article shall authorize the licensee to engage in taking or catching of any of the products named herein.

**ARTICLE 3987. Wholesale Dealer Defined. Barrel of Oysters Defined.**—For the better protection of the fish and oyster industry, any person, firm or corporation engaged in or who may engage in the business of wholesale dealer or dealers in fish or oysters shall on or before the first day of September of each year secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such person, firm or corporation permission to engage in said occupation. A wholesale dealer, in the meaning of this Act, is one who is engaged in the fish or oyster business as a dealer supplying the wholesale or retail trade by sale of quan-

ties or fifty pounds or more of fish, or oysters in quantities or lots of five barrels or more, provided, one who has a license under Article 3986 and pays the tax of one-fifth of one per cent per pound on fish caught and sold shall not be considered a wholesale dealer. Provided, that two gallons of shucked oysters shall be considered a barrel of oysters.

ARTICLE 3988. *Application for Wholesale Dealer's License. Record Book to Be Kept.*—For the purpose of obtaining a wholesale dealer's license, the applicant desiring the same, shall make written application to the Game, Fish and Oyster Commissioner or one of his deputies in which he, the applicant, shall set forth under oath, if so required, that he is a citizen of the United States and that he does, because of the privilege for which he applies for from the State of Texas, agree that all products bought or sold or had for sale by him shall at all times be subject to the inspection of the Game, Fish and Oyster Commissioner or any of his deputies, and in said application he shall authorize said commissioner or any of his deputies to enter his place of business or any place where he may have such products stored and inspect same. He shall also agree to keep a correct record of all purchases made by him under this chapter, in a book to be furnished by the Game, Fish and Oyster Commissioner, and he shall further agree, that failure on his part to keep a correct record and comply with all provisions of his application, shall be grounds for the forfeiture of his license granted him under the application there aforesaid; and provided, further, that the violation of any of the fish and oyster laws of this State or the violation of any of the rules and regulations of the Fish and Oyster Commissioner of this State, shall be and constitute a forfeiture of said license.

ARTICLE 3989. *Issuance of Wholesale Dealer's License. Tax on Products Handled.*—The application for a wholesale dealer's license having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with the fee for same, it shall then be the duty of the Game, Fish and Oyster Commissioner or his deputy to pass upon same, and if said application is found to comply with the law and the rules and regulations of the Game, Fish and Oyster Commissioner, a license shall be issued to said applicant permitting such applicant to engage in the business set forth in the application, said license to be signed by the Game, Fish and Oyster Commissioner, or one of his deputies, stamped with the seal of office, and state the name of the licensee, place of business and the kind of license applied for and shall be good for twelve months following the date of issuance, and for such license the applicant shall pay a tax of one dollar for each one thousand pounds of fish handled by him and a tax of one cent per barrel of oysters handled by him, which tax shall be paid monthly, the tax to be paid on the first of each month, which may be due upon the said products handled during the preceding month, as per the record book hereinbefore mentioned. For the failure or refusal of any licensee to pay said tax the Game, Fish and Oyster Commissioner or his deputy shall have authority and it shall be his duty to cancel such license.

ARTICLE 3990. The applicant for any license under this Act, based upon fish and oysters handled, shall upon the issuance of such license, deposit with the Game, Fish and Oyster Commissioner an amount of money, to be fixed by the said commissioner, sufficient to cover the estimated amount of tax that would be due by applicant upon the monthly business of applicant, and against which deposit the tax due may be

charged by the commissioner, and said applicant shall make additional deposits in sufficient amounts to at all times maintain a deposit sufficient to cover the estimated tax that may be due by applicant, which additional deposit shall be made upon request of the Game, Fish and Oyster Commissioner.

ARTICLE 3991. *Who Has Right to Obtain an Oyster Location. Fee Required.*—Any person who is a citizen of the United States, or any corporation having been chartered in this State, shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Game, Fish and Oyster Commissioner, or his deputy, describing the location desired. A fee of ten dollars cash must accompany such application.

ARTICLE 3992. *Examination of Location; Survey.*—When the application and fee provided for in Article 3991 has been placed in the hands of the Game, Fish and Oyster Commissioner, it shall then be the duty of the Game, Fish and Oyster Commissioner, or his deputy, to examine thoroughly the location desired, as soon as practicable, with tongs, dredge, or any other efficient manner; and, if the same be not a natural oyster bed or reef, and exempt from location by any section or article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes shall be not less than two inches in diameter and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and

maintain under the direction of the Game, Fish and Oyster Commissioner, or his deputy, a buoy at each corner of his oyster claim farthest from the land. All locations for private oyster beds shall be made outside of the riparian limits as defined in the laws relating thereto.

ARTICLE 3993. *A Certificate; Requisites; Fee.*—The Game, Fish and Oyster Commissioner, or his deputy, shall give the locator a certificate signed by the Game, Fish and Oyster Commissioner and stamped with the seal of his office; such certificate shall show the date of application, date of survey, number, description of metes and bounds, with reference to the points of the compass and natural and artificial objects by which said location can be found and verified; and the locator shall pay the Game, Fish and Oyster Commissioner, or his deputies, a fee of ten dollars for every fifty acres or fractional part thereof, for the examination of said location, including the certificate; provided, that the ten dollars theretofore paid by the locator with his application shall be deducted from this fee.

ARTICLE 3994. *Certificate to be Filed and Recorded, Fee, Evidence.*—At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificates shall be admissible in evidence under the same rules governing the admission of deeds or certified copies thereof.

ARTICLE 3995. *Locator, Protected, in Possession.*—

Any person so locating, shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their possessions, as long as he maintains all stakes and buoys in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries.

ARTICLE 3996. *Location Limited and Foreign Corporation Excluded.*—No person, firm, or corporation, shall ever own, lease, or otherwise control more than six hundred and forty acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm, or corporation that now holds six hundred and forty acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State.

ARTICLE 3997. *Owner of Private Location and Assignee to Keep Stakes in Place; May Fence, Provided.*—Any person, firm, or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for in Article 3992, in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location, or any part thereof; provided, that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters.

ARTICLE 3998. *Rents to be Paid for Locations; Forfeitures, Etc.*—Every locator or assignee of any locator of a location for private oyster beds in this State shall pay the following amounts as rent for his location; in addition to the locating fee of ten dollars as prescribed in Article 3993 of this Chapter, he shall pay the sum fifteen cents per acre to the first day of January following the date of application, to be paid to the Game, Fish and Oyster Commissioner on receipt of the certificate of location; the rent for the next four years from the first day of January above named shall be twenty-five cents per acre per annum; and the rent thereafter shall be seventy-five cents per acre per annum; the rent shall be paid to the Game, Fish and Oyster Commissioner, and shall be due on January 1st of each year; and, if not paid by March 1st of the same year, the locator, or the assignee of any locator, shall forfeit all right to the location, and the same shall revert to the State. Provided, a locator shall not sell his oyster claim within a period of four years from date of location unless he has expended not than five dollars per acre on such claim. Provided, the lessee of an oyster location may forfeit or sell a part of his claim under rules of the Game, Fish and Oyster Commissioner, and with his consent.

ARTICLE 3999. *Permit to Gather Seed Oysters, to Whom and by Whom Granted, etc.; On what Beds, etc.; Fees, etc.*—Any person who is a citizen of the State of Texas, or any corporation having been chartered in the State of Texas wishing to plant oysters on location obtained from the State, or on private property in the State, must make written application to the Game, Fish and Oyster Commissioner, or his deputy, for a permit or license, which shall entitle the holder to gather seed oysters from the date of permit to such time as may be designated by the Game, Fish and Oyster Com-



missioner thereafter, by dredge, tongs or hand, without culling, on such reefs or beds as may be designated by the Game, Fish and Oyster Commissioner, or his deputy, in said permit; provided, that in no instance can there be designated a bed or reef on which marketable oysters are being gathered in paying quantities or on which marketable oysters have been gathered within two years, but the bed or reef so designated shall be an old or abandoned bed or reef, or one on which oysters do not get in marketable condition during the oyster season or on such reefs where the oysters are so thickly set as to warrant the commissioner in granting a permit to have them thinned, and in taking oysters from such reef or bed the work shall be done with a view to reclaiming and improving such reef or bed; for the permit above named the applicant shall pay to the Game, Fish and Oyster Commissioner, or his deputy, the sum of five dollars, and shall pay all expenses for examining and locating such reef or beds designated.

ARTICLE 4000. *Duties of Commissioner.*—It shall be the duty of the Game, Fish and Oyster Commissioner to collect the special tax imposed by this chapter, and enforce its payment, to inspect all products so taxed and verify the weights and measures thereof, to collect all license fees, to collect all rents on locations for planting oysters, to examine, or have examined, all streams, lakes, or ponds, when requested so to do, for the purpose of stocking such waters with fish, best suited to such location and he shall procure and furnish such stock fish from the nearest fishery, and at the cheapest rate possible to parties applying for same.

ARTICLE 4001. *Commissioner to Keep Record, to Show What.*—The Game, Fish and Oyster Commissioner shall keep a record book, which shall be well bound, and in which shall be recorded all special taxes collected, all licenses issued and license fees collected,

all certificates issued for locations of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked, number and kinds of fish used in each and showing all collections, and disbursements in and from his office.

ARTICLE 4002. *Commissioner to Keep Accounts with Locators.*—The Game, Fish and Oyster Commissioner shall keep an account with each and every person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc.

ARTICLE 4003. *Commissioner to Make Annual Report to Governor, to be Printed, etc.; Requisites; Penalty.*—The Game, Fish and Oyster Commissioner shall make, on the thirty-first day of August of each year, or as soon thereafter as practicable, not later than October 1st of each year, a report to the Governor, showing the conditions of the fish and oyster industry. The report shall show special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever source, and the disbursements thereof, as provided for in this chapter with such observations and remarks as pertain to the industry. The report shall also contain a statement of all stock fish furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subject. The Governor shall order a sufficient

number of copies of such report to be printed and filed in the Secretary of State's office for the purpose of free distribution to parties interested therein. Failing to make such report within the time specified, the said Commissioner may, in the discretion of the Governor, be dismissed from his office.

ARTICLE 4004. *Deputies in Coast Counties; Special Deputies over Entire Coast; Appointment; Powers.*—The Game, Fish and Oyster Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department. Such boat deputies shall have and exercise the same powers and duties as the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws; provided, that such deputies shall at all times be subject to the orders of the Game, Fish and Oyster Commissioner, and any and all laws or parts of laws in conflict with the provisions of this article are hereby repealed.

ARTICLE 4005. *Deputies in the Interior Counties; Appointment, Powers, Duties, Charges.*—The Game, Fish and Oyster Commissioner is authorized to appoint such other shore and interior deputies as he may deem necessary for the enforcement of the law. And such shore deputies and interior deputies shall have and exercise the same powers and duties as the Game, Fish and Oyster Commissioner in the enforcement of the law and be at all times subject to his orders.

ARTICLE 4006. *Qualifications of Deputy Fish Commissioner, etc.*—No person shall hold the office of deputy fish and oyster commissioner who is not a citizen of the United States and resident of the State of Texas. All deputies shall hold their office at the pleasure of the Game, Fish and Oyster Commissioner.

ARTICLE 4007. *Oath and Bond of Deputy Commissioner.*—Before entering upon the duties of his office each deputy fish and oyster commissioner shall file with the Fish and Oyster Commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Game, Fish and Oyster Commissioner, and said bond and oath shall be governed by the provisions of Article 3977.

ARTICLE 4008.—*Duties of Deputy Fish Commissioner, etc.*—Each deputy fish and oyster commissioner shall be ex-officio game commissioner, and shall exercise the duties and powers of Game Commissioner under the direction of the Game, Fish and Oyster Commissioner.

ARTICLE 4009. *Weekly Reports by Deputies; with Remittances; Annual Reports.*—All deputy fish and oyster commissioners shall make a weekly report to the Game, Fish and Oyster Commissioner of all funds collected by them, remitting along with said report all sums of money collected by them during the said week, and shall make an annual report to the Game, Fish and Oyster Commissioner not later than August first of each year, which report shall set forth in detail such acts as are provided for in Article 4003 and Article 4014.

ARTICLE 4010. *Commissioner Responsible for His Deputies.*—The Commissioner shall be responsible, on his bond, for the official acts of his deputies.

ARTICLE 4011. *“Fish and Oyster Fund.”*—All the money derived by the State from fines for infraction of the fish and oyster laws, fees for licenses, and taxes on private oyster beds, and taxes on fish and oysters, shall be kept by the Comptroller separate under the head of “Fish and Oyster Fund.”

ARTICLE 4012. *Fines Distributed, How.*—Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney and the residue shall go to the fish and oyster fund of the State.

ARTICLE 4013. *Disposition of Funds Collected by Deputies.*—All funds collected by deputy fish and oyster commissioners along the coast for register certificates, licenses, fees and rents for locating private oyster beds and any other fees that may be prescribed, shall be, by said deputies and each of them, paid over weekly to the Game, Fish and Oyster Commissioner. Such funds so collected by the Game, Fish and Oyster Commissioner weekly from the deputy game, fish and oyster commissioners shall be by the Game, Fish and Oyster Commissioner deposited monthly in the State Treasury to the credit of the fish and oyster fund.

ARTICLE 4014. *Compensation of Commissioner.*—The Game, Fish and Oyster Commissioner shall for his services in the fish and oyster department be allowed the sum of eighteen hundred dollars per annum, to be paid out of any funds in the State Treasury not otherwise appropriated, to be paid in the same manner as other officers of the State. He shall also be allowed a sum not to exceed six hundred dollars per annum for office rent, traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office.

ARTICLE 4015. *Compensation of Deputy Commissioners.*—Out of the special fish and oyster funds all deputy fish and oyster commissioners shall be paid their salaries and expenses monthly, on the approval of the

Game, Fish and Oyster Commissioner; the Comptroller drawing his warrant in favor of each of said persons on said special fish and oyster fund as follows: Deputies on boats shall receive seventy-five dollars per month; deputies on shore and interior shall receive fifty dollars per month when permanently engaged, or two dollars per day for each day's service when specially employed. Provided, that the deputy fish and oyster commissioners in service at Caddo Lake shall receive monthly salaries of seventy-five dollars each. Provided, that the Game, Fish and Oyster Commissioner shall appoint, when he deems it necessary, a mate for any of the boats in the service of the State and such mates shall receive a salary of fifty dollars each per month. Provided, that the deputies shall not be allowed any expenses for provisions.

ARTICLE 4016. *Commissioners Court May Appropriate Money for Stocking Waters with Fish; Deputy for, etc.*—The commissioners court of any county bordering on any stream or having within its borders any public stream, lake or pond, shall have the right to appropriate a sum not to exceed two hundred dollars per annum, out of the general fund of the county, or so much thereof as said court may deem necessary, for the purpose of stocking said waters with fish, and at the request and recommendation of said commissioners court the State Game, Fish and Oyster Commissioner shall appoint a deputy fish commissioner for said county, who shall have charge of all public waters in said county for the purpose of stocking and protecting same, and the commissioners court shall pay the said deputy for his services such amount as may be agreed upon, not to exceed two dollars and fifty cents per day.

ARTICLE 4017. *Meshes of Drag Seines. Tags. Size of Shrimp and Turtle Nets.*—The mesh of all seines and nets used for taking fish in salt waters, not including

the bag, shall be not less than one and one-half inch square mesh. The mesh of bags and for fifteen feet on each side of the mouth of the bag shall be not less than one and one-fourth inch square mesh. No seine used for taking fish shall be over twelve hundred feet in length. All seines shall be inspected by the Game, Fish and Oyster Commissioner, or one of his deputies, and shall be properly tagged with a metallic tag, which tag shall be provided at the cost of the owner of the same. The mesh of shrimp nets shall be not less than one-half inch square mesh and not more than fifty feet long and four feet deep. The mesh of the turtle nets shall be twelve inches square.

ARTICLE 4018. *Seining for Drum Fish on Oyster Beds. Deputy to Be Paid.*—Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Game, Fish and Oyster Commissioner for permission to seine for drum fish in such waters. In his application he shall make oath that the drum fish are seriously damaging his oysters, and that if he is permitted to seine for such drum fish in such waters he will not take or destroy any other food fish, but will throw them back in the water. If the Commissioner is satisfied that such damage is being done he may grant such permission to the person applying for it, specifying in such permit the length and mesh of the seine to be used, the length of time in which it is to be used, and the claim or reef on which it is to be used. And such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining and no seine shall be dragged except in his presence, and for which, a person obtaining the permission to seine, as set forth above, shall pay to the Game, Fish and Oyster Commissioner \$2.50 per day, to be placed in the special fish and oyster fund, for such services. The person granted such permission shall board the

deputy fish and oyster commissioner during his superintendence of such seining. If the person obtaining the permission shall violate any of the provisions of this Act, he shall be prosecuted and punished under the criminal laws of this State applicable in such cases.

ARTICLE 4019. *Dredging of Oyster Reefs Permissible, When and How.*—Whenever a reef of oysters is over eight feet below the surface of the waters the Game, Fish and Oyster Commissioner may grant permission, to any one applying for it, to dredge on such reef. And in doing this the commissioner shall state the character and number of dredges to be used and the length of time for which they shall be used. The person to whom such privilege shall be granted shall not dredge except in the presence of a deputy fish and oyster commissioner, assigned to such duty by the Game, Fish and Oyster Commissioner. And the person granted such permission shall furnish board to such commissioner on board of the dredge boat or other boat on the reef and shall pay to the Game, Fish and Oyster Commissioner \$2.50 for all days or parts of days during such dredging, which money shall be placed in the special fish and oyster fund.



## CRIMINAL STATUTES PERTAINING TO FISH AND OYSTERS.

ARTICLE 870. *Entrap or Net in Any Pool or Pond; Burden of Proof.*—Any person who shall take, catch, ensnare or entrap any fish by means of nets or seines or by muddying, ditching, or draining in any lake, pool or pond in any county within this State without the consent of the owner of such lake, pool or pond, shall be subject to the penalty hereinbefore prescribed in Article 868; and, in all prosecutions under this law, the burden of proof of such consent of the owner shall devolve and be upon the defendant.

ARTICLE 871. *Conviction May be Had on Unsupported Testimony of Accomplice.*—Any court, officer or tribunal having jurisdiction of the offense set forth in this chapter, or any district or county attorney, may subpoena persons and compel their attendance as witnesses to testify as to violations of any of the provisions of this law; and any person so summoned and examined shall not be liable to prosecution for any of the violations of this law about which he may testify; and a conviction for said offense may be had upon the unsupported evidence of an accomplice or participant.

ARTICLE 872. *Duty of Persons Erecting Mill Dams.*—It shall be the duty of all persons, firms or corporations who have erected, or who may hereafter erect, any mill dam, water weir or other obstruction or weirs on streams within waters of this State, to construct and keep in repair fishways or fish-ladders at such mill dam, water weirs or obstructions, so that at all seasons of the year fish may ascend above such dam, weirs or obstructions to deposit their spawn. Any firm, corporation or person owning such mill dam or obstructions

who shall fail or refuse to construct or keep in repair such fishways or fish-ladders, after having been notified and required by the county judge to do so shall be deemed guilty of a misdemeanor, and, upon conviction one hundred nor less than twenty-five dollars for every such neglect or refusal.

ARTICLE 877. *Catching of Fish, etc., in Counties of Montgomery and Newton.*—It shall be unlawful for any person in the counties of Montgomery and Newton, in the State of Texas, at any time during the year, to take, catch, ensnare or entrap any fish by means of nets, traps, poison or dynamite, or in other manner than with the ordinary hook and line or trot line, in any of the fresh waters, lakes or streams of this State in said counties; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars and not more than one hundred dollars; provided, that this article shall not be construed to prevent the catching of fish by nets in any of the lakes in said counties, except Grand Lake. (Act 1909, p. 133.)

ARTICLE 901. *Culls of Oysters Must be Scattered.*—It shall be unlawful for any person to fail or refuse to scatter the culls of such oysters as he may take from the oyster reefs as directed by the Game, Fish and Oyster Commissioner, and any person so failing or refusing to scatter such culls, as directed by the Commissioner, shall be deemed guilty of a misdemeanor and on conviction he shall be fined in a sum of not less than ten nor more than one hundred dollars. And on such conviction the Game, Fish and Oyster Commissioner may cancel the license of the captain of the boat, and he shall also cancel the license of such person to gather oysters, on which such person is employed or for which he is gathering oysters, and no new license shall be

issued to such captain or to such person convicted for a period of three years.

ARTICLE 902. *Planting Prohibited, When.*—It shall be unlawful for any person to plant or purchase oysters for planting, bedding, or depositing, or for marketing, or for any other purpose whatever, from the first day of May to the first day of September in any year, except by permission of the Game, Fish and Oyster Commissioner, and if any person shall violate the provisions of this article he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined for each offense not less than ten nor more than one hundred dollars.

ARTICLE 903. *Unlawful to Receive for Shipment, When.*—It shall be unlawful for any transportation company operating within this State, its officers, agents or employes, to receive for shipment, or to ship, within the boundaries of this State, from the first day of May to the first day of September of any year, any oysters from any public bed or reef, for depositing or for marketing; provided, that nothing in this chapter shall be so construed as to prohibit any such transportation company, its officers, agents or employes, from shipping, or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the written affidavit of the person or persons offering such oysters for shipment, made before an officer authorized to take oaths. Any officer, agent or employee of such transportation company violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each offense not less than ten nor more than one hundred dollars.

ARTICLE 904. *Unlawful to Rake, Dredge, etc.; Penalty.*—It shall be unlawful for any person or persons

to rake, dredge or excavate with machinery any public oyster bed or oyster reefs in the waters of this State without first having obtained permission of the Game, Fish and Oyster Commissioner to so dredge or excavate with machinery. Any person or persons who shall violate the provisions of this article shall, on conviction, be fined in any sum not less than five hundred nor more than one thousand dollars. Each day's violation of any of the provisions of this article shall constitute a separate offense.

ARTICLE 905. *Unlawful to Destroy or Deface Buoy.*  
—Any person who shall wilfully deface, injure or destroy or remove any buoy, markers or fence or any parts thereof, used to designate or enclose a private oyster bed in this State, without the consent of the owner thereof, or any buoy, marker or sign placed or used by the Game, Fish and Oyster Commissioner for the purpose of designating any waters closed against fishing or oyster taking, without the consent of the Game, Fish and Oyster Commissioner, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than ten nor more than two hundred dollars.

ARTICLE 906. *Unlawful to Catch Fish, Green Turtle, etc.; How and When.*—It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this State, within the limits or within one mile of the limits of any city or town in this State, with seines, dragnets, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this Act shall be a collection of one hundred families within an area of one square mile. Any one violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less

than twenty-five nor more than two hundred dollars. In all prosecutions under the provisions of this Act, the identification of the boat from which such violation or violations occur, shall be prima facie evidence against the owner, lessee, person or persons in charge or master of such boat.

ARTICLE 907. *Catching of Same by Poison, Dynamite, etc. Prohibited.*—The catching, taking or killing of fish, green turtle or terrapin in any of the salt waters or fresh waters, lakes or streams in the State by poison, lime, dynamite, nitroglycerine, giant powder or other explosives, is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than two hundred dollars, and by confinement in the county jail not less than thirty nor more than ninety days.

ARTICLE 908. *Penalty for Failure to Take Out License as a Fisherman.*—Any person who shall engage in the business of fishing or catching green turtle or terrapin or shrimp for market without first having procured a license therefor, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than ten dollars nor more than two hundred dollars.

ARTICLE 909. *Possession of or Sale of Certain Fish of Certain Weight Prohibited.*—It shall be unlawful for any person to have in his or her possession, or to sell or ship any red fish more than twelve pounds in weight or less than one and one-half pounds in weight; any trout of less than three-fourths of one pound in weight; sheepshead, flounder, Spanish mackerel or pompano of less than one-half pound in weight. It shall also be unlawful for any person to place or stretch in or across any water any seine or net for the purpose of catching or holding fish for a longer period of time

than ten hours. Any person offending against this article shall, upon conviction, be fined in any sum not less than ten nor more than two hundred dollars.

ARTICLE 910. *Sale of Turtle and Terrapin of Certain Weight Prohibited.*—It shall be unlawful for any person to sell or ship any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell, or to catch or sell any terrapin from the first day of May to the first day of August. Any person offending against this article shall, upon conviction, be fined in any sum not less than ten nor more than two hundred dollars.

ARTICLE 911. *Taking of Fish and Terrapin by Seines and Nets in Salt Waters.*—It shall be unlawful for any person, during the breeding season, consisting of the months intervening between June first and September first of each year, to catch any fish or terrapin in the bays, tidal or coastal waters of this State by use of a drag seine; or to drag any seine or net or other device, except a minnow seine for catching bait of not more than twenty feet in length or a shrimp seine of not more than fifty feet in length for catching shrimp only. And it shall be unlawful for any person to place or set or drag any net or seine or use any other device for taking fish, other than the ordinary hook and line or cast net, or minnow seine of not more than twenty feet in length, within the waters of any pass leading from the Texas coastal waters into the Gulf of Mexico, or within one mile of such pass, or within the waters of any pass, stream or canal leading from one body of Texas bay or coastal waters into another body of such waters. And the Game, Fish and Oyster Commissioner, whenever he has reason to believe that fish are breeding, or that it is destructive to fish, to permit fishing in any of such tidal waters, shall have power and authority to close such waters against fishing with

any net, seine or other device, except by hook and line or cast net or minnow net of no greater length than twenty feet; but such commissioner shall give notice of his intention to close any such waters against fishing with nets and seines for two weeks prior to such closing by posting notices in public places near such waters; and after the date set in such notices for the closing of such waters it shall be unlawful to drag a seine or set nets in such waters for that period of time that the commissioner shall in the notice declare they shall be closed. Any person offending against the provisions of this article, shall be deemed guilty of a misdemeanor and upon conviction shall, be punished by fine of not less than \$25.00 nor more than \$200.00; and each day shall constitute a separate offense, and in all prosecutions under this article the identification of the boat from which the violation occurred shall be prima facie evidence against the owner or the party last in charge of such seines or nets or on such boat.

Nothing in the foregoing article shall be taken to prohibit fishing on the Gulf Beach outside of one mile of the passes at any time and with any net or seine authorized by the provisions of this chapter. And provided further, that this section is not intended to prevent the use of trammel nets, gill nets or other nets, when used strictly as set nets, except in passes, streams, canals and in waters within one mile of passes leading from coastal waters into the Gulf of Mexico.

ARTICLE 912. *Person Fishing with Drag Seine, etc., Shall Return to Water, What.*—Any person fishing with a drag seine or set net, for sale or market, shall return all fish, green turtle or terrapin of the sizes and weights specified in Articles 909 and 910 of the Penal Code to the water, while they are yet alive, except sharks, gars, rays, catfish and sawfish; and the size of the meshes of the fish seines shall not be less than

one and one-half inches square, not including the bag, nor shall any seine exceed twelve hundred feet in length; and any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars, nor more than two hundred dollars.

ARTICLE 913. *United States Coastal Survey Charts Admissible in Evidence.*—All United States Coast Survey Charts covering the coast of Texas shall be admissible as evidence in all prosecutions under this Act.

ARTICLE 914. *Unlawful to Take or Catch Oysters During Certain Seasons.*—It shall be unlawful for any person to take or catch oysters from any public beds or reefs, for sale or for market, from the first day of April to the first day of September of each year. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than two hundred dollars, and each day shall constitute a separate offense; provided that part of Laguna Madre, south and west of Baffin's Bay, be exempted from the operation of this article.

ARTICLE 915. *Taking Water from Public Waters of State; Screen Shall be Placed over End of Pipe.*—It shall be the duty of every person, firm or corporation using pumps for the purpose of taking water from the public waters of the State, when directed to do so by the Game, Fish and Oyster Commissioner to place screens over the mouth of the intake pipe for the purpose of preventing fish from entering said pipe. The size of and regulation for placing such screen shall be designated by the Game, Fish and Oyster Commissioner. Any person, firm or corporation failing to comply with this article, after notification by the Game, Fish and Oyster Commissioner so to do, shall be deemed



guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars; and each day shall constitute a separate offense.

ARTICLE 916. *Unlawful to Take Fish, Turtle, Oysters, etc., Without License.*—It shall be unlawful for any person to catch any fish, green turtle or terrapin, with seine or set net for market, in any of the bays or coast waters of this State, or gather any oysters with tongs otherwise for market or planting from any of the public reefs or beds in this State, without having a license from the Game, Fish and Oyster Commissioner, or his deputy. Any person offending against this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars; and each day shall constitute a separate offense.

ARTICLE 917. *Dealer in Fish and Oysters Shall Take Out License; Requirements of; "Wholesale Dealer" Defined.*—For the protection of the fish and oyster industry, any individual, firm or corporation, engaged in, or who may engage in, the business of a wholesale dealer or dealers in fish and oysters, shall, on or before the first day of September of each year, secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such individual, firm or corporation, permission to engage in said occupation. For the purpose of obtaining this license the applicant desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath, if required, that he is a citizen of the United States; he shall also agree that, because of the privilege which he applies for from the State of Texas, that all products handled by him shall at all times be subject to the inspection of the Game, Fish and

Oyster Commissioner, or any of his deputies; and in said application he shall authorize said Commissioner or any of his deputies to enter his place of business, or any place where he may have such products stored, and inspect same. He shall also agree to keep a correct record of all fish and oysters handled by him under this chapter in a book to be furnished by the Game, Fish and Oyster Commissioner; and, further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with the fee for same, it shall then be the duty of the Game, Fish and Oyster Commissioner, or his deputy, to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the Game, Fish and Oyster Commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For such license the applicant shall pay one dollar for each one thousand pounds of fish handled by him, and a tax of one cent per barrel on oysters handled by him, which tax, shall be paid monthly, the tax to be paid on the first of each month, which may be due upon the said product handled during the preceding month as shown by the record books hereinbefore mentioned. And any person, firm or corporation or association of persons or any officer, agent or employee of any company, corporation or association of persons, who shall engage in the business of a wholesale dealer in fish and oysters or either, without procuring a license to follow said business or without paying the tax required by this article shall be guilty of a misdemeanor and upon conviction shall be punished by a

fine of not less than one hundred dollars nor more than two hundred dollars; and each day such business may be engaged in, in violation of this article shall constitute a separate offense and upon conviction for pursuing said occupation without payment of the tax required by law or for any other violation of the game, fish and oyster law, the license of such dealer shall be forfeited. A wholesale dealer, within the meaning of this article, is one who is engaged in the fish and oyster business as a dealer supplying the retail and wholesale trade, or either, by sales in quantities of fifty pounds or more of fish and oysters of five barrels or more.

ARTICLE 918. *Selling Unculled Oysters, Penalty.*—Any person offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent of young oysters, shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any oyster that measures less than three and one-half inches from hinge to mouth shall be deemed a young oyster for the purpose of this and the preceding article.

ARTICLE 919. *Duty of Game, Fish and Oyster Commissioner.*—It shall be the duty of the Game, Fish and Oyster Commissioner or his deputies, when he thinks that any cargo of oysters offered for sale contains more than five per cent of young oysters, to take as many as he may deem necessary from such cargo, cull them and measure the young oysters, or those that measure less than three and one-half inches from the hinge to the mouth, and ascertain to the best of his ability the proportion of the young oysters by number to the marketable oysters; and, if the young oysters be in greater proportion than five per cent, the cargo shall be deemed unculted, and the owner shall be deemed

guilty of the offense prescribed in Article 918 of the Penal Code.

ARTICLE 920. *Unlawful Taking Oysters from Private Beds, Theft.*—It shall be unlawful for any person to take oysters from a private bed, or to take oysters deposited by one making up a cargo for market or family use, without the consent or permission of the owner thereof; and anyone offending against any provisions of this article shall be deemed guilty of theft, and, upon conviction, shall be punished as provided by law for the offense of theft.

ARTICLE 921. *Taking Oysters for Planting, Penalty for Selling Same.*—It shall be unlawful for any person gathering oysters for planting on locations obtained from the State or on private property, to sell, market or in any way dispose of oysters so gathered at the time of gathering, for any other purpose than planting, provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than fifty nor more than two hundred dollars.

ARTICLE 922. *Unlawful to Gather Seed Oysters without License.*—It shall be unlawful for any person, firm, corporation or joint stock company to gather seed oysters for planting without having first obtained a permit or license to do so from the Game, Fish and Oyster Commissioner, or his deputy, said permit or license to designate the reef or beds from which the applicant is allowed to gather seed oysters; and any person, agent, employee or officer of a firm, corporation or joint stock company gathering or having gathered oysters for planting from any bed or reef designated, or who has not a permit or license for gathering seed

oysters, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars.

ARTICLE 923. *Penalty for Selling Fish, Turtle, Oysters, etc., Without License.*—Any person who shall market or offer to market any fish, turtle, terrapin, shrimp or oysters taken from salt waters of this State, or any fish taken from any fresh water lakes or streams, in any quantity of fifty pounds shall pay the tax and obtain the permit, as prescribed by law before disposing of any part of said product, and if he or any other person shall sell or shall dispose of any part of said product for shipment or storage before obtaining said permit, the person so selling or disposing of said product, or any part thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than ten nor more than two hundred dollars. In prosecutions in this and other similar cases, the fact of the fish, turtle, terrapin, shrimp and oysters being of the varieties that are found in the waters of this State shall be prima facie evidence that said fish, turtle, terrapin, shrimp or oysters were taken from the waters of this State.

ARTICLE 923a. *Natural Oyster Reefs May Be Dredged When and How.*—Whenever the Game, Fish and Oyster Commissioner believes that an oyster bed can be improved by the use of dredges in it, he may grant the use of such dredges in such reefs, but only under the superintendence, supervision and in the presence of a deputy fish and oyster commissioner.

ARTICLE 923b. *Natural Oyster Reefs May Be Closed by Commissioner.*—Whenever the Game, Fish and Oyster Commissioner believes that any public reef is being overworked or damaged in any way, he may close such reef against any one taking oysters from it, but before he closes such reef he shall give two weeks' notice of

such closing, posting notices in such fish houses as are in two towns nearest such reefs. In such notices he shall state the date of closing and the time for which such reefs shall be closed.

ARTICLE 923c. *Nets, Seines, Boats May Be Seized and Destroyed by Commissioner When.*—Nets, seines, boats or other devices for catching fish, unlawfully used in the waters of this State, or boats, dredges, barges and tongs unlawfully used in violating the oyster laws of this State, are hereby declared public nuisances, and may be summarily seized, destroyed and abated by the Game, Fish and Oyster Commissioner, or his deputies, and no action for damages shall be maintained against such Commissioner or his deputies for such seizure, destruction and abatement.

ARTICLE 923d. *Penalty for Taking Oysters from Reef That Has Been Closed.*—Any person who shall take any oysters from any oyster reef which has been closed by the Game, Fish and Oyster Commissioner shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum of not less than twenty-five nor more than two hundred dollars.

ARTICLE 923e. *Complaints May Be Made Before Any Justice of the Peace.*—Complaint against any person for the violations of the game, fish and oyster law of this State may be made before any justice of the peace of the county in which the offense is charged to have been committed, and he shall have jurisdiction to try and dispose of such case; provided, the penalties prescribed for such offense are within the jurisdiction of justices of the peace.

ARTICLE 923f. *Seining and Netting in Fresh Waters. Kind of Seines.*—It shall be unlawful for any person to take or catch any fish in the public fresh water

rivers, creeks, lakes, bayous, pools, lagoons or tanks of this State by any other means than by the ordinary hook and line or trot line, or by a set or drag net or seine, the meshes of which are less than three inches square, or trammel net, the meshes of any part of which are less than four inches square, or by a minnow seine of no more than twenty feet in length, and it shall be unlawful for any person to place in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons or tanks of this State any net or other device or trap for taking or catching fish other than a set net or drag net or seine, the meshes of which are less than four inches square. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined any sum not less than twenty-five nor more than one hundred dollars. All fresh water streams or bayous emptying into the tidal waters of this State are, for the purpose of this Act, hereby declared fresh water streams to their mouths.

ARTICLE 923g. *Seines and Nets Not to Be Carried Into Closed Waters.*—It shall be unlawful for any person to carry into or have in his possession in any waters where seining is prohibited, any seine or drag net, and any such person who shall carry into or have in his possession any such seine or drag net shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in a sum of not less than ten nor more than one hundred dollars, and any seine or drag net so carried into or found in such water shall be deemed a nuisance, and the Game, Fish and Oyster Commissioner, or his deputy, are required to abate such nuisance by the destruction of such nets, as provided in this Act. Provided, that this Act shall not apply to the closed waters within one mile of any town.

ARTICLE 923h. *License May Be Forfeited When and*

*How by Commissioner.*—On the conviction of any wholesale dealer or the conviction of any licensed fisherman or oysterman, the license of such dealer shall be forfeited and the Game, Fish and Oyster Commissioner shall not issue to such dealer, fisherman or oysterman another license for a period of three years.

ARTICLE 923i. *Natural Flow of Waters Not to Be Obstructed. Penalty.*—It shall be unlawful for any person to wilfully obstruct the natural flow of waters into any of the public waters of this State or to wilfully divert the waters from any of the public lakes, streams or ponds of this State, except for domestic or other necessary uses, or for irrigation purposes, and any person so offending shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum of not less than fifty nor more than one hundred dollars.

ARTICLE 923j. *None But Official Measure Shall Be Used.*—Any person who uses any means in the sale of oysters other than the measure established by this Act shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum of not less than ten nor more than one hundred dollars.

ARTICLE 923k. *Taking of Another's Fishing Boat or Seine Prohibited.*—Any person who shall wilfully and with intent to injure the owner, take any boat, seine or net or other device for fishing into prohibited waters, or shall use said articles for the unlawful taking or catching of fish, so as to cause the destruction of same, shall be guilty of a misdemeanor and punished by a fine of not less than ten nor more than two hundred dollars, and by confinement in the county jail not less than thirty nor more than ninety days.

ARTICLE 923l. *Seining and Killing Gars, etc., Per-*



*mitted by Any Means.*—The provisions of this Act relative to use of seines in fresh water streams shall not prevent the seining for gars, turtle and other natural enemies of the fish, under the supervision of the Game, Fish and Oyster Commissioner, or a deputy; and the commissioners' court of any county is hereby authorized to have any stream, creek or lake in said county seined for the purpose of destroying any gar, turtle or other natural enemies of the fish which may be caught from such waters, said seining to be done under the supervision of and in the presence of the Game, Fish and Oyster Commissioner, or a deputy. The expense of said seining to be borne by the said county, or by the citizens thereof; all good or edible fish which may be caught or taken in said seine to be returned to the waters.

## LAW PERTAINING TO MARL, SAND SHELLS AND MUDSHELL.

(Acts of the 32nd Legislature.)

SECTION 1. All of the islands, reefs, bars, lakes and bays within tidewater limits from the most interior point seaward coextensive with the jurisdiction of this State and such of the fresh water lakes within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells or mudshell, of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay or shallow water, and also all fishing waters, fish hatcheries and oyster beds, within the jurisdiction and territory herein defined, are included within the provisions of this Act, and all such islands, reefs, bars, lakes, bays, shallow waters, and the marl, sand, shells, or mudshell and oyster beds and fishing waters and fish hatcheries, located as herein defined, are, for the purpose of this Act, hereby placed under the management, control and protection of the Game, Fish and Oyster Commissioner.

SEC. 2. Such of the fresh water lakes within this as may not be embraced in any survey of private land shall not be sold, but shall remain open to the public; provided, should the Game, Fish and Oyster Commissioner stock them with fish, he is authorized to protect same for such time and under such rules as he may prescribe.

SEC. 3. The Game, Fish and Oyster Commissioner is hereby invested with all the power and authority necessary to carry into effect the provisions of this Act, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying

away or disturbing of all marl or sand of commercial value, and all shells or mudshell and oyster beds and fishing waters, and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions and under such restrictions and limitations as may be provided herein.

SEC. 4. None of the marl, or sand or shells or mudshell included within the preceding sections of this Act shall be purchased, taken, carried away or disturbed except as provided in this Act, nor shall any oyster beds, fishing waters or fish hatcheries, within the territory included in this Act be disturbed except as herein provided.

SEC. 5. Any one desiring to purchase any of the marl and sand of commercial value and any of the shells or mudshell included within the provisions of this Act, or otherwise operate in any of the waters or upon any island, reef, bar, lake or bay included in this Act, shall first make written application therefor to the Game, Fish and Oyster Commissioner, designating the limits of the territory in which such person desires to operate. If the Game, Fish and Oyster Commissioner is satisfied the taking, carrying away or disturbing of the marl, sand or shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster bed, fish inhabiting the waters thereof or adjacent thereto, and that such operation would not damage or injuriously affect any island, reef, bar, channel used for frequent or occasional navigation nor change or otherwise injuriously affect any current that would affect navigation, he may issue a permit to such person after such applicant shall have complied with all regulations and requirements prescribed by said Commissioner. The permit shall authorize the applicant to take, carry away, or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purposes only as

may be named in the permit and upon the terms and conditions therein. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of the permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any marl, sand or shell or mudshell from any territory nor to otherwise operate in or upon any island, reef, bar, lake, or bay included in this Act.

SEC. 6. The Game, Fish and Oyster Commissioner, by and with the approval of the Governor, may sell the marl, sand and shells or mudshell, included within this Act, upon such terms and conditions as he may deem proper, but for not less than four cents per ton, and payment therefor shall be made to said Commissioner. The proceeds arising from such sale shall be transmitted to the State Treasurer and be credited to the fish and oyster fund, and may be expended by the said Commissioner upon itemized accounts sworn to by those performing the service of furnishing the material, and approved by said Commissioner. The said accounts shall be filed with the Comptroller of Public Accounts, and he shall draw a warrant therefor upon the State Treasurer.

SEC. 7. So far as the proceeds arising under this Act may be sufficient, the said Commissioner may locate suitable places for oyster beds and advise the public of such locations, and may establish fish-hatcheries on the coast or elsewhere in the fresh water lakes and streams of the interior upon such terms and conditions as he may prescribe.

SEC. 8. If any county, or any subdivision of a county city or town should desire any marl, sand or shell or mudshell included in this Act for use in the building of any road or street, which work is done by such

county, or any subdivision of a county, city or town, such county or any subdivision of a county, city or town may be granted a permit without charge and shall have the right to take, carry away or operate in any waters, or upon any islands, reefs, or bars included in this Act, and this whether such county, subdivision of a county, city or town does the work under its own supervision or by contract, but such county, or any subdivision of a county, city or town shall first obtain from the said Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such county, or any subdivision of a county, city or town, shall be subject to the same rules, regulations and limitations and discretion of the said Commissioner as are other applicants and permits.

SEC. 9. If any person, association of persons, corporate or otherwise, shall, for himself or itself, or for or on behalf of or under the direction of another person, association of persons, corporate or otherwise, take or carry away any of the marl, sand or shells or mudshell included in this Act, or shall disturb any of said marl, sand, shells or mudshell or oyster beds or fishing waters, or shall fish in any fresh water lake or shall operate in or upon any of said places for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, without having first obtained a written permit from the Game, Fish and Oyster Commissioner for the territory in which such operation is carried on, such person, association of persons, corporate or otherwise, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in a sum of money not less than ten dollars nor more than two hundred dollars, and one-half of the proceeds arising from such fines shall be appropriated to the road and bridge fund of the county in which the conviction is had and one-half shall be appropriated to the fish and oyster fund.

## REGULATIONS PERTAINING TO GAME ANIMALS, BIRDS AND FOWL.

### CIVIL STATUTE.

Article 4022. *Wild Animals, Birds, etc., Property of Public.*—All the wild deer, wild antelope, wild Rocky Mountain sheep, wild turkey, wild ducks, wild geese, wild grouse, wild prairie chickens (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins, wild Mexican pheasants or chacalaca and all other wild animals, wild birds, and wild fowls found within the borders of this State, shall be, and the same are hereby declared to be, the property of the public. [Acts 1907, p. 278.]

Art. 4023. *Hunting Licenses Required of Non-Residents; Requisites and Duration; Fee.*—It shall hereafter be unlawful for any person who has not been a bona fide inhabitant of, and resident citizen of, this State for six months last past to hunt for or kill any game or birds protected by the laws of this State without first procuring a hunting license from the Game, Fish and Oyster Commissioner permitting him to do so, and paying said Commissioner the sum of fifteen dollars. Said license shall be dated when issued and shall remain in force until the first day of September following thereafter. [Acts 1909, 2 S. S., p. 456. Acts 1907, p. 256.]

Art. 4024. *Non-Resident Licensee May Take Home Game Lawfully Killed, Provided, etc.*—Any person to whom a non-resident license to hunt for game in this State has been issued may take to his home beyond the boundaries of this State such game as he has him-

self lawfully killed, not to exceed one day's bag limit, and under such restrictions and regulations as may be prescribed by the Game, Fish and Oyster Commissioner. [Act 1907, p. 256.]

Art. 4025. *Hunting Licenses Required of Residents, When; Requisites; Authority Given, Duration; Fee.*—It shall hereafter be unlawful for any person to hunt or kill any game quadrupeds or game birds or wild fowl protected by the game laws of this State, except in the county of his residence or in counties adjoining the county of his residence or on land owned or controlled by him, without first obtaining a State hunting license from the Game, Fish and Oyster Commissioner permitting him to do so. Any person who has been a bona fide resident of this State for six months last past may procure a hunting license to hunt outside the boundaries of the county in which he resides, by paying a license fee of one dollar and seventy-five cents to the county clerk of the county in which he resides, to be dated when issued. Such license shall expire the first day of September of each year following such date. Such license shall authorize the person named therein to use firearms in the hunting or killing of game or game birds during the hunting season of that year, but only in the manner and time prescribed by law. Such license shall limit the number and quantity of game which may be taken or killed, in accordance with the provisions of law governing the subject. [Acts 1907, p. 256. Acts 1909, 2 S. S., p. 456.]

Art. 4026. *County Clerk to Issue Local Hunting Licenses, etc., Keep Stubs of, etc.*—The county clerk of each county in this State is hereby authorized to issue local hunting licenses, under his official seal, to all persons complying with the provisions of this chapter, and shall fill out correctly and preserve the stubs attached thereto. [Acts 1907, p. 256. Id.]

Art. 4027. *County Clerk to Keep Record.*—The county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each licensee, and the serial number and date of the license so issued, in a book to be furnished by the Game, Fish and Oyster Commissioner; which record shall be kept in his office and be open to the inspection of the public at all times during office hours. Said books and license stubs and unused licenses shall always be open to inspection of the Game, Fish and Oyster Commissioner or his deputies. [Acts 1907, p. 256. Id.]

Art. 4028. *Monthly Report of Licenses by County Clerk, in Duplicate, to Commissioner and Comptroller.*—The county clerk shall, within ten days of the close of each calendar month, make out a detailed report in duplicate under the seal of his office, showing the serial number and date of each license issued, and the name and residence of the person to whom issued; he shall forward one copy to the Game, Fish and Oyster Commissioner at Austin, and one copy to the Comptroller, who shall charge the Game, Fish and Oyster Commissioner with the amount so shown to be remitted. [Acts 1907, p. 256. Id. p. 457.]

Art. 4029. *Commissioner to Enforce Laws for Protection, etc., of Wild Game, etc., Bring Actions, etc., for Fines, etc.; Powers.*—It is hereby made a special duty of the Game, Fish and Oyster Commissioner to enforce the statutes of this State for the protection and preservation of wild game and wild birds and to bring, or cause to be brought, actions and proceedings in the name of the State of Texas to recover any and all fines and penalties provided for in the laws now in force, or that may hereafter be enacted, relating to wild game and wild birds. Said Game, Fish and Oyster Commissioner may make complaint and cause proceedings to be



commenced against any person for violation of any of the laws for the protection and propagation of game or birds, without the sanction of the county attorney of the county in which such proceedings are commenced; and in such case he shall not be required to furnish security for costs. [Acts 1907, p. 254.]

Art. 4030. *Power to Seize Birds and Animals, When; Disposition of.*—The Game, Fish and Oyster Commissioner shall, at any and all times, seize and take possession of all birds and animals that have been caught, taken or killed, or had in possession or under control, or have been shipped contrary to any of the laws of this State, and such seizure may be made without a warrant. All birds or animals seized by the Commissioner shall be disposed of in such manner as may be directed by any court having competent jurisdiction to hear and determine cases for violation of the game and bird laws of this State. [Id.]

Art. 4031. *Commissioner to Keep Record; to Contain What.*—It shall be the duty of the Game, Fish and Oyster Commissioner to keep in his office, in the capitol of this State, a well bound book in which he shall keep a complete list of the licenses issued, fines collected and a statement of all prosecutions instituted for violation of the game, fish and oyster laws, and the result of same. Said records shall be kept open for the inspection of the Comptroller and the public. [Acts 1907, p. 256. Acts 1909, 2 S. S., p. 457.]

Art. 4032. *Monthly Report by Commissioner.*—The Game, Fish and Oyster Commissioner, at the close of each calendar month, shall file with the Comptroller a report in writing and detail, stating the service performed by him during the last preceding month, including a detailed statement of the suits commenced at his instance and the disposition made of same, all

finer, licenses and other fees collected, their disposition, and any other particulars he may deem proper. [Acts 1907, p. 255. Id. p. 455.]

Art. 4033. *Commissioner May Appoint Chief Deputy; Office in Capitol; Oath; Duties.*—The Game, Fish and Oyster Commissioner shall have power to appoint a chief deputy, who shall maintain an office in the capitol of the State; said chief deputy shall take the constitutional oath of office and shall act as general assistant to said Game, Fish and Oyster Commissioner, and, during the absence, sickness or disability of the Commissioner, he shall exercise the duties of said Commissioner. Said chief deputy shall devote his entire time to the work of his office. [Acts 1907, p. 255.]

Art. 4034. *Bond of Chief Deputy.*—The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the Secretary of State a good and sufficient bond in the sum of five thousand dollars for the faithful performance of the duties of his office. [Id. p. 256.]

Art. 4035. *The Commissioner May Appoint Deputy Game Commissioners; Powers.*—The Game, Fish and Oyster Commissioner shall also have power to appoint deputy game commissioners, who shall have the same power and authority as herein provided for the Game, Fish and Oyster Commissioner himself, subject to the supervision and control of and removal by the said Game, Fish and Oyster Commissioner. [Id. p. 255.]

Art. 4036. *Disposition of Fees and Fines Received by Commissioner.*—The Game, Fish and Oyster Commissioner shall, at the time of each monthly report required of him by this chapter, pay over to the State Treasurer all fines, license and other fees collected by him, which shall be credited to the special fund provided for in this chapter. [Acts 1909, 2 S. S., p. 455.]

Art. 4037. *Disposition of Fines by Court or Deputy Commissioner.*—All fines collected in the county or district courts of this State for violation of the game, and bird laws of this State, shall, within thirty days from date of the collection, be forwarded by the court, or the deputy game commissioner, to the Game, Fish and Oyster Commissioner, who shall deposit same in the State Treasury, and the same shall be credited to the special fund provided for the payment of salaries and expenses of deputies appointed under the provisions of this chapter. [Id.]

Art. 4038. *Disposition of License Fees Received by County Clerk.*—The county clerk shall, with each monthly report required of him by this chapter, remit to the Game, Fish and Oyster Commissioner at Austin, all license fees collected by him, less twenty-five cents for each license issued, which he may retain as his fee. Upon the receipt of such report and remittance, the Game, Fish and Oyster Commissioner shall deposit same in the State Treasury to the credit of the special fund provided for in this chapter; and the Comptroller shall credit said Commissioner with the amount of the deposits so made. [Id. p. 457.]

Art. 4039. *Hunting License Fund; a Separate Salary, etc.; Fund.*—All funds paid into the State Treasury from the sale of hunting licenses shall be set apart as a special fund for salaries and expenses of the Game, Fish and Oyster Commissioner and his various deputies, as provided in this chapter; provided, that the fund derived from the sale of hunting licenses contemplated by this chapter shall never be combined with the fish and oyster fund of the State; nor shall said fish and oyster fund ever be liable for the payment of any of the expenses contemplated by this chapter, but shall be kept intact and for the sole purpose of paying the expenses and maintaining the Fish and Oyster

Department of the State, as now provided by law; and the said Commissioner and his deputies shall not be paid out of any other funds. [Acts 1907, p. 256.]

Art. 4040. *Compensation of Commissioner and Deputies.*—The Game, Fish and Oyster Commissioner shall receive, in addition to the salary now paid him for his services in the Fish and Oyster Department, the sum of seven hundred dollars per annum, and his actual and necessary expenses incurred in the discharge of his said duties, to be paid monthly on the warrant of the Comptroller, on the approval of his vouchers therefor. The chief deputy shall receive an annual salary of eighteen hundred dollars and his actual and necessary expenses incurred by him in the discharge of the duties of his office, to be paid monthly on the warrant of the Comptroller, and on the approval of his accounts and vouchers therefor. Each deputy commissioner shall receive three dollars per day for each day actually spent in the discharge of his duties under the direction of the Commissioner, and their actual expenses necessarily incurred when so employed, to be paid monthly on the warrant of the Comptroller, on the approval of itemized vouchers verified under oath and certified and approved by the Game, Fish and Oyster Commissioner; provided, that the total amount paid out by the warrant of the Comptroller for the salaries and expenses of the Game, Fish and Oyster Commissioner, his chief deputy and the other deputies provided for in this chapter, shall not exceed the amount received by the State Treasurer from the sale of hunting licenses and the collection of fines and penalties in cases for the violation of the game and bird laws of this State. And in no event shall the State ever be liable for the pay of any of the deputy commissioners provided for in this chapter. [Id. pp. 255-256, secs. 5-6.]

Art. 4041. *Chief Deputy to Furnish Blank Hunting*

*Licenses to County Clerk; Accounts.*—It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk blank hunting licenses with stubs attached, numbered serially. Said chief deputy shall open an account with each county clerk and charge him with the number of licenses furnished said clerk. Said account shall show the serial number of such licenses. [Acts 1909, 2 S. S., p. 456, sec. 10.]

Art. 4042. *Commissioner and Deputies Made Fire Commissioners; Deputies.*—The Game, Fish and Oyster Commissioner and his deputies appointed under the provisions of this chapter are hereby made fire commissioners, and it shall be their duty, in addition to their duties provided for in this chapter, to caution sportsmen or other persons, while in the woods or marshes or prairies, of the danger from fire, and to extinguish all fires left burning by any one, to the extent of their power, and to give notice to any and all parties interested, when possible, of fires raging and beyond their control, to the end that same may be controlled and extinguished. [Acts 1907, p. 257, sec. 12.]

**CRIMINAL STATUTES PERTAINING TO GAME ANIMALS, BIRDS AND FOWLS.**

Art. 871. *Conviction May be Had on Unsupported Testimony of Accomplice.*—Any court, officer or tribunal having jurisdiction of the offense set forth in this chapter, or any district or county attorney, may subpoena persons and compel their attendance as witnesses to testify as to violations of any of the provisions of this law; and any person so summoned and examined shall not be liable to prosecution for any of the violations of this law about which he may testify; and a conviction for said offense may be had upon the unsupported evidence of an accomplice or participant. [P. C.]

Art. 878. *Wild Game, Property of Public.*—All the wild deer, wild antelope, wild Rocky Mountain sheep, wild turkey, wild ducks, wild geese, wild grouse, wild prairie chickens (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins, wild Mexican pheasants, or chacalaca, and all other wild animals, wild birds and wild fowls found within the borders of this State, shall be, and the same are hereby declared to be the property of the public. [Act 1907, p. 278.]

Art. 879. *Unlawful to Kill or Have in Possession Any Wild Bird but Game Bird as Defined.*—It shall be unlawful for any person in the State of Texas to kill, catch or have in his or her possession, living or dead, any wild bird, other than a game bird, or to purchase, to offer or expose for sale, transport or ship within or without the State, any such wild bird after it has been killed or caught, except as permitted by this law; and no part of the plumage, skin or body of any bird pro-

tected by this article shall be sold or had in possession for sale. For the purposes of this article, the following only, shall be considered game birds: Wild turkey, wild ducks, wild geese, wild grouse, wild prairie chicken (pinnated grouse), wild Mongolian or English pheasants, wild quail or partridges, wild doves, wild pigeons, wild plover, wild snipe, wild jacksnipe, wild curlews, wild robins and wild Mexican pheasants or chacalaca. [Id., p. 278.]

Art. 880. *Unlawful to Destroy Nest or Eggs of Wild Birds.*—It shall be unlawful for any person in the State of Texas to take or needlessly destroy the nest or eggs of any wild bird, or have such nest or eggs in his or her possession, except as permitted by this law. [Id., p. 279.]

Art. 881. *Penalty for Violating Two Preceding Articles.*—Any person violating any of the provisions of Articles 879 and 880 shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than ten nor more than one hundred dollars for each bird, living or dead, or a part of a bird, nest or set of eggs, or part thereof, possessed in violation of this law. [Id., p. 279.]

Art. 882. *Sell, Purchase or Offer for Sale Game or Game Birds, Penalty.*—Whoever shall sell or offer for sale, have in his or her possession, for the purpose of sale, or whoever shall purchase or have in his possession after purchase, any wild deer, wild antelope, or wild Rocky Mountain sheep, killed in this State, or the carcass thereof, or the hide thereof, or the antlers thereof; or whoever shall sell or offer for sale, or have in his possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase, any of the game or game birds mentioned in Article 879, killed or taken within this State, shall

be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars. [Id., p. 279.]

*Constitutional law.* This statute is held constitutional. *Ex parte Blardone*, 55 T. Cr. R., 189, 116 S. W. R., 1199.

And the legislative power has the right to decree that the citizen shall be restricted in the slaughter of game, and inhibited from the sale of game slaughtered under that restriction. *Id.*

Art. 883. *Netting or Trapping of Prohibited.*—The netting or trapping of any wild bird or wild fowl mentioned in Articles 878 and 880, at any season of the year, is hereby prohibited; and any person violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars. [Id., p. 279.]

Art. 884. *Unlawful to Kill Wild Geese or Ducks Otherwise Than by Ordinary Gun.*—It shall be unlawful to destroy any wild geese or wild ducks by any means otherwise than by an ordinary gun, capable of being held to and shot from the shoulder; and whoever violates the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars. [Id., p. 279.]

Art. 885. *Killing of in Certain Counties at Night Prohibited.*—If any person shall, in either of the counties of Harris, Jefferson, Galveston, Brazoria, Matagorda, Nueces, Aransas, Refugio, Lavaca, San Patricio, Cameron, Hidalgo or Calhoun, shoot or shoot at, with a gun of any description, or hunt or kill in any manner, any wild duck, wild goose or any other kind of wild aquatic fowl at night, that is, between sunset and



sunrise, he shall be fined not less than five nor more than twenty dollars. [Act 1901, p. 301.]

Art. 886. *Certain Game Not to be Killed for a Period of Five Years.*—It shall be unlawful for any person to kill, take or destroy any wild Mongolian or English pheasant, wild prairie chicken (pinnated grouse), wild antelope, or wild Rocky Mountain sheep, for the space of five years next after this Act takes effect; and any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than one hundred dollars. [Approved March 13, 1911. Became the law June 12, 1911. Will continue to be law until June 12, 1916.]

Art. 887. [518] *Killing Certain Harmless Birds Prohibited.*—If any person shall wilfully kill, or in any manner injure, any mocking bird, whippoorwill, night hawk, blue bird, red bird, finch, thrush, linnet, wren, martin, swallow, bobolink, cat bird, nonpareil, scissor-tail, he shall be deemed guilty of a misdemeanor, and, upon conviction before a justice of the peace or other court of competent jurisdiction, he shall be fined a sum of not less than five nor more than fifteen dollars.

Art. 888. [519] *Killing of Certain Other Birds or Fowls Prohibited.*—If any person shall wilfully kill any seagull, tern, shear-water, egret, heron or pelican, or shall wilfully take from their nests, or in any manner destroy, any egg or eggs of any seagull, tern, shear-water, egret, heron or pelican, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five nor more than twenty-five dollars; provided, that the killing of any of the birds above enumerated, or taking of their eggs with intent to preserve the same for scientific purposes, shall not be construed to be a violation of this act.

Art. 889. *Open Season, When; Killing of Over Certain Number of Game Prohibited.*—It shall be unlawful for any person to kill, ensnare, or entrap, or in any way destroy any wild deer in the period of time embraced between the first day of January and the first day of November in each year; provided, it shall be unlawful for any person at any season of the year to take, kill, trap, or ensnare any wild female deer or spotted fawn within this State; and provided, further, that it shall be unlawful for any person to take, kill, trap or ensnare more than three wild buck during the months of November and December of any one year; provided, it shall be unlawful to kill any wild turkey in the period of time embraced between the first day of April and the first day of December of each year, or more than three wild turkey in the period of time embraced in the months of December, January and February of each year, or any wild quail or partridge, or any dove within the period of time embraced between the first day of February and the first day of November in each year; provided, it shall be unlawful, except herein elsewhere provided, for any person in any one day to kill or destroy more than twenty-five of the birds or fowls mentioned in Article 878 that are permitted to be taken or killed in any one day. It shall further be unlawful for any person at any time to hunt deer or other game mentioned in Article 878 by aid of what is commonly known as a hunting lamp or lantern, or any other light used for the purpose of hunting at night; and after the space of five years next after this Act takes effect, it shall be unlawful for any person to kill, trap or ensnare or in any way destroy any wild antelope or Rocky Mountain sheep in the period of time embraced between the first day of January and the first day of November of each year; provided further, that it shall be unlawful for any person to kill, trap, or ensnare more than two wild antelopes

or one Rocky Mountain sheep during the months of November and December of each year; and any wild Mongolian or English pheasants or any prairie chicken (pinnated grouse), in the period of time embraced between the first day of February and the first day of November of each year. Any person violating any provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars. [Approved March 13, 1911.]

Art. 890. *Unlawful to Receive for Transportation.*—It shall be unlawful for any express company, railroad company or other common carrier, or the officers, agents, servants or employes of the same, to receive for the purpose of transportation, or to transport, carry or take beyond the limits of the State, or within this State, except as hereinafter provided, any wild animal, bird or water fowl mentioned in Article 878 of this Act, or the carcass thereof, or the hide thereof. Any persons violating the provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars. Provided, that each shipment shall constitute separate offense, and that such express company, or other common carrier, or its agents, servants or employes shall have the privilege of examining any suspected package for the purpose of determining whether such package contains any of the articles mentioned herein.

Art. 891. *Exception When Lawfully Killed, Shipping Affidavit Necessary.*—Nothing in this chapter shall be construed to prohibit the transportation or shipment of any of the game, birds or wild fowls mentioned in Article 878, when lawfully taken or killed, from the place of shipment to the home of the person who killed the same; provided, the person who killed said game,

birds or fowls shall accompany said game, birds or fowls on the same train or common carrier from the point of shipment to the said point of destination; and provided, further, that the person desiring to ship or transport said game, birds or fowls shall first make the following affidavit in writing before some officer authorized by law to administer oaths, and deliver same to said railroad or common carrier, or to the agent of said railroad or common carrier, at the point of shipment; and, upon filing the affidavit, such party shall be permitted to transport to his home in accordance herewith not exceeding twenty-five of any wild game bird, when such number is permitted to be killed, or the kind offered for shipment, except wild duck; provided that such party may be permitted to transport seventy-five wild ducks upon filing the affidavit containing the provisions as stipulated in the affidavit prescribed:

State of Texas, County of .....

Before me, the undersigned authority, on this day personally appeared.....who, after being by me duly sworn, upon oath says:

I live at ....., in the county of ..... in the State of .....; that I have killed (state the number and kind of game, birds or fowls), which I desire to ship from ....., in ..... county, to my home, which game I killed for my own use and not for sale, and same shall not be sold, and same will be accompanied by me from the point of shipment to the point of destination; that I have not killed or shipped exceeding three buck deer during this hunting season, and have not killed are shipped exceeding twenty-five birds or fowls, mentioned in Article §78, except wild ducks, in any one day during the present hunting season; and that I have in no way violated any of the provisions of this law; (and if such game to be shipped be wild duck, then such party shall further

make affidavit) that the shipment I offer is wild duck only, that the number does not exceed seventy-five, that I killed the said ducks in three days consecutively; and that I did not kill more than twenty-five of same in any one day.

Sworn to and subscribed by .....  
 before me this ..... day of ..... 190..  
 Name and official character of officer.

And thereupon, said game, birds or fowls shall be transported or shipped, by railroad or other common carrier in the name of the person making said affidavit, to the home of said person, and shall mark on the card attached to said game, birds, or fowls the words "affidavit made." Any person violating the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars.

Art. 892. *What Birds Not Protected.*—The English or European house sparrows, hawks, crows, buzzards, black birds, rice birds, and owls are not included among the birds protected by this chapter. Nothing herein contained shall be construed to prevent any person or persons from killing birds that are at the time destroying his growing crop. [Id., p. 282.]

Art. 893. *Domestic Birds Excepted.*—Nothing in this chapter shall prevent the keeping of any bird in a cage as a domestic pet; provided, that such bird shall not be sold or exchanged or offered for sale or exchange or transported out of the State; provided, that nothing herein contained shall be construed to prohibit the sale or shipment of canary birds or parrots. [Id., p. 282.]

Art. 894. *Possession of Prohibited Bird Applies to Any Such Bird.*—Whenever in this chapter the possession of any bird is prohibited, said prohibition shall

apply equally to a bird coming from outside the State as to one taken within the State. [Id., p. 282.]

Art. 895. *Possession During Protected Season Prima Facie Evidence of Guilt.*—Possession at any time of the year during which the game, birds and wild fowl of the State are protected herein shall be prima facie evidence of the guilt of the person in possession thereof. [Id., p. 282.]

Art. 897. *Has Power of Sheriff, May Arrest Without Warrant.*—Said Game, Fish and Oyster Commissioner shall have the same power and authority to serve criminal process as sheriffs, and shall have the same power as sheriffs to require aid in executing such process.

Said commissioner may arrest without warrant any person found by him in the act of violating any of the laws for the protection or propagation of game or wild birds, and take such person forthwith before a magistrate having jurisdiction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest. [Id., p. 255.]

Art. 899. *Hunting License to be Procured, When.*—It shall hereafter be unlawful for any person who has not been a bona fide inhabitant of and resident citizen of this State, for six months last past to hunt for or kill any game or birds protected by the laws of this State, without first procuring a hunting license from the Game, Fish and Oyster Commissioner, permitting him to do so, and by paying to said Commissioner the sum of fifteen dollars. Said license, shall be dated when issued, and shall remain in force until the first day of September, following thereafter. It shall hereafter be unlawful for any person to hunt or kill any game quadrupeds or game birds or wild fowl protected by

the game laws of this State, except in the county of his residence or in the counties adjoining the county of his residence, or on land owned or controlled by him, without first obtaining a State hunting license from the Game, Fish and Oyster Commissioner, permitting him to do so. Any person who has been a bona fide resident of this State for six months last past may procure a hunting license to hunt outside the boundaries of the county in which he resides, by paying a license fee of one dollar and seventy-five cents to the county clerk of the county in which he resides, to be dated when issued. Such licenses shall expire the first day of September of each year following such date. Said license shall authorize the person named therein to use firearms in the hunting or killing game birds during the hunting season of that year, but only in the manner and time prescribed by law. Said license shall limit the number and quality of game which may be taken or killed, in accordance with the provisions of law governing the subject. [Act 1909, p. 456.]

Art. 900. *Person Hunting Who Refuses to Show License.*—Any person found hunting, in open season, any game protected by the laws of the State, and who shall refuse to show his license herein provided for to any sheriff, deputy sheriff, constable, game commissioner or deputy game commissioner, or any other person or persons, on whose lands said person or persons are found hunting, or to any person who has the land under their control, on demand, shall be deemed guilty of a violation of the provisions of this law, and, upon conviction, shall be liable to the penalties provided herein. [Id., p. 456.]

*Penalty for Violation.*—Any person violating the provisions of this law shall be punished, upon conviction by fine not exceeding one hundred dollars and the cost of prosecution.

**FEDERAL MIGRATORY BIRD LAW.**

The Congress of the United States in March of this year passed the following law regulating the killing and taking of migratory birds:

“All wild geese, wild swans, brant, wild ducks, snipe, plover, woodcock, rail, wild pigeons, and all other migratory game and insectivorous birds which in their northern and southern migrations pass through or do not remain permanently the entire year within the borders of any State or Territory, shall hereafter be deemed to be within the custody and protection of the Government of the United States, and shall not be destroyed or taken contrary to regulations hereinafter provided therefor.

“The Department of Agriculture is hereby authorized and directed to adopt suitable regulations to give effect to the previous paragraph by prescribing and fixing closed seasons, having due regard to the zones of temperature, breeding habits, and times and line of migratory flight, thereby enabling the department to select and designate suitable districts for different portions of the country, and it shall be unlawful to shoot or by any device kill or seize and capture migratory birds within the protection of this law during said closed season, and any person who shall violate any of the provisions or regulations of this law for the protection of migratory birds shall be guilty of a misdemeanor and shall be fined not more than \$100 or imprisoned not more than ninety days, or both, in the discretion of the court.

“The Department of Agriculture, after the preparation of said regulations, shall cause the same to be made public, and shall allow a period of three months in which said regulations may be examined and considered before final adoption, permitting, when deemed



proper, public hearings thereon and after final adoption shall cause the same to be engrossed and submitted to the President of the United States for approval: *Provided, however,* That nothing herein contained shall be deemed to affect or interfere with the local laws of the States and Territories for the protection of nonmigratory game or other birds resident and breeding within their borders, nor to prevent the States and Territories from enacting laws and regulations to promote and render efficient the regulations of the Department of Agriculture provided under this statute."

### REGULATIONS ADOPTED.

The Department of Agriculture, in pursuance of the above statute adopted rules and regulations. And in pursuance of the above statute, President Wilson, on October 1, 1913, issued a proclamation putting into effect these rules and regulations as follows:

#### Regulation 1. Definitions.

For the purposes of these regulations the following shall be considered migratory game birds:

(a) Anatidae or waterfowl, including brant, wild ducks, geese, and swans.

(b) Gruidae or cranes, including little brown, sandhill, and whooping cranes.

(c) Rallidae or rails, including coots, gallinules, and sora and other rails.

(d) Limicolae or shore birds, including avocets curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plover, sandpipers, snipe, stilts, surf birds, turnstones, willet, woodcock, and yellow legs.

(e) Columbidae or pigeons, including doves and wild pigeons.

For the purposes of these regulations the following shall be considered migratory insectivorous birds:

(f) Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks, or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.

### **Regulation 2. Closed Season at Night.**

A daily closed season on all migratory game and insectivorous birds shall extend from sunset to sunrise.

### **Regulation 3. Closed Season on Insectivorous Birds.**

A closed season on migratory insectivorous birds shall continue to December 31, 1913, and each year thereafter shall begin January 1 and continue to December 31, both dates inclusive, provided that nothing in this or any other of these regulations shall be construed to prevent the issue of permits for collecting birds for scientific purposes in accordance with the laws and regulations in force in the respective States and Territories and the District of Columbia; and provided, further, that the closed season on reedbirds or ricebirds in Maryland, the District of Columbia, Virginia, and South Carolina shall begin November 1 and end August 31 next following, both dates inclusive.

### **Regulation 4. Five-year Closed Seasons on Certain Game Birds.**

A closed season shall continue until September 1, 1918, on the following migratory game birds: Band-tailed pigeons, little brown, sandhill, and whooping cranes, swans, curlew, and all shorebirds except the

black-breasted and golden plover, Wilson or jack snipe, woodcocks, and the greater and lesser yellowlegs.

A closed season shall also continue until September 1, 1918, on wood ducks in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Kansas, California, Oregon, and Washington; on rails in California and Vermont; and on woodcock in Illinois and Missouri.

#### **Regulation 5. Closed Season on Certain Navigable Rivers.**

A closed season shall continue between January 1 and December 31, both dates inclusive, of each year, on all migratory birds passing over or at rest on any of the waters of the main streams of the following navigable rivers, towit: The Mississippi river between Minneapolis, Minn., and Memphis, Tenn.; and the Missouri river between Bismarck, N. Dak., and Nebraska City, Nebr.; and on the killing or capture of any of such birds on or over the shores of any of said rivers, or at any point within the limits aforesaid, from any boat, raft, or other device, floating or otherwise, in or on any such waters.

#### **Regulation 6. Zones.**

The following zones for the protection of migratory game and insectivorous birds are hereby established:

Zone No. 1, the breeding zone, comprising States lying wholly or in part north of latitude 40 degrees and the Ohio river and including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, North Dakota,

South Dakota, Nebraska, Colorado, Wyoming, Montana, Idaho, Oregon, and Washington—25 States.

Zone No. 2, the wintering zone, comprising States lying wholly or in part south of latitude 40 degrees and the Ohio river and including Delaware, Maryland, the District of Columbia, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, New Mexico, Arizona, California, Nevada, and Utah—23 States and the District of Columbia.

### **Regulation 7. Construction.**

For the purposes of regulations 8 and 9, each period of time therein prescribed as a closed season shall be construed to include the first day and to exclude the last day thereof.

### **Regulation 8. Closed Seasons in Zone No. 1.**

Closed seasons in Zone No. 1 shall be as follows:

*Waterfowl.*—The closed season on waterfowl shall be between December 16 and September 1 next following except as follows:

Exceptions: In Massachusetts the closed season shall be between January 1 and September 15.

In New York, except Long Island, the closed season shall be between December 16 and September 16.

On Long Island and in Oregon and Washington the closed season shall be between January 16 and October 1.

In New Jersey the closed season shall be between February 1 and November 1; and

In Minnesota, North Dakota, South Dakota, and Wisconsin the closed season shall be between December 1 and September 7.

*Rails.*—The closed season on rails, coots, and galli-

nules shall be between December 1 and September 1 next following, except as follows:

Exceptions: In Massachusetts, New Hampshire, and Rhode Island the closed season shall be between December 1 and August 15.

In Connecticut, Michigan, and New York, and on Long Island the closed season shall be between December 1 and September 16.

In Minnesota, North Dakota, South Dakota, and Wisconsin the closed season shall be between December 1 and September 7; and

In Oregon and Washington the closed season shall be between January 16 and October 1.

*Woodcock*.—The closed season on woodcock shall be between December 1 and October 1 next following, except as follows:

Exceptions: In Connecticut, Massachusetts, and New Jersey the closed season shall be between December 1 and October 10.

In Rhode Island the closed season shall be between December 1 and November 1; and

In Pennsylvania and on Long Island the closed season shall be between December 1 and October 15.

*Shore Birds*.—The closed season on black-breasted and golden plover, jack-snipe or Wilson snipe, and greater and lesser yellowlegs shall be between December 16 and September 1 next following, except as follows:

Exceptions: In Maine, Massachusetts, New Hampshire, Rhode Island, and on Long Island, the closed season shall be between December 1 and August 15.

In New York, except Long Island, the closed season shall be between December 1 and September 16.

In Minnesota, North Dakota, South Dakota, and Wisconsin the closed season shall be between December 1 and September 7; and

In Oregon and Washington the closed season shall be between December 16 and October 1.

**Regulation 9. Closed Seasons in Zone No. 2.**

Closed seasons in Zone No. 2 shall be as follows:

*Waterfowl.*—The closed season on waterfowl shall be between January 16 and October 1 next following except as follows:

Exceptions: In Delaware, Maryland, Virginia, North Carolina, Alabama, Mississippi, Louisiana, and Texas, the closed season shall be between February 1 and November 1.

In the District of Columbia, Kansas, New Mexico, and West Virginia, the closed season shall be between December 16 and September 1.

In Florida, Georgia, and South Carolina the closed season shall be between February 16 and November 20.

In Missouri and Nevada the closed season shall be between January 1 and September 15; and

In Arizona and California the closed season shall be between February 1 and October 15.

*Rails.*—The closed season on rails, coots, and gallinules shall be between December 1 and September 1 next following except as follows:

Exceptions: In Tennessee and Utah the closed season shall be between December 1 and October 1.

In Missouri the closed season shall be between January 1 and September 15.

In Louisiana the closed season shall be between February 1 and November 1; and

In Arizona and California the closed season on coots shall be between February 1 and October 15.

*Woodcock.*—The closed season on woodcock shall be between January 1 and November 1, except as follows:

Exceptions: In Delaware, and Louisiana the closed season shall be between January 1 and November 15.

In West Virginia the closed season shall be between December 1 and October 1; and

In Georgia the closed season shall be between January 1 and December 1.

*Shore Birds.*—The closed season on black-breasted and golden plover, jack-snipe or Wilson snipe, and greater and lesser yellowlegs shall be between December 16 and September 1, next following, except as follows:

Exceptions: In Florida, Georgia, and South Carolina the closed season shall be between February 1 and November 20.

In Alabama, Louisiana, Mississippi, and Texas the closed season shall be between February 1 and November 1.

In Tennessee the closed season shall be between December 16 and October 1.

In Arizona and California the closed season shall be between February 1 and October 15; and

In Utah the closed season on snipe shall be between December 16 and October 1, and on plover and yellowlegs shall be until September 1, 1918.

### **Regulation 10. Hearings.**

Persons recommending changes in the regulations or desiring to submit evidence in person or by attorney as to the necessity for such changes should make application to the Secretary of Agriculture. Whenever possible hearings will be arranged at central points, and due notice thereof given by publication or otherwise as may be deemed appropriate. Persons recommending changes should be prepared to show the necessity for such action and to submit evidence other than that based on reasons of personal convenience or a desire to kill game during a longer open season.

### COMMENTS.

In the above it will be observed that the Federal law, applicable to Texas, is contained specifically in "Regulation 9, closed season in Zone No. 2."

It will be observed that although the Federal law mentions doves as migratory birds no regulation for open or closed season for killing them is made. Therefore the killing and protection of doves is left to the State laws, and under the State law it is unlawful to kill or take doves from February 1 to November 1 of each year.

The Federal law does not undertake to control or regulate the killing of quail, wild turkeys, pheasants, prairie chickens or any kind of game animals, and therefore these game birds and fowls and all game animals are exclusively under control of the State law.



## INDEX.

	Page.	Article.
Creation of office of Game, Fish and Oyster Commissioner.....	3	3974
Qualification of Commissioner.....	3	3975
Location of office of Commissioner.....	3	3976
Oath and bond of Commissioner.....	3-4	3977
Seal of office.....	4	3978
General duties and powers of Commissioner.....	4	3979
Public waters property of State.....	5	3980
Jurisdiction of Commissioner.....	5	3980
Private and public oyster beds defined.....	5	3981
Riparian rights.....	5-6	3982
Tax on fish, terrapin, oysters and shrimp.....	6-7	3983
Box measure for oysters.....	7	3983
Registration of fishing boats.....	7	3984
Who may secure registration, and how.....	7	3984
Permit to sell fish and oysters.....	7-8	3985
Seizure and sale by Commissioner.....	7-8	3985
Captain's license.....	8-10	3986
Captain must be American citizen.....	8	3986
Fishermen must be American citizens.....	8	3986
Captain's qualifications and requirements of fishermen.....	8-10	3986
Wholesale dealer's license.....	10-11	3987
Definition of wholesale dealer.....	10-11	3987
Two gallons of shucked oysters a barrel.....	11	3987
Application for wholesale dealer's license.....	11	3988
Record book of wholesale dealer.....	11	3988
License tax to be paid by wholesale dealer.....	12	3989
Deposit may be required by wholesale dealer.....	12-13	3990
Who may obtain oyster location.....	13	3991
Fee to accompany application for oyster location.....	13	3991
Examination and survey of oyster location.....	13-14	3992
Certificate and fee for oyster location.....	14	3993
Oyster location certificate to be recorded.....	14	3994
Fee and evidence of oyster location.....	14	3994
Locator protected in possession.....	14-15	3995
Foreign corporations excluded from locating oyster claim.....	15	3996
Stakes to be kept in place.....	15	3997
Oyster location may be fenced.....	15	3997
Rent for oyster location.....	16	3998

	Page.	Article.
Forfeiture of oyster location.....	16	3998
Permit to gather seed oysters.....	16-17	3999
Duties of Commissioner.....	17	4000
Shall keep record.....	17	4001
Accounts to be kept with oyster locators.....	18	4002
Annual report of Commissioner.....	18	4003
Deputies in coast counties.....	19	4004
Special deputies.....	19	4004
Deputies in interior counties.....	19	4005
Qualifications of deputies.....	19	4006
Oath and bond of deputies.....	20	4007
Duties of deputies.....	20	4008
Weekly reports by deputies.....	20	4009
Annual reports of deputies.....	20	4009
Commissioner responsible for deputies.....	20	4010
Fish and oyster fund.....	20	4011
Distribution of fines.....	21	4012
Disposition of funds.....	21	4013
Compensation of Commissioner.....	21	4014
Compensation of Deputy Commissioners.....	21	4015
Commissioners' court may appropriate money for stocking waters.....	22	4016
Meshes of drag seines.....	22	4017
Tags for seines.....	22	4017
Seining for drum fish.....	23	4018
Dredging of oyster reefs—when and how.....	24	4019

#### CRIMINAL STATUTES.

Trapping and netting of fish prohibited.....	25	870
Conviction on testimony of accomplice.....	25	871
Mill dams, duty of persons erecting.....	25	872
Montgomery and Newton counties.....	26	877
Culls of oysters to be scattered.....	26	901
Planting prohibited, when.....	27	902
Shipment prohibited, when.....	27	903
Unlawful to rake or dredge, when.....	27	904
Destroying or defacing buoy.....	28	905
Catching fish, green turtle, unlawful, when and how.....	28	906
Dynamiting and poisoning prohibited.....	29	907
Failure to take out license, penalty.....	29	908
Sale or possession of certain weight fish pro- hibited.....	29	909
Sale or shipment of terrapin of certain weight prohibited.....	30	910

	Page.	Article.
Closed season against seining.....	30	911
Passes closed against seining and netting.....	30	911
Seining and netting in one mile of pass prohibited	30	911
Seining or netting in streams or canals pro- hibited.....	30	911
Waters may be closed against seining and netting, when.....	30	911
Notice of closing must be given.....	31	911
Penalty for unlawful seining and netting.....	31	911
Fishing in gulf permitted, where.....	31	911
Trammel nets, gill nets and other nets may be used, when.....	31	911
Certain fish to be returned to water.....	31	912
Mesh of seines, size of.....	31	912
Penalty for use of unlawful seines.....	31	912
Length of seines.....	31	912
United States Coastal Survey charts.....	32	913
Closed season against taking oysters.....	32	914
Screens over ends of pumping pipes.....	32	915
Penalty for failure to screen pipes.....	32	915
Penalty for fishing without license.....	33	916
Wholesale dealer's license.....	33	917
Wholesale dealer defined.....	33	917
Penalty for failure to take out wholesale dealer's license.....	34	917
Selling unculled oysters, prohibited.....	35	918
Size of oysters.....	35	919
Taking of young oysters prohibited.....	35	919
Examination of oysters by deputies.....	35	919
Five per cent of cargo may be young oysters.....	35	919
Taking of oysters from private beds, theft.....	36	920
Taking of oysters for planting.....	36	921
Unlawful to sell seed oysters.....	36	921
Gathering seed oysters without license, unlawful	36	922
Selling fish, turtle or oysters without license, unlawful.....	37	923
Natural reefs may be dredged, when and how.....	37	923a
Natural reefs may be closed, when.....	37	923b
Notice of closing to be given.....	37	923b
Seizure and distribution of nets, seines and boats	38	923c
Penalty for taking oysters from closed reef.....	38	923d
Jurisdiction of justices of the peace.....	38	923e
Seining and netting in fresh waters.....	38	923f
Size of fresh water seines and nets.....	39	923f
Seines and nets not to be carried into closed waters.....	39	923g

	Page.	Article.
Forfeiture of license.....	39	923h
Natural flow of water.....	40	923i
Penalty for use of unlawful oyster measure.....	40	923j
Taking of another's fish boat or seine into closed waters prohibited.....	40	923k
Killing of gars and pedacious fish permitted.....	40	923l
SAND, SHELL AND MARL.....	42-45	

#### GAME LAW, CIVIL STATUTE.

Wild animals and birds property of public.....	46	4022
Hunting license for non-residents.....	46	4023
Non-resident may take game home, how.....	46	4024
Hunting license for citizens.....	47	4025
Hunting license issued annually.....	46-47	4023-25
County clerk to issue local license.....	47	4026
Monthly reports by county clerks.....	48	4028
Commissioner to enforce laws.....	48	4029
Seizure of birds and animals, when.....	49	4030
Disposition of seized game.....	49	4030
Record to be kept by Commissioner.....	49	4031
Monthly report by Commissioner.....	49	4032
Chief Deputy Game, Fish and Oyster Commissioner.....	50	4033-34
Deputy Game Commissioners.....	50	4035
Fees and fines.....	50	4036
Disposition of fines.....	51	4037
License fees, disposition of.....	51	4038
Hunting license fund.....	51	4039
Compensation of Commissioner.....	52	4040
Salary of Chief Deputy.....	52	4040
Compensation of Deputy Commissioners.....	52	4040
County clerks to be furnished licenses.....	52	4041
Fire Commissioners.....	53	4042

#### GAME LAW, CRIMINAL STATUTES.

Testimony of accomplice.....	54	871
Wild game property of public.....	54	878
Killing and possessing birds other than game birds unlawful.....	54	879
Nests and eggs of wild birds.....	55	880
Penalty for killing certain wild birds.....	55	881
Penalty for destroying nest or eggs.....	55	881
Selling or purchasing game, prohibited.....	55	882

	Page.	Article.
Having in possession for sale prohibited.....	55	882
Possession after purchase prohibited.....	55	882
Constitutionality of law.....	56	
Netting or trapping prohibited.....	56	883
Ordinary gun only for killing geese and ducks.....	56	884
Killing wild fowl at night prohibited.....	56	885
Pheasants, prairie chickens, antelope and Rocky Mountain sheep not to be killed for five years.....	57	886
Killing of certain harmless birds prohibited.....	57	887
Killing of certain other birds prohibited.....	57	888
Open season—		
Deer—November and December.....	58	889
Wild Turkey—December 1st to March 31st	58	889
Quail and doves—November 1st to January 31st.....	58	889
Bag limit.....	58	889
All kinds of birds and fowls—twenty-five pieces per day.....	58	889
Deer—three buck deer with horns during open season.....	58	889
Use of hunting lamp or light prohibited.....	58	889
Transportation of game, prohibited.....	59	890
Affidavit for shipping game home.....	59	891
Form of affidavit.....	60	891
Kind of birds not protected.....	61	892
Kind of birds that may be kept in cages.....	61	893
Possession, unlawful.....	61	894
Possession during protected season prima facie evidence.....	62	895
Commissioner has power of sheriff.....	62	897
Hunting license, penalty for hunting without.....	63	899
Penalty for refusing to show license.....	63	900
Federal and migratory bird law.....	64-72	











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