

## TEXAS<sup>1</sup>

### *State Authority for Marine Protection*

#### Summary of State Authority

Texas’s authority to protect offshore marine areas within its jurisdiction is limited to Fish Sanctuaries, of which none have been created; however, the state has a number of authorities to protect estuarine and coastal habitat. The Texas Parks and Wildlife Department is authorized to designate a range of protected areas along the state’s shoreline—including State Parks, Scientific Areas, Coastal Preserves, and Wildlife Management Areas. These lands are managed through different mechanisms to conserve habitat and set aside areas for recreational fishing opportunities.

	State Parks	Scientific Areas	Coastal Preserves	Wildlife Management Areas	Fisheries Management, Fish Sanctuaries and Closures
Legal requirement	Allows designation of State Parks	Allows designation of “scientific areas”	Allows designation of Coastal Preserves	Allows designation of Wildlife Management Areas	Allows restrictions for fisheries management
Citation <sup>2</sup>	TEX. PARKS & WILD. CODE ANN. § 13.002 (2003)	TEX. PARKS & WILD. CODE ANN. § 81.501 (1975)	TEX. NAT. RES. CODE ANN. §§ 33.001 <i>et seq.</i> (1977)	TEX. PARKS & WILD. CODE ANN. § 81.401 (1975)	TEX. PARKS & WILD. CODE ANN. §§ 47.001 <i>et seq.</i> (1975)
Designation authority	Texas Parks and Wildlife Department (TPWD)	TPWD	School Land Board & TPWD	TPWD	TPWD
Management & enforcement authority	TPWD	TPWD and Texas General Land Office	TPWD	TPWD	TPWD
Jurisdiction & boundaries	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes	All state waters
Prohibited uses	TPWD regulations prohibit harming, harassing, disturbing, trapping, confronting, catching, possessing or removing wildlife	Uprooting seagrasses with propellers, except by permit	None specified	None specified	TPWD has authority to close marine areas or to issue permits to regulate use
Permitted uses	Recreational uses	Research and	Recreational uses	Recreational uses	None specified

<sup>1</sup> This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at [www.eli-ocean.org/mpa](http://www.eli-ocean.org/mpa).

<sup>2</sup> The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

	State Parks	Scientific Areas	Coastal Preserves	Wildlife Management Areas	Fisheries Management, Fish Sanctuaries and Closures
	such as boating and fishing	recreational uses such as boating and fishing	such as boating and fishing	such as boating and fishing	

Texas’s jurisdiction over its coastal waters extends nine nautical miles seaward.<sup>3</sup> “The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.”<sup>4</sup> In addition, the Texas Open Beaches Act grants the public access to the state-owned “wet beach,” and also prohibits structures on and grants a public easement to the dry beach between the mean high tide line and the vegetated dune line.<sup>5</sup>

### State Parks

The Texas Parks and Wildlife Department (“TPWD”) is authorized to “acquire land, water, and interests in land and water for outdoor recreation areas and facilities.”<sup>6</sup> The legislature gave the Department the authority to develop, operate, and maintain the outdoor recreation areas.<sup>7</sup> One goal of the state park system is “to seek out and protect high quality examples of . . . sensitive habitats.”<sup>8</sup> However, State Parks are primarily developed to provide recreational opportunities.

One example of TPWD’s use of its conservation authority is Boca Chica State Park, which protects sand dune habitat and serves as important nursery grounds for fish and shellfish. TPWD regulations prohibit harming, harassing, disturbing, trapping, confining, catching, possessing, or removing any wildlife, but recreational uses like boating, fishing, swimming, and surfing are permitted.<sup>9</sup>

### Scientific Areas

Texas authorizes TPWD to establish “scientific areas” to research and preserve species with scientific or educational value.<sup>10</sup> TPWD has used this authority to create two state scientific areas on the coast: Nine-Mile Hole and Redfish Bay State Scientific Area.<sup>11</sup>

For example, TPWD designated Redfish Bay State Scientific Area in order to protect and study native seagrasses. The Department’s regulations offer some limited protections for the area’s seagrasses, which serve as valuable habitat to a number of marine species. The use of electric trolling motors and anchoring in the Redfish Bay State Scientific Area is permitted, but uprooting seagrasses with propellers is prohibited, except when permitted by a coastal lease issued by the Texas General Land Office.<sup>12</sup>

<sup>3</sup> See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

<sup>4</sup> TEX. WATER CODE ANN. § 11.0235(a).

<sup>5</sup> TEX. NAT. RES. CODE ANN. §§ 61.001 *et seq.* The reach of this easement following avulsive storm events has been called into question by a recent decision of the Texas Supreme Court. See *Severance v. Patterson*, 345 S.W.3d 49 (Tex. 2011).

<sup>6</sup> TEX. PARKS & WILD. CODE ANN. § 13.002 (2003).

<sup>7</sup> 31 TEX. ADMIN. CODE § 59.61(1).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* § 59.134.

<sup>10</sup> TEX. PARKS & WILD. CODE ANN. § 81.501 (1975).

<sup>11</sup> 31 TEX. ADMIN. CODE §§ 57.920–57.921.

<sup>12</sup> 31 TEX. ADMIN. CODE § 57.921(d).

## Coastal Preserves

The Texas Coastal Management Program serves to “preserve the natural resources of the surface estate of public land.”<sup>13</sup> The Commissioner of the General Land Office administers the Program with assistance from the Coastal Coordination Advisory Committee, comprised of representatives from TPWD’s Parks and Wildlife Commission, the Texas Commission on Environmental Quality, the Railroad Commission of Texas, the Texas Water Development Board, the Texas Transportation Commission, the State Soil and Water Conservation Board, and the Texas Sea Grant College Program.<sup>14</sup>

The Program uses its authority to lease coastal lands to TPWD for the purpose of conserving estuarine habitat; currently there are four coastal preserves.<sup>15</sup> For example, TPWD manages the Christmas Bay Coastal Preserve, with the goal of protecting the unique coastal areas and fragile biological communities of the Bay.<sup>16</sup> Christmas Bay’s seagrasses serve as valuable habitat and nursery grounds for a variety of marine species. TPWD permits recreational activities in the area, such as fishing and boating.

## Wildlife Management Areas

TPWD has authority to acquire and manage Wildlife Management Areas (“WMAs”).<sup>17</sup> WMAs are intended to serve primarily as hunting reserves, but TPWD has the authority to manage these lands “along sound biological lines.”<sup>18</sup> Texas has 12 WMAs in the Gulf Coast region, which preserve barrier islands, salt grass marshes, and other habitats.

For example, TPWD acquired the lands that compose the Guadalupe Delta Wildlife Management Area between 1985 and 1994.<sup>19</sup> The WMA conserves estuarine habitat, which provides valuable spawning and nursery grounds for Atlantic croaker, blue crab, brown shrimp, red drum, spotted seatrout, white shrimp, and other marine species. Recreational fishing is allowed in certain areas of the WMA on a seasonal basis.

## Fisheries Management, Fish Sanctuaries and Closures

The Coastal Fisheries Division of TPWD has broad authority to manage Texas’s marine fisheries.<sup>20</sup> Texas authorizes TPWD to issue area-based protections for marine species, and the Department has authority to create fish sanctuaries where takings of fish are prohibited. However, TPWD has not yet created any fish sanctuaries in the state.<sup>21</sup>

<sup>13</sup> TEX. NAT. RES. CODE ANN. §§ 33.001 *et seq.* (1977).

<sup>14</sup> TEX. SEN. BILL 656, 82ND LEG. REG. SESSION.

<sup>15</sup> See Texas General Land Office, <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/environmental-protection/preserving-coastal-habitat.html>

<sup>16</sup> Tex. Parks & Wildlife Dep’t, Texas GEMS-Christmas Bay Coastal Preserve, <https://www.tpwd.state.tx.us/landwater/water/conservation/txgems/christma/index.phtml> (last visited Apr. 25, 2013);

STEPHANIE SHOWALTER & LISA C. SCHIAVINATO, MARINE PROTECTED AREAS IN THE GULF OF MEXICO: A SURVEY 138 (2004).

<https://www.tpwd.state.tx.us/landwater/water/conservation/txgems/christma/index.phtml>

<sup>17</sup> TEX. PARKS & WILD. CODE ANN. § 81.401 (1975).

<sup>18</sup> *Id.* § 81.401(b).

<sup>19</sup> STEPHANIE SHOWALTER & LISA C. SCHIAVINATO, MARINE PROTECTED AREAS IN THE GULF OF MEXICO: A SURVEY 143 (2004); Tex. Parks & Wildlife Dep’t, Guadalupe Delta WMA, [http://www.tpwd.state.tx.us/huntwild/hunt/wma/find\\_a\\_wma/list/?id=37/](http://www.tpwd.state.tx.us/huntwild/hunt/wma/find_a_wma/list/?id=37/) (last visited Apr. 25, 2013).

<sup>20</sup> TEX. PARKS & WILD. CODE ANN. §§ 47.001 *et seq.* (1975).

<sup>21</sup> *Id.* § 81.004. The authorizing statute states:

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the presiding officer.

(b) The proclamation must contain:

- (1) the area to be included in the sanctuary;
- (2) the reason for creation of the sanctuary;
- (3) the date on which the proclamation takes effect;

Additionally, the agency protects marine species through its licensing and closure activities.<sup>22</sup> The Director of the Coastal Fisheries Division “may close an area to the taking of oysters upon finding that the area is being overworked or damaged or the area is to be reseeded or restocked, and may re-open the areas as provided [by statute].”<sup>23</sup>

*Evaluation of State Authorities<sup>24</sup>*

FACTORS	State Parks	Scientific Areas	Coastal Preserves	Wildlife Management Areas	Fisheries Management, Fish Sanctuaries and Closures
<b>Legal Regime</b>	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory
<b>Ocean Jurisdiction</b>	★★★ Estuarine	★★★ Estuarine	★★★ Estuarine	★★★ Estuarine	★★★★★ All marine waters
<b>Durability</b>	★★★ Indeterminate	★★★ Indeterminate	★★★ Indeterminate	★★★ Indeterminate	★★★ Indeterminate
<b>Consistency</b>	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection
<b>Habitat</b>	★★★★ Habitat protection goal	★★★★ Habitat protection goal	★★★★ Habitat protection goal	★★★★ Habitat protection goal	★★★ Byproduct is habitat protection
<b>Sector</b>	★★★★ Authorizes multi-sector protection	★★★★ Authorizes multi-sector protection	★★★★ Authorizes multi-sector protection	★★★★ Authorizes multi-sector protection	★ Authorizes single-sector protection
<b>Enforcement</b>	★★★★★ Grants TPWD authority to enforce chapter & arrest offenders or issue citations	★★★★★ Grants TPWD authority to enforce chapter & arrest offenders or issue citations	★★★ Some MPA-specific enforcement	★★★ Some MPA-specific enforcement	★★★★★ Grants TPWD authority to enforce chapter & arrest offenders or issue citations
<b>Extent (Scope)</b>	★★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion	Authority not currently used to protect coastal or marine areas
<b>Process for designation or expansion</b>	★★★ No MPA-specific public process	★★★ No MPA-specific public process	★★★ No MPA-specific public process	★★★ No MPA-specific public process	★★★ No MPA-specific public process

(4) the duration of the proclamation; and

(5) a statement that the sanctuary is set aside and designated under the authority of this subchapter, the citation of which must be included.

TEX. PARKS & WILD. CODE ANN. § 81.206 (1975). This authority does not extend to Wichita, Clay, Baylor, and Wilbarger counties. *Id.* § 81.209.

<sup>22</sup> *Id.* §§ 47.002, 47.039.

<sup>23</sup> 31 Tex. Admin. Code §§ 58.21(c)(1) (citing TEX. PARKS & WILD. CODE ANN. § 76.115).

<sup>24</sup> For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

## Local Authority for Marine Protection

### Summary of Local Authorities

Local governments in Texas have some limited authority to protect marine habitat, including the ability to establish a “dune protection line” landward of the mean high tide line and require permits within it. Other available authorities involve land acquisitions of coastal habitat—either through Texas’s counterpart to the federal Endangered Species Act or through voter-approved bonds.

	Dune Protection Act	Endangered Species Habitat Protection	Land Acquisition
<b>Legal requirement</b>	Requires county governments to establish a dune protection line and restrict activity within it	Local governments may adopt regional habitat conservation plans that involve habitat acquisitions	Authority to fund land acquisition
<b>Citation<sup>25</sup></b>	TEX. NAT. RES. CODE ANN. §§ 63.001-63.181 (1973, amended 1991)	TEX. PARKS & WILD. CODE ANN. §§ 11.051–.056 (1983)	n/a
<b>Designation authority</b>	County governments; can delegate to municipalities	Local governments	Local governments
<b>Management &amp; enforcement authority</b>	Local governments	Local governments	Local governments
<b>Jurisdiction &amp; boundaries</b>	Up to 1,000 feet landward of the mean high tide line	Estuaries, coastal lands, beaches and dunes	Coastal lands, beaches and dunes
<b>Prohibited uses</b>	Recreational vehicles; any damage to sand dunes or destruction of vegetation	None specified	None specified
<b>Permitted uses</b>	Livestock grazing, oil and gas production, non-vehicular recreation; others by individual permit	None specified	None specified

### Dune Protection Act

Texas’s Dune Protection Act requires all coastal counties to establish a “dune protection line” for the purpose of preserving sand dunes.<sup>26</sup> The line may extend up to 1,000 feet landward from the mean high tide line, and is established after notice and a public hearing.<sup>27</sup> Within the line, recreational vehicles are banned, and damage to sand dunes or destruction of dune vegetation is prohibited without a permit.<sup>28</sup> The Act also requires the Texas General Land Office to identify “critical dune areas” and promulgate rules for their protection.<sup>29</sup>

### Endangered Species Habitat Protection

Texas’s counterpart to the federal Endangered Species Act funds certain habitat research and conservation activities. TPWD administers the Nongame Endangered Species Conservation Account,

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<sup>26</sup> TEX. NAT. RES. CODE ANN. § 63.011(a). Counties may delegate the delineation authority to municipalities. Id. § 63.011(b).

<sup>27</sup> Id. §§ 63.012-.014.

<sup>28</sup> Id. §§ 63.051, .057, .091, .093. There are statutory exemptions for livestock grazing, oil and gas production, and non-vehicular recreation. Id. § 63.052.

<sup>29</sup> Id. § 63.121.

which collects funds from donations, grants, the sale of wildlife art, and certain fees to be spent on public education, research, habitat enhancement or acquisition, and other activities intended to benefit protected species.<sup>30</sup>

The state also authorizes local governments to create habitat conservation plans that meet the requirements of the federal Endangered Species Act.<sup>31</sup> Local governments may impose regulations that protect endangered species if they are necessary to implement a habitat conservation plan. Before an agency can adopt a plan that involves habitat acquisitions—known as a regional habitat conservation plan—voters must pre-approve bonds to fund the new habitat preserves.

**Land Acquisition**

On Texas’s Gulf Coast, some local governments have used voter-approved bonds to fund conservation acquisitions that have the ability to protect coastal habitat. These local governments include Harris County and the cities of Alvin, Baytown, Missouri City, Pasadena, Seabrook, and Stafford. All are located in the Galveston Bay area and have had approved conservation bonds since 1991.<sup>32</sup>

*Evaluation of Local Authority*

FACTORS	Dune Protection Act	Endangered Species Habitat Protection	Land Acquisition
<b>Legal Regime</b>	Regulatory ★★★★★	Regulatory ★★★★★	Incentive-based ★★
<b>Ocean Jurisdiction</b>	Beach, tidal only ★	Estuarine ★★	Beach, tidal only ★
<b>Durability</b>	Indeterminate ★★	Indeterminate ★★	Indeterminate ★★
<b>Consistency</b>	Authorizes year-round protection ★★★★★	Indeterminate ★★	Indeterminate ★★
<b>Habitat</b>	Habitat protection goal ★★★★★	Species-specific ★	Habitat protection goal ★★★★★
<b>Sector</b>	Mandates multi-sector protection ★★★★★	Mandates multi-sector protection ★★★★★	Managed
<b>Enforcement</b>	Statutory civil penalties specified ★★★★★	Some MPA-specific enforcement ★★	Voluntary, with assistance/incentives
<b>Extent (scope)</b>	All coastal counties ★★	Local government regional habitat conservation plan ★	Shoreland-by-shoreland, local management ★
<b>Process for expansion</b>	Public process for development & expansion of protected area ★★★★★	No MPA-specific public process ★★	No MPA-specific public process ★★

<sup>30</sup> TEX. PARKS & WILD. CODE ANN. §§ 11.051–11.056 (1983).

<sup>31</sup> *Id.* §§ 83.011–83.020 (1999).

<sup>32</sup> Trust for Public Land, Conservation Almanac, Texas LandVote Data, <http://www.conservationalmanac.org/secure/almanac/southwest/tx/lvdata.html> (last visited Apr. 10, 2013).