

STATE-OWNED SUBMERGED LANDS and ISLANDS

COMPLETION OF A FOUR YEAR STUDY
(SUPPLEMENTAL REPORT)

A REPORT TO THE 57th LEGISLATURE



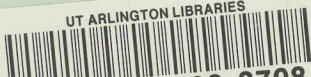
TEXAS LEGISLATIVE COUNCIL

Austin, Texas

December, 1960

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STATE-OWNED SUBMERGED
LANDS and ISLANDS

COMPLETION OF A FOUR YEAR STUDY
(SUPPLEMENTAL REPORT)

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Texas Legislative Council,
Austin, Texas
December, 1960

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of the

56th Legislature of Texas

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TEXAS LEGISLATIVE COUNCIL
CAPITOL STATION — AUSTIN, TEXAS

TO THE MEMBERS OF THE 57TH LEGISLATURE:

The Texas Legislative Council was requested by S. C. R. 65, 56th Legislature, to continue its study of State-owned submerged lands and islands, supplementing a Staff Research Report on that subject published in 1958, with particular emphasis on the production of a bill draft which would encompass solutions for the various problems in this area. The resolution requested that the additional report and bill draft be submitted to the 57th Legislature.

The supplemental report on this subject, together with the report of the Study Committee of the Council which supervised its preparation, are transmitted herewith. The report of the Study Committee includes the bill draft requested by the resolution.

The Council adopted the recommendations contained in the report of the Study Committee on January 9, 1961, and they are submitted for your consideration.

Respectfully submitted,

Ben Ramsey
Ben Ramsey, Chairman

*Report of Study Committee
to the
Texas Legislative Council*

Austin, Texas
January 9, 1961

Lieutenant Governor Ben Ramsey, Chairman
Speaker Waggoner Carr, Vice Chairman
Members of the Texas Legislative Council

Senator Colson and Gentlemen:

We, the undersigned, your Study Committee on Submerged Lands and Islands hereby report and recommend as follows:

1. This study was initially undertaken in response to H.S.R. No. 411 of the 55th Legislature. A comprehensive study of problems relating to State-owned submerged lands and islands was made during the 1957-1958 interim and a report and recommendations submitted by the Council to the 56th Legislature. Legislation was introduced which, if it had been enacted, would have carried into effect the Council's recommendations. The recommended bill relating to the management and utilization of State-owned submerged lands, however, was not enacted and S. C. R. No. 65 was introduced and passed by both houses requesting the Council to continue its study, placing particular emphasis upon the production of a bill draft for consideration by the 57th Legislature which would encompass solutions for the various problems existing in this particular area. This resolution requested further that hearings be held in the Gulf Coast Area so that interested parties might give their views concerning the problems involved.

2. A supplemental report to the basic research report, prepared and submitted to the 56th Legislature, is submitted herewith.

3. The Commissioner of the General Land Office and personnel of his office have cooperated fully in connection with this study and have given valuable assistance to the committee and staff members. The Honorable Jerry Sadler, Commissioner-Elect, has met with your Committee and has attended the public hearings held on the coast. His counsel and advice have been of particular help, and the Committee wishes to express its appreciation therefor.

4. Your Study Committee, pursuant to instructions contained in S. C. R. No. 65, held public hearings at Beaumont on September 29, 1960, and at Corpus Christi on November 14, 1960. These hearings were well attended and several members of the Legislature, State officials, municipal officers, county judges, property owners, sportsmen and other citizens from the Gulf Coast Area appeared and testified.

5. Your Study Committee finds as follows:

(a) Despite oft-repeated requests by Commissioners of the General Land Office since 1894, no executive agency of the State government is charged with the specific responsibility of developing and administering an over-all continuing submerged lands management program. At the present time such a program should be designed to:

(1) Conserve the natural resources of salt water lakes, bays, inlets and marshes within tidewater limits;

(2) Protect the interest of navigation and commerce in the intra-coastal waters;

(3) Prevent the unauthorized encroachment upon and use of the submerged lands and islands owned by the State;

(4) Protect the private and public rights in land, running with the land; and

(5) Permit in certain limited instances the utilization of submerged lands and islands by the lease thereof for industrial purposes where the public interest would not be unduly adversely affected thereby.

(b) Unauthorized encroachment upon and use of State-owned submerged lands and islands by private interests have occurred frequently in the past and will, in the opinion of the Committee, continue in the future unless an executive agency is charged with the responsibility of making investigations of such cases and referring those warranting legal action to the Attorney General.

(c) The State-owned submerged lands and islands, comprising some 1,500,000 acres of land, and their natural resources constitute an important and valuable property right belonging to all the people of Texas. It is the belief of the Committee that the value of such lands and resources as public property for fishing, hunting, recreation, health and other uses in which the public at large may participate and enjoy should be considered as paramount, and private development should be approved only if it does not significantly impair such values. Further, it is the view of this Committee that such lands should not be sold except by express authorization of the Legislature. The Committee is of the opinion, however, that in some areas private development of these lands would not materially interfere with or affect the public interest and that in such cases an executive agency of the State should be authorized to lease the lands for industrial purposes if the county or city, as the case may be, approves such lease.

(d) Under existing law, navigation districts are authorized to purchase submerged lands of the State and to fill in, reclaim or otherwise improve such lands, and the Commissioner of the General Land Office is directed to sell such lands at \$1 per acre. It has been construed that under this law, the Commissioner has no discretion but to sell lands thus applied for if he finds that the district has been created according to law. Further, navigation districts are authorized to sell or lease lands they own which are surplus and no longer needed for the purposes of the district. To date, 108,188 acres of submerged lands have been sold by the State to navigation districts and an additional 16,451 acres have been sold to cities pursuant to special legislation. It is the view of the Committee that the \$1 per acre purchase price now provided by law is wholly inadequate and unrealistic considering the real value of the lands involved. Further, it would appear that if lands sold to navigation districts are no longer needed for navigation district purposes, such lands should revert to the State.

(e) The lack of specific authority for any executive agency to act in the capacity of official representative of the Governor of the State in conducting, with the Federal Government, business concerning matters affecting the submerged lands, islands and coastal waterways of the Gulf Coast has sometimes resulted in the State's interests not being fully identified and consequently protected.

6. Your Study Committee respectfully presents the following recommendations:

(a) That the Council recommend to the Legislature the passage of an act conferring upon the School Land Board certain responsibilities and duties with respect to the management, control and use of the surface estate in State-owned submerged lands and islands and that a Coastal Areas Management Division within the General Land Office be established to assist the Board in the discharge of its functions. Further, it is the opinion of your Study Committee that a Submerged Lands Advisory Committee should be appointed to give technical assistance and advice to the Board. Specifically, it is recommended that the School Land Board be authorized to:

(1) Develop, with the technical assistance of the Advisory Committee, a continuing comprehensive submerged lands management program. Such program would include a survey to determine the extent and location of the State-owned submerged lands and islands and the locating and marking on the ground of boundaries separating such lands from privately-owned lands. This program should further include a study of the potential uses to which these lands might be put so as to utilize the marine resources of the State to the fullest extent conducive with the public interest and studies of the various problems in the coastal engineering field, such as the protection of shores and bay bluffs from harmful erosion, the design

and use of groins, seawalls and jetties, and the effects of fish passes, fills and other coastal works upon the physical features of the shores, bay bottoms and channels and upon the marine and wildlife inhabiting such areas;

(2) Investigate cases involving unauthorized encroachment upon and use of State-owned submerged lands and islands by private interests and refer such cases where warranted to the Attorney General for appropriate legal action;

(3) Represent the Governor of the State in matters in which the Federal Government has an interest which affect the State-owned submerged lands and islands; and

(4) Lease certain submerged lands or islands for industrial purposes in those areas only where private development would not materially interfere with or affect the public interest and where the county commissioners court of the county in which the land is located, or governing body of an incorporated city or town, if the land is located therein, has recommended to the School Land Board the use of the land for such purpose.

It is the opinion of your Study Committee that the act herein recommended should declare it to be the State's policy that the submerged lands and islands of the Texas Gulf Coast which belong to all the people of Texas be so managed and used as to insure the conservation of such lands and resources and their development and utilization in the maximum public interest. In such regard, the value of such lands as public property for fishing, hunting, recreation, health and other uses in which the public at large may participate should be considered as paramount and private development should be approved only if it does not significantly impair these values. Your Committee further believes that such act should declare it to be the policy of the State not to sell any of its submerged lands or islands unless specifically authorized to do so by the Legislature.

The suggested act, attached to this report, is designed to carry out the recommendations herein set forth.

(b) That the Council recommend to the Legislature the appropriation of sufficient funds to the General Land Office for assistance to the School Land Board in the performance of the additional duties imposed by the proposed legislation.

(c) That the Council recommend to the Legislature the passage of an act amending the existing law authorizing sales of submerged lands to navigation districts so as to:

(1) Give the State Land Commissioner discretion with respect to approving such sales;

(2) Provide that the purchase price be based on the fair market value of the lands; and

(3) Provide that if the lands purchased should cease to be used by the district for navigation purposes, they shall revert to the State.

Respectfully submitted,

/s/ Bruce Reagan
Bruce Reagan, Chairman

/s/ R. A. Bartram
R. A. Bartram

/s/ R. H. Cory
R. H. Cory

/s/ Eligio de la Garza
Eligio de la Garza

/s/ W. T. Oliver
W. T. Oliver

A BILL
To Be Entitled

AN ACT relating to the management, control and use of the surface estate in certain State-owned submerged lands and islands so as to insure the conservation of the marine resources of the State and the development of a submerged lands and islands management program dedicated to the preservation and utilization of such natural resources of the State in the public interest.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Declaration of policy and purpose. The State-owned submerged lands and islands in the Texas Gulf Coast Area and the natural resources with which they are so richly endowed, constitute an important and valuable property right belonging to all of the people of Texas. It is the declared policy of the State that such lands shall be so managed and used as to insure the conservation of such lands and resources and their development and utilization in the public interest. The value of such lands as public property for fishing, hunting, recreation, health and other uses in which the public at large may participate and enjoy, shall be considered as paramount, and private development shall be approved only if it does not significantly impair these values. Further, it is the policy of this State not to sell any of its submerged lands or islands unless specifically authorized to do so by the Legislature.

The purpose of this Act is to implement the foregoing policies by delegating to a Submerged Lands Advisory Committee and to the School Land Board, which shall be assisted by a Coastal Areas Management Division within the General Land Office, certain responsibilities and duties with respect to the management, control and use of the surface estate in State-owned submerged lands and islands to the end that:

- (a) The natural resources of salt water lakes, bays, inlets or marshes within the tidewater limits shall be conserved;
- (b) The interests of navigation and commerce in the intra-coastal waters will be protected;
- (c) Unauthorized encroachment upon and use of the submerged lands and islands owned by the State shall be prevented;

(d) Private and public rights in land, running with the land, shall be protected; and

(e) Utilization of such lands for industrial uses will be allowed only if the public interest is not unduly adversely affected thereby.

The Legislature shall appropriate biennially to the General Land Office, the necessary funds to accomplish the purposes of this Act.

Sec. 2. Definitions: As used in this Act, unless the context clearly requires otherwise:

(a) "Board" means the School Land Board.

(b) "Commissioner" means the Commissioner of the General Land Office.

(c) "Advisory Committee" means the Texas Submerged Lands Advisory Committee.

(d) "Island" means any body of land completely surrounded by water located in a salt water lake, bay, inlet or other inland body of water within the tidewater limits of this State, or any portion of such body of land, and shall include man-made islands resulting from dredging or other operations in such waters.

(e) "Submerged lands" means any land extending from the shore line marking the boundary between the lands of the State and littoral owners, to the low water mark on any salt water lake, bay, inlet or other inland water within tidewater limits, and any land lying beneath such bodies of water but shall not include beaches on the open Gulf of Mexico, or land within the jurisdiction of the State of Texas which lies beneath the open waters of the Gulf of Mexico.

(f) "Person" means any individual, firm, partnership, association, corporation (public or private), or political subdivision of this State.

(g) "Bulkhead line" means the linear lines beyond which, when so established by the commissioners court in the county where such land is located, or the governing body of an incorporated city or town if the land is within the limits of a city or town, a further extension creating or filling of land or islands outward into the water is prohibited, and beyond which no State-owned submerged land may be leased to the littoral owners of the upland.

(h) "Governing body" means the governing body of an incorporated city or town.

Sec. 3. Administration. The School Land Board is hereby designated the executive agency of the State charged with the administration and enforcement of the provisions of this Act. There shall be established a Coastal Areas Management Division within the General Land Office to assist the Board in the discharge of its responsibilities and duties under this Act and the Commissioner is authorized to employ such personnel as may be necessary for the Board to perform effectively such functions.

Sec. 4. Duties of Board.

(a) The Board shall, with the technical advice and assistance of the Submerged Lands Advisory Committee, develop a continuing comprehensive submerged lands management program designed to achieve the purposes set forth in Section 1 of this Act. Incidental thereto, it shall make a survey to determine, as accurately as possible, the extent and location of the State-owned submerged lands and islands, and shall locate and mark on the ground the boundaries separating such lands from privately owned lands. Such program shall further comprehend a study of the potential uses to which such lands might be put so as to utilize the marine resources of the State to the fullest extent conducive with the public interest, and shall also include studies of the various problems in the coastal engineering field such as the protection of the beaches and bay bluffs from harmful erosion, the design and use of groins, seawalls and jetties, and the effects of bay fills, fish passes and other coastal works upon the physical features of the shores, channels and bay bottoms and upon marine and wildlife inhabiting such areas.

(b) The Board shall investigate cases involving the unauthorized encroachment upon and use of State-owned submerged lands and islands by private interests and shall refer all such cases where warranted to the Attorney General for appropriate action. The Attorney General shall promptly institute legal action to enjoin such unauthorized encroachment or use.

(c) The Board shall, with the advice and assistance of the Advisory Committee, conduct a continuing study of the problems affecting State-owned submerged lands and islands and shall make a report to the Legislature not later than the first of December preceding each Regular Session, setting forth the results of its study together with any recommendations for legislative action which it considers necessary.

(d) The Board shall pass upon applications for lease of State-owned submerged lands and islands for industrial purposes as hereinafter provided.

(e) The Board shall approve or disapprove bulkhead lines located and fixed by the commissioners courts or governing bodies of incorporated cities and towns.

Sec. 5. Submerged Lands Advisory Committee.

(a) There is hereby created a "Texas Submerged Lands Advisory Committee" to advise and assist the School Land Board and perform such other duties as are herein provided, which Committee shall be composed of the following members:

(1) The Executive Director of the State Game and Fish Commission, the Director of the Institute of Marine Science, The University of Texas, and the Chairman of the Department of Oceanography, Texas A. & M. College, who shall serve as ex-officio members of the Committee.

(2) Two (2) citizen members appointed by the Governor, with the consent of the Senate, one (1) of whom shall be chosen for his recognized interest in conservation of the State's natural resources, and the other for his interest in the development of the State's submerged lands and his knowledge in the fields of oceanography and coastal engineering.

(b) The terms of members first appointed shall be from the date of their appointment through December 31, 1961, and appointments thereafter shall be for a period of two (2) years ending on December 31 of even-numbered years. Any vacancy shall be filled by appointment by the Governor for the unexpired term and each member shall serve until his successor is appointed and qualified.

(c) Members of the Committee shall serve without compensation, but shall be entitled to reimbursement for actual necessary travel and subsistence expenses while in attendance upon meetings of the Committee or engaged in the performance of duties as a member while away from their places of residence.

(d) The Committee shall, within thirty (30) days following the appointment of members, meet and organize by selecting a chairman and vice chairman. Thereafter, the Committee shall meet at least once every three (3) months, and called meetings may be held at such times and places as the chairman shall determine. A majority of the members shall constitute a quorum. Each ex-officio member may delegate to a personal representative from his office the authority and duty of representing him on the Committee or at public hearings.

Sec. 6. Power to fix bulkhead line.

(a) The commissioners court, or the governing body if the submerged lands or islands are within the limits of an incorporated city or town, may locate and fix a bulkhead line within all or part of the area of the county, city or town, as the case may be, after public hearing of which at least thirty (30) days prior notice has been given by publication once each week for three (3) consecutive weeks in a newspaper having general circulation in the county.

Notice of the public hearing shall be sent to the Board and Advisory Committee, which shall have representatives present at the hearing. Every bulkhead line located and fixed by a commissioners court or governing body shall be reviewed and approved by the Board with the technical advice of the Advisory Committee before such bulkhead line shall become effective.

(b) Any person desiring to lease any submerged lands or islands as provided for in Section 8, shall, if a bulkhead line has not been fixed, make written application to the commissioners court or governing body as the case may be, requesting that a bulkhead line be established within the area defined in the application. The commissioners court or governing body shall, upon receiving such application, promptly proceed to locate such bulkhead line subject to the review by and approval of the Board with the advice of the Advisory Committee. A public hearing after notice as provided in the above paragraph shall be required.

(c) In locating and fixing a bulkhead line or lines, the county commissioners or governing body shall take into consideration:

(1) The correlative rights of other littoral owners within the area and vicinity of the land in question;

(2) The protection of coastal and intra-coastal waters of the State in the interest of navigation, commerce and public health;

(3) The public and private rights in lands adjacent to such waters;

(4) The conservation of the natural resources of such waters and the submerged bottoms thereof; and

(5) The necessity for establishing such lines at uniform distances from the shores at the boundaries of adjoining counties and at points separating the jurisdiction of incorporated cities and towns and counties.

(d) Upon the establishment and approval of any such bulkhead line or lines in the manner herein provided for, a drawing showing the location of such line or lines shall be promptly filed in the public records of the county where the same may be located and recorded in the book of plats of said county.

(e) Once so established, any proposal thereafter made to change a bulkhead line shall be published once each week for three (3) consecutive weeks in a newspaper of general circulation published in the county where such change in said line or lines is proposed, and the publication of such proposals shall be deemed to be a public notice of a hearing

before the authority initially establishing said bulkhead line or lines and the publication of such proposals shall include therein the time, date and place for such hearing. Notice of such hearing shall be sent to the Board and Advisory Committee, which shall have representatives present at the hearing. Any change in any such line or lines when made and approved by the Board with the technical advice of the Advisory Committee, shall be evidenced as provided by this section.

Sec. 7. Board's authority to lease.

(a) Subject to the limitations contained in paragraphs (b), (c), (d), (e), (f) and (g) of this section, the Board may lease the surface estate in State-owned islands and submerged lands, as defined in Section 2, upon such terms and conditions and for such lease rentals as it sees fit, provided the Board determines such lease is not contrary to the public interest.

(b) The Board shall not lease the surface estate in any State-owned island or submerged lands unless the commissioners court of the county in which such land is situated or the governing body of an incorporated city or town, in the event such lands are within the limits of a city or town, has filed with the Board pursuant to Section 8 of this Act, a recommendation that the particular land be made available for lease.

(c) No State-owned submerged land as herein defined lying between the shore line and the bulkhead line, shall be leased to any person other than the littoral owner of the adjoining upland; except that should the State of Texas be the littoral owner thereof, then such submerged land may be leased in the same manner as provided herein for islands.

(d) All mineral rights, together with the right to explore for, produce and market same shall be reserved to the State.

(e) The rental payment for any land leased pursuant to this Act shall represent the reasonable rental value for such land as determined by the Board.

(f) Every lease executed pursuant to this Act shall provide that the lease shall automatically terminate in the event the use for which the land was leased ceases or the land is diverted to materially different uses.

(g) No State-owned submerged land or islands as herein defined shall be leased except for industrial purposes.

Sec. 8. Procedure before commissioners court or governing body.

(a) Any person desiring to lease the surface estate in any State-owned island or submerged land shall make application in writing to the

commissioners court of the county in which such land is located, or, if located within the limits of a city or town, to the governing body thereof, requesting such court or governing body to recommend to the School Land Board that the land in question be made available for lease by the State. The application, in such form as prescribed by the School Land Board, shall particularly describe by field notes the land sought to be leased and shall set forth a proposed plan of development showing:

- (1) The nature and extent of any improvements to be made on such land;
- (2) The industrial purpose for which the land is to be used;
- (3) The estimated time within which the development of the land is to be completed; and
- (4) Such additional information as may be considered necessary by the Board.

(b) Upon receiving the application, the commissioners court or governing body shall give notice thereof by publication in a newspaper published and distributed in the county in which the land is located not less than once a week for three (3) consecutive weeks, and by mailing copies of such notice by registered mail to each littoral owner of upland lying within one thousand (1,000) feet of the island or submerged land proposed to be leased, addressed to such owner as his name and address appear upon the latest county tax assessment rolls, in order that any person having objections to the lease may have the opportunity of filing same in writing with the commissioners court or governing body. The applicant shall pay to the commissioners court or governing body a fee in an amount determined by it as necessary to defray the costs of processing the application. If no objections are filed within thirty (30) days after the date of the first publication of the aforesaid notice, the commissioners court or governing body shall forthwith determine whether or not the application shall be approved and a recommendation made to the Board that such land be made available for lease by the State. If the court or governing body approves the application, it shall make its recommendation to the Board in the same manner and form as provided in paragraph (c).

(c) If objections are filed, the commissioners court or governing body, after giving notice in the same manner as provided above, shall hold a public hearing at which all interested parties may express their approval of or opposition to the proposed lease. Notice of such hearing shall also be sent to the Board and Advisory Committee, which shall have representatives present at the hearing. If the commissioners court or governing body determines on the basis of the testimony presented at the public hearing, and other information obtained through its own investigations, that it would not

be against the public interest for the land under consideration to be leased by the State, it shall make its recommendations accordingly to the School Land Board. Such recommendation shall be supported by a finding of facts in such form as prescribed by the Board and shall be accompanied by a copy of the application filed by the person desiring to lease the State-owned land. The commissioners court or governing body may make any recommendations with respect to rentals, or limitations on acreage for such consideration as the Board may deem proper.

(d) Upon receipt of the recommendations from the commissioners court or governing body, and after due consideration of all facts presented and after review and report thereon by the Advisory Committee, the Board, if it appears that the lease of such lands for the purposes set forth in the application of the person desiring to lease would not interfere with the lawful rights of littoral owners or the conservation of natural resources, or would not unreasonably obstruct navigation, or would not for any other reason be against the public interest, may issue an order to be entered in its minutes declaring the land available for lease for such purposes. The Board may have its own appraisers set a reasonable rental value on the land or it may request the commissioners court or governing body, to have an independent appraisal made of such land. In the event the land approved for lease is "submerged land" as defined herein, and is limited under Section 7, Subsection (c) to lease by a littoral owner, the Board may proceed with negotiations for the lease of the property with the person filing the application under paragraph (a) of this section. If agreement is reached between the Board and applicant as to terms of the lease of such submerged lands such facts shall be entered on the minutes of the Board. In the event the land declared available for lease by the Board is an island or portion thereof, or submerged land which is not limited to lease by a littoral owner, the Board shall insert an advertisement in at least four (4) newspapers published daily in the State of Texas, in at least three (3) issues of each, the last insertion of which shall be at least thirty (30) days in advance of the date set for opening bids, giving notice that the lands described in the notice will be offered for lease for the purpose therein defined on a certain date upon sealed bids. The Board may reject any one or more of all bids, but unless the Board elects to reject any and all bids, it shall accept the best bid submitted. All leases of submerged lands or islands shall be executed by the Commissioner of the General Land Office in accordance with the minutes as approved by the Board.

Sec. 9. County Submerged Lands Board authorized.

(a) The commissioners court of any county within the boundaries of which are located State-owned islands or submerged lands, may, if it considers such action desirable, by resolution delegate to a County Submerged Lands Board, as hereinafter provided for, all of the powers, responsibilities and duties conferred upon the commissioners court by this Act, and

such Board, when constituted, is hereby vested with all such powers, responsibilities and duties.

(b) Upon the adoption of the aforesaid resolution, the county judge shall appoint seven (7) persons, residents of the county, as members of the County Submerged Lands Board whose term of office shall be two (2) years. In the event of a vacancy on such Board, the county judge shall fill the vacancy by appointment for the unexpired term. No member of such Board or any of his immediate family may be an officer or employee of the county or an officer or employee of any city or political subdivision of the State located in said county. A member shall receive no compensation for his services but shall be entitled to receive all necessary expenses incurred in the discharge of his duties; such expenses to come from funds appropriated for the purpose by the commissioners court. Four (4) members of the County Submerged Land Board shall constitute a quorum for the purpose of conducting the business of such Board, and action may be taken upon the majority of vote of the members present. Such Board shall select from among its members a chairman and vice chairman, and it may employ such officers, agents, and employees as it may require and shall determine their qualifications, duties and compensation to be paid out of funds appropriated for the purpose by the commissioners court.

Sec. 10. Rules and regulations. The School Land Board is hereby authorized to promulgate such rules and regulations as it considers necessary in the administration and enforcement of this Act.

Sec. 11. Designation of School Land Board as representative of State. The School Land Board is hereby designated as the official representative of the Governor of the State to conduct with the Federal Government any business concerning any matter affecting the islands and submerged lands of the State, which arises out of the exercise by the Federal Government of any authority it may have over navigable waters under the Constitution of the United States.

Sec. 12. Public Free School Fund credit. All moneys received by the School Land Board under the provisions of this Act shall be deposited in the State Treasury to the credit of the Permanent Free School Fund.

Sec. 13. Severability Clause. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 14. Repealer. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. It is expressly provided, however, that it is not intended that this Act shall repeal or modify the provisions of Chapter 3, Title 67, Revised Civil Statutes

of Texas, as amended, as it relates to the powers and duties of the Game and Fish Commission with respect to all matters pertaining to the sale, taking, carrying away, or disturbing of marl, sand or gravel of commercial value, and all gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation as provided in said Chapter 3.

Sec. 15. Emergency Clause. The importance of this legislation to the people of Texas creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and said Rule is hereby suspended.

SENATE CONCURRENT RESOLUTION

WHEREAS, The Texas Legislative Council, pursuant to H.S.R. 441, 55th Legislature, undertook a comprehensive study of State-owned submerged lands and islands; and

WHEREAS, As the result of said study, the Council recommended to the 56th Legislature the passage of an Act relating to the management, control, use and disposition of the surface estate in certain State-owned submerged lands and islands located within the tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas, which Act if passed would have contained authority which commissioners of the General Land office have sought since 1894 and which is deemed essential for the protection of the rights of the State as well as the littoral owners of the uplands adjoining State-owned submerged lands; and

WHEREAS, In full justice to the rights of the State as well as to the said littoral landowners further study should be given to the detailed provisions of this important legislation, all of which will require widely publicized hearings at various points along the Texas Gulf Coast and will require considerable time; now, therefore, be it

RESOLVED, By the Senate of Texas, the House of Representatives concurring, that the Texas Legislative Council be requested to continue its study of State-owned submerged lands and islands with particular emphasis upon the

production of a bill draft, for consideration by the 57th Legislature, which will encompass solutions for the numerous types of problems encountered in this complex legislative area; and, be it further

RESOLVED, That the Council be requested to hold necessary hearings along the Texas Gulf Coast so that interested parties will have an opportunity to make known their views on various phases of the problems involved; and, be it further

RESOLVED, That the Council be requested to make a supplemental report on the subject of State-owned submerged lands and islands to the 57th Legislature and include therein a proposed bill draft.

Research Report
and
Letter of Transmittal From The Executive Director



TEXAS LEGISLATIVE COUNCIL
CAPITOL STATION — AUSTIN, TEXAS

OFFICE OF THE
EXECUTIVE DIRECTOR

Honorable Ben Ramsey, Chairman,
Honorable Waggoner Carr, Vice Chairman, and
Members of the Texas Legislative Council

Senator Colson and Gentlemen:

Herewith are transmitted for your consideration the supplemental basic research report and the report of the Council's Study Committee on State-Owned Submerged Lands and Islands. The Study Committee report will be formally presented to the Council at its meeting on January 9, 1961.

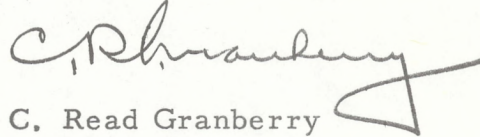
The request for this study was made by the 56th Legislature in S. C. R. 65, which asked that the Council continue its study of State-owned submerged lands and islands. The initial study on this subject was undertaken pursuant to H. S. R. 441, 55th Legislature, and resulted in the publication of a comprehensive report entitled State-Owned Submerged Lands and Islands in December, 1958. Legislation concerning the management, control, use and disposition of the surface estate in certain State-owned submerged lands and islands located within the tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas was considered by the 56th Legislature but was not passed. S. C. R. 65, 56th Legislature, directed that public hearings on the subject be held in the Gulf Coast area so that all interested parties would have an opportunity to be heard and further requested the Council to submit to the 57th Legislature a bill draft which would encompass solutions for the various types of problems encountered in this complex legislative area.

On behalf of the Study Committee and the Research Staff, I wish to express appreciation to the governmental agencies and officials and to the many private organizations and individuals who made valuable contributions during the course of this study.

Special gratitude should be extended to the Commissioner of the General Land Office and the personnel of his department, particularly to Mr. Jack B. Gibberson, Chief Clerk; and to the numerous citizens of the Texas Gulf Coast area who attended public hearings held by the Study Committee and submitted valuable information and data.

The basic research work and report on this study were handled by W. B. Wilmot, Director for Legal Affairs, and Jerome D. Brock, Jr., Research Associate. We hope the report will be of assistance to the Legislature as it seeks to provide satisfactory solutions to the complex problems related to development and full utilization of the resources of the Gulf Coast area with maximum protection to the rights of the State and all of its citizens.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C. Read Granberry". The signature is written in dark ink and is positioned above the typed name.

C. Read Granberry
Executive Director

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STATE-OWNED SUBMERGED LANDS AND ISLANDS
(A SUPPLEMENTARY REPORT)

Introduction

In response to a resolution passed by the 55th Legislature in 1957,¹ the Texas Legislative Council in 1957 and 1958 made a comprehensive study of problems relating to the management and disposition of State-owned submerged lands and islands located along the Texas Gulf Coast.² As a result of this study, the Council in 1959 made its report³ and recommended to the 56th Legislature the passage of a bill conferring upon the School Land Board certain powers and duties concerning the management, control and disposition of the surface estate in State-owned submerged lands and islands other than the beach areas on the open Gulf. With respect to such beaches, the Council recommended that the Legislature declare it to be State policy that these lands be held in trust by the State for the use, benefit and enjoyment of the general public and that no exclusive right therein be granted to any private interest unless specifically authorized by the Legislature. By way of implementing these recommendations, the Council staff drafted a bill, passage of which was specifically recommended to the Legislature by the Council.

In addition, the Council further recommended the passage of legislation to regular construction or maintenance of buildings, fences, walls, ditches and other obstructions on or near the shores of the Gulf of Mexico which might limit access to and along publicly-owned beach and shore areas and such other legislation as might be necessary by reason of the Supreme Court's ruling in Luttet v. State⁴ to insure the general public's continued use and enjoyment of the Gulf

¹H.S.R. No. 441, 55th Legislature, 1957. A copy of the resolution is included as Appendix A.

²Texas Legislative Council, State-Owned Submerged Lands and Islands, Research Report No. 55-6, 1958.

³Report of the Study Committee on State-owned Submerged Lands and Islands to the Texas Legislative Council, dated December 19, 1958, is included as Appendix B.

⁴324 SW 2d 167. The Supreme Court of Texas held in this case that the line of "mean higher high tide" marks the boundary between private and State-owned lands in the case of civil law (Spanish) grants. This is substantially the same rule which is applied in the case of common law grants; that is, the line of "mean high tide" marks the boundary. It is contended by many that the practical effect of the Luttet decision is to so narrow the State-owned beach areas as to make them inaccessible to public use much of the time because at high tide they are covered with water.

Coast beaches. The 56th Legislature carried out this recommendation by the enactment of Senate Bill No. 9.⁵ This law declares it to be the public policy of the State that the public have free and unrestricted right of ingress and egress to and from not only the State-owned beaches on the seaward shore of the Gulf of Mexico but also to the area along such beaches extending from mean higher high tide to the vegetation line in the event the public has acquired the right to use such larger area by prescription. The law further makes it the responsibility of the Attorney General, district attorneys and county attorneys to bring legal action to require the removal of any fences or barriers restricting the public's access to or use of such beach areas and to enjoin any interference with or restraint upon the public's enjoyment of such rights. As of the writing of this report, several cases have been filed and are awaiting trial to determine the right of property owners along the Gulf beaches to fence out the public. These suits will test the validity of the "open beaches" law enacted by the 56th Legislature which prohibits such action.

It should be emphasized that the law discussed above relates only to beach areas fronting on the open Gulf of Mexico and not to beaches on the bays, inlets or other inland coastal waters. The bill recommended by the Legislative Council to give the School Land Board certain powers of management and disposition, on the other hand, pertained to State-owned submerged lands and islands situated on bays and inlets and did not include beaches on the seaward shore of the Gulf of Mexico. This bill was introduced in both House and Senate but failed to be reported out of committee. At a Senate committee hearing on the bill, a number of witnesses appeared in opposition to the measure. Much of their testimony was directed not against the basic policy or objectives of the legislation but toward the manner prescribed for achieving the objectives and implementing the policy. Further, it seems fair to state that much of the opposition was due to lack of understanding of the proposed act. This was evidenced by the fact that persons present at the hearing requested the committee to refer the bill to subcommittee to enable them to give it more careful study and analysis.

When it became apparent that the bill, as recommended by the Council, would not receive the necessary support to secure passage, its sponsors introduced Senate Concurrent Resolution No. 65. This resolution, which was approved by both houses, requested the Texas Legislative Council to continue its study of State-owned submerged lands and islands with particular emphasis upon the production of a bill draft which would encompass solutions for the various problems in this area for consideration by the 57th Legislature. The resolution further requested that hearings be held along the Gulf Coast so that interested parties might have an opportunity to express their views on the problems involved.

⁵Chapter 19, Acts of the 56th Legislature, 2d C. S., 1959, p. 108, compiled as Art. 5415d, Vernon's Texas Civil Statutes.

State Policy Concerning State-Owned Submerged Lands

Present State policy with respect to the control, management and disposition of State-owned submerged lands and islands is believed by many persons to be wholly inadequate to meet the problems of the rapidly developing Texas Gulf Coast area. Little statutory authority exists in any executive agency of the State government to supervise, control, lease or otherwise dispose of such lands. What coastal management exists is carried out almost solely by the navigation districts and the Corps of Army Engineers. Often projects for navigation purposes have been carried out without taking into consideration the other competing interests in the area.⁶

To what extent has the Legislature seen fit to grant, or authorize executive officers or agencies to grant, such lands to private interests, thus denying or restricting their use by the general public? By the enactment of special laws, it has granted to private interests much of the land constituting the larger offshore islands.⁷ In addition, the Legislature has from time to time, by general law, delegated to the General Land Office or to other executive agencies authority to sell or lease submerged lands or to grant some interest in them to certain types of purchasers or lessees for designated purposes. The most important of these statutes currently in effect authorize the Land Commissioner: (1) to sell submerged lands to navigation districts⁸ and to deep-water corporations;⁹ (2) to lease submerged areas for the production of oil and gas, coal, lignite, sulphur, salt and potash;¹⁰ (3) to grant prospecting permits and to lease submerged areas for uranium and other minerals (excepting those just listed under the second category);¹¹ (4) to grant easements across submerged areas for rights-of-way for telephone, telegraph, electric transmission, and power lines; for oil, gas, and sulphur pipelines; and for irrigation canals and water pipelines;¹²

⁶Texas Natural Resources, Natural Resources Division, Research Committee, Houston Chamber of Commerce, June, 1959.

⁷For example, Acts 30th Legislature, 1907, Ch. CLXXII, p. 320, authorized the Commissioner of the General Land Office to sell any and all lands situated on Mustang Island.

⁸Tex. Civ. Stat. (Vernon), Art. 8225.

⁹Ibid., Art. 1483.

¹⁰Ibid., Art. 5421C, Sec. 8. The authority of the Land Commissioner to execute such leases is subject to certain powers resting in the School Land Board.

¹¹Ibid., Art. 5421C, Sec. 7.

¹²Ibid., Art. 6020a.

(5) to grant easements or leases for electric substations, pumping stations, loading racks and tank farms to be located on State lands;¹³ (6) to issue permits for geological, geophysical and other surveys and investigations of unleased areas within tidewater limits;¹⁴ and (7) to lease submerged lands for oyster raising purposes.¹⁵

By statute, the School Land Board is given certain duties and responsibilities in connection with the leasing of the mineral estate in submerged areas, including the setting of dates for leasing and determination of the prices at which the lands shall be leased.¹⁶ The Board is further charged by statute with the responsibility for granting easements or surface leases of submerged lands to the Federal government for defense purposes.¹⁷

The statutes which have been cited are the principal laws placing responsibilities and duties in agencies of the executive department with respect to the granting of interests in State-owned submerged areas. Since this study is primarily concerned with the surface estate in these lands, laws pertaining to the leasing of the mineral estate need not be discussed here. Certain other laws should be mentioned, however, since they relate to the acquisition of interests in submerged lands belonging to the State. These laws fall generally into three classes: (1) those authorizing counties and cities to construct and maintain public improvements; (2) those allowing counties, cities and certain political subdivisions of the State to engage in public works; and (3) those granting easements of rights-of-way over State lands to certain quasi-public corporations.

As indicated, one class of laws authorizes cities and counties to construct and maintain certain types of public improvements and grants them the right to use the necessary public lands for such purposes. Sections 7 and 8 of Article XI of the Texas Constitution authorize counties and cities bordering on the Gulf of Mexico to levy and collect taxes for the construction of seawalls, breakwaters, or works for sanitary purposes and empower the Legislature to aid in such improvements by donating portions of the public domain for such use.

¹³Tex. Civ. Stat. (Vernon), Art. 6020a.

¹⁴Ibid., Art. 5382b.

¹⁵Ibid., Arts. 4035 - 4048.

¹⁶Ibid., Art. 5421C, Secs. 4 and 5.

¹⁷Ibid., Sec. 4.

Pursuant to this constitutional grant of power, the Legislature has, by statute,¹⁸ authorized various counties and cities to construct and maintain seawalls, breakwaters, levees, dikes, floodways, and drainways and has granted them the right to use and control for these purposes as much of the land and sea bottom below high tide as may be considered necessary by the county commissioners court or the governing body of the city.¹⁹

The second group of laws consists of statutes authorizing counties, cities and certain political subdivisions of the State to engage in specified public works and granting them the power of eminent domain to acquire both private and public property. For example, any city located within a navigation district containing a deep-water port has been empowered to issue revenue bonds for certain enumerated purposes, including:²⁰ (1) the construction, maintenance and operation of toll bridges over--or tunnels under--any stream or inlet or arm of the Gulf of Mexico or port channel in order to connect streets or thoroughfares within or leading to the city; (2) the acquisition, reclamation, reconstruction, elevation, or filling of any submerged lands or lowlands along the city waterfront; (3) the construction of seawalls, breakwaters, and shore protections; and (4) the construction, reconstruction, maintenance, operation and dredging of any channel or boat basin in connection with a port. Each city included within the scope of this law has been expressly given the right of eminent domain "for the purpose of enabling such city to acquire the fee simple title, easement, or right-of-way to, over, and through any and all lands, water, or lands under water, private or public. . . necessary in the constructing and maintaining. . . of the improvements herein authorized."²¹

The third group of laws is made up of those which grant easements or rights-of-way over State submerged areas or other State lands to certain private corporations which are quasi-public in character. Included among such corporations are those created to construct and operate toll roads;²² causeways

¹⁸Tex. Civ. Stat. (Vernon), Arts. 6830 ff.

¹⁹Another example of this type of law is Tex. Civ. Stat. (Vernon), Art. 6795b-1, which grants easements and rights-of-way for causeways, bridges and tunnels in Gulf coast counties having 50,000 or more population.

²⁰Tex. Civ. Stat. (Vernon), Art. 1187b, Sec. 1.

²¹Ibid., Sec. 9.

²²Ibid., Arts. 1448 ff.

across salt water bays, inlets, or arms of the Gulf of Mexico;²³ channels and docks;²⁴ and railroads.²⁵

It should be noted that the three groups of laws described here have a common characteristic--the purpose or use for which the interest in State lands was granted is one which serves or benefits the public generally rather than private interests exclusively. It seems fair to say that all these laws have promoted the construction of public works and have, indeed, been in the public interest in that they have contributed to the economic progress and development of the State of Texas.

Except for the instances above mentioned, it is necessary for the Legislature to enact a special law each time any interest in submerged lands or islands is granted to a private individual or concern. Failure of the Legislature to grant authority to a designated executive agency of the government to deal with the many complex coastal area problems has been a matter of concern to State officials and private citizens for more than half a century. This policy, some of them believe, may (1) greatly retard the over-all development of these State-owned lands which are potentially important to the economy of Texas, (2) deprive the State of much-needed revenue, and (3) work hardships upon littoral property owners, business concerns interested in the industrial development of the coastal areas, and others desirous of developing homesites and recreational facilities.

Finally, it has been argued that the lack of such authority in an executive agency has resulted in unauthorized development and encroachment upon the State's lands by private interests. The extent to which this has taken place is not definitely known, but it is believed to be considerable. Specific instances of alleged unauthorized use and encroachment were reported to the Study Committee at its public hearing in Beaumont, and numerous other instances have come to the attention of officials of the General Land Office in recent years. While it is true that in some of these cases the private interest involved is occupying the land under a chain of title and may in fact own it, the point remains that the responsibility has not been clearly placed in a particular executive agency to investigate the facts and determine whether State lands are being wrongfully encroached upon and, if so, to recommend that appropriate legal action be taken by the Attorney General.

²³Tex. Civ. Stat. (Vernon), Art. 1466 ff.

²⁴Ibid., Arts. 1478 ff.

²⁵Ibid., Arts. 6317 and 6339.

Navigation District Development and Management

More State-owned submerged lands have been sold to navigation districts than to all other interests combined. The General Land Office reports that as of January 1, 1961, 108,188.33 acres of such lands had been sold to 24 navigation districts.²⁶ For this reason, it seems appropriate to make a more extensive analysis of the power of navigation districts to buy such lands and the use to which such lands may be put.

Navigation districts are political subdivisions of the State, performing governmental functions.²⁷ The "Conservation Amendments" to the Constitution approved in 1904 and 1917 authorize the Legislature to create such districts.²⁸ The original laws relating to navigation districts granted authority to improve rivers, bays, creeks and canals and to construct canals and waterways for navigation purposes.²⁹ Through the years, however, additional grants of power have given such districts what amounts to an almost unlimited authority to acquire, construct and operate facilities for river and port development.³⁰

Authorization for such districts to purchase State-owned submerged lands is granted by Article 8225, Revised Civil Statutes of 1925, which provides in brief that:

. . . Any Navigation District shall have the right to purchase. . . any lands and flats belonging to said State, covered or partly covered by the waters of any of the bays or other arms of the sea, . . . and the Commissioner of the General Land Office is hereby authorized and directed to sell the same upon application, as hereinafter provided, as the price of One Dollar (\$1) per acre. . . . If the Commissioner of the General Land Office is satisfied that the applicant is a Navigation District created as hereinbefore provided, a patent shall then be issued to said Navigation District, conveying to said District the right,

²⁶The maps included as Appendix C show the approximate location of the lands so sold.

²⁷Willacy County Water Control and Improvement District No. 1 v. Abendroth, 142 Tex. 320, 177 SW 2d 936.

²⁸Tex. Const., Art. III, Sec. 5, and Art. XVI, Sec. 59.

²⁹Tex. Civ. Stat. (Vernon), Art. 8198.

³⁰Ibid., Art. 8247a and 8427b.

title and interest of the State in the lands described in said application, . . . Such sales shall be subject to any oil, gas or mineral leases theretofore given by the State on said lands, and all mines and minerals and mineral rights, . . ."

A recent Attorney General's Opinion states that the General Land Office is authorized to sell State-owned lands outside the boundaries of navigation districts, under Article 8225, when the lands are to be:

. . . used for lawful purposes of the Navigation District concerned, for purposes that have substantial relationship to the needs of such district and when such lands are covered or partly covered by the waters of bays or other arm of the sea adjacent to said district.³¹

The powers which navigation districts are able to exercise over submerged lands purchased from the State of Texas are apparently plenary. Article 8247b, Section 1, Vernon's Texas Civil Statutes, Subsections (b) and (c), provide in part:

Sub-Sec. (b). Such Navigation District, . . . shall have power to lease for oil, gas and minerals all rights-of-way, spoil grounds, spoil basins, or any other lands owned by such Navigation District, . . .

Sub-Sec. (c). Such Navigation District may sell or lease all or any part of any lands owned by it, . . . provided such lands are declared as surplus and are not necessary to be used by such Navigation District in connection with the development of such navigation project. . .

It would appear from the statutes quoted above that navigation districts have practically unrestricted right to purchase State-owned submerged land at \$1 per acre and also power to sell or lease such lands if declared surplus. In fact, the law authorizing the purchase of lands has been interpreted as precluding any discretionary choice on the part of the Land Commissioner with respect to granting patents applied for by a navigation district if he finds that the district has been created according to law.

³¹Op. Tex. Atty. Gen. No. WW-914, August 24, 1960.

Submerged Lands as a Valuable Natural Resource

According to figures compiled by the General Land Office, the State of Texas owns 4, 145, 674 acres of land within the coastal belt bounded on the landward side by the property of littoral owners and on the seaward side by a line paralleling the coast three marine leagues out from the low-water mark. Of this total, 2, 608, 774 acres lie within the marginal sea area extending from the low-water mark along the shore of the open Gulf out to the six-league limit. Some 1, 112, 450 acres comprise the bay areas.³² This study has been concerned with the 1, 536, 900 acres which comprise the beach areas, the islands in coastal waters, and the lands beneath salt water lakes, bays, inlets, and other inland waters within tidewater limits.

In the development of the Texas Gulf Coast, many divergent uses of its resources have been made. Present economic activities in the area include navigation; recreation, such as sport fishing, swimming, camping, surfcasting, water skiing and beachcombing; commercial fishing; shrimping, both for human consumption and for bait; crab and oyster production; production of petroleum and natural gas; shell dredging; use of bay water for industrial cooling; and use of bays as depositories for waste effluents of industry, municipalities and oil wells.

Still in the experimental states are such additional activities as the extraction of minerals from salt water, conversion of salt water into fresh water, and the harvesting of marine vegetation from the bay bottoms for animal feed. Freeport has been chosen as the site of a federally sponsored saline water conversion plant with a daily capacity of one million gallons. Extraction of minerals from salt water is also being done successfully at Freeport, where Dow Chemical Company operates a plant with the capacity to produce 72,000,000 pounds of magnesium a year from sea water.

Some of these activities are conflicting and exclusive of other interests and developments. On the other hand, certain combinations of activities can be compatible or even mutually beneficial. As resources of the area continue to be developed and utilized to a greater extent, competitions and conflicts, which are already retarding progress in some areas, will become more accentuated and acute.

The submerged lands and the waters lying above the land are tied together in an unbreakable ecological chain. Removal, destruction or pollution of submerged lands or the waters above them may affect both land and water in the immediate vicinity and in other areas.³³

³²Appendix D shows the areas of Texas bays in terms of water, land and total acreage.

³³Howard T. Odum, Director of the University of Texas Institute of Marine Science at Port Aransas.

If present or potential uses are conflicting, how should the decision be made as to which use is to have priority? One method of determining to what use or uses a particular bay area should be put is to place a dollar-per-acre value on the bay surface for each use, thus permitting each resource to be compared on the same basis. A report made recently by the Bureau of Business Research at the University of Texas has utilized this approach in a study of five bay areas in the Corpus Christi vicinity.³⁴ The objective was to arrive at a value in dollars and cents per bay surface acre for the various types of uses to which the bay might be put. The following is a summary of the findings.

Estimated Value of the Project Bays for 1958

Economic activity	Yearly value	Value per bay surface acre	Percent
Recreational use:			
Tourist expenditures	\$29,892,190.60	\$130.83	
Local-resident expenditures	4,747,271.00	20.78	
Total	<u>\$34,639,461.60</u>	<u>\$151.61</u>	40.96%
Commercial fishing:			
Shrimp - Food	\$ 2,962,632.00	\$ 12.96	
Bait	292,000.00	1.28	
Finfish	78,808.00	.35	
Oysters	10,061.00	.04	
Crabs	2,340.00	.01	
Total	<u>\$ 3,345,841.00</u>	<u>\$ 14.64</u>	3.96%
Minerals:			
Oil	\$19,403,295.72	\$ 84.92	
Natural gas	9,008,869.31	39.43	
Shell	1,174,632.00	5.14	
Total	<u>\$29,586,797.00</u>	<u>\$129.49</u>	34.98%
Cooling water	\$ 2,201,676.00	\$ 9.64	2.60%
Transportation	\$14,570,533.00	\$ 63.71	17.21%
Effluent disposal	\$ 249,762.20	\$ 1.09	.29%
GRAND TOTAL	<u>\$84,594,070.80</u>	<u>\$370.18</u>	100.00%
Future activity:			
Primary production (organic material)	\$22,266,525.00	\$ 97.46	--

SOURCE: Marine Resources of the Corpus Christi Area, by Arvid A. Anderson, Bureau of Business Research, University of Texas, June 1960, p.42, (percentages calculated).

³⁴Marine Resources of the Corpus Christi Area, by Arvid A. Anderson, Bureau of Business Research, University of Texas, June, 1960.

It should be noted that percentagewise, recreational use of the bays has the highest value, 40.96 per cent of the total. Minerals production ranks second with 34.98 per cent and transportation third with 17.21 per cent.

It is the consensus of informed sources in Texas that careful and exhaustive studies must be made before an extensive program of the development of submerged lands is undertaken. The Houston Chamber of Commerce has recommended the following eight categories of marine research which must be accomplished in order to realize the maximum possible benefit from the submerged lands and waters of the Gulf Coast:

- (1) a determination of the exact areas and volumes of bays and the bay discharge;
- (2) a survey of the chemical content of bay waters;
- (3) the navigational needs of such waters for the next 25 years;
- (4) the value to the State in using the bays for releasing effluence therein;
- (5) inventory and management of fish production;
- (6) inventory of the coastal area for tourism, sports fishing and hunting;
- (7) a study of the use of marine waters for cooling and the possibility of the State's receiving lease money for such use; and
- (8) the possibility of developing harvestable marine products other than oysters, shrimp and fish.³⁵

Preferably on the basis of such careful studies as those outlined above, some type of management and control must be exercised to protect the State's resources in this area and to assure orderly growth and development with maximum protection of the rights of all citizens. Considerable study and planning has already been done in this field. For instance, a zoned-sector plan for multiple development of the marine bays has been proposed by a specialist in marine science.³⁶ In a discussion of administration of the proposed plan, he re-emphasizes that no existing agency except the Legislature now has the breadth of authority and interest to initiate a positive program for the full development of the sea frontier.

³⁵Texas Natural Resources, Report of the Resources Committee, Houston Chamber of Commerce, June, 1959, pp. 52, 53.

³⁶"A Zoned-Sector Plan for the Multiple Development of the Marine Bays of Texas," by Howard T. Odum, Director, Institute of Marine Science, The University of Texas, Port Aransas.

The key to continued growth and orderly development, with maximum protection of the interests of the State and all its citizens, seems to lie in a comprehensive, orderly plan for the management and control of the State-owned submerged lands and islands and for a State agency to be charged with the continuing responsibility for development and administration of such a plan in accordance with general principles and policies set by the Legislature.

Appendixes

APPENDIX A

H.S.R. 441

By: Hale

HOUSE SIMPLE RESOLUTION

requesting the Texas Legislative Council to study the policy of the State of Texas with respect to submerged areas and to make recommendations to the Fifty-sixth Legislature.

WHEREAS, The Commissioner of the General Land Office has received, within the past few months, numerous requests and applications for leases on islands and land covered by the ebb and flow of the tide, commonly known as submerged areas; and

WHEREAS, A great many problems have arisen with regard to the leasing or other disposition of such submerged areas, particularly with regard to the sale and lease of such land, the uses to which such land may be put and the amount of land which may be purchased or leased; and

WHEREAS, There exists no statutory authority for the supervision, control, leasing or other disposition of such submerged areas except by sale to Navigation Districts or deepwater corporations and leasing for mineral development; and

WHEREAS, There is great interest in the recreational and commercial development of the Texas Coastal area at the present time, necessitating further consideration and analysis of State policy with respect to the sale or lease of such lands, with the objective of redefining the policy of the State with regard to the sale, lease and use of such submerged areas; and

WHEREAS, Solution of these problems in a manner satisfactory to the people of Texas will require additional statutory authority to the Commissioner of the General Land Office, such statutory authority to include the definition of State policy with regard to the submerged area and the basis upon which sales and leases of such lands may be made, and the uses to be permitted thereunder, and the authority of the Commissioner of the General Land Office in regulating and controlling same; and

WHEREAS, A comprehensive study of this problem should be made, together with recommendations for legislative action, in order that the Legislature may act intelligently in the solution of this problem; now therefore, be it

RESOLVED by the House of Representatives of the State of Texas, That the Texas Legislative Council be and it is hereby requested to make a study of the problems involved in the administration, disposition and control of submerged areas and submit to both houses of the Fifty-sixth Legislature a written report of its findings and recommendations; and, be it further

RESOLVED, That the Texas Legislative Council be and it is hereby requested to recommend to the Fifty-sixth Legislature such additional laws as in its judgment are necessary (1) to define properly the policy of the State of Texas with regard to these submerged areas, (2) to outline in detail the authority and responsibility of the General Land Office in administering, selling, leasing, and controlling such submerged areas, and (3) to define the limitations and restrictions, if any, to be imposed upon the use of such submerged areas by persons, firms or corporations buying, leasing or using same under authority of such Act and under the rules and regulations promulgated by the General Land Office pursuant thereto; and, be it further

RESOLVED, That the Texas Legislative Council be and it is hereby requested to make such study in co-operation with the Governor, Commissioner of the General Land Office, Attorney General, the Game and Fish Commission and other interested State agencies, and all of such officials and agencies be and they are hereby requested to co-operate with the Texas Legislative Council in the making of said study and in the promulgation of such recommendations to the Fifty-sixth Legislature.

APPENDIX B

Report of Council Study Committee
on State-owned Submerged Lands and Islands
Dated December 19, 1958

Lieutenant Governor Ben Ramsey, Chairman
Speaker Waggoner Carr, Vice Chairman
Members of the Texas Legislative Council

Senator Colson and Gentlemen:

We, the undersigned, your Study Committee on Submerged Areas, hereby report and recommend as follows:

1. This study was undertaken in response to H.S.R. No. 441 of the 55th Legislature. The resolution cited the lack of statutory authority (except in certain narrowly defined areas) for any agency of the State government to supervise, control, lease, or sell the State-owned submerged areas and islands on the Texas Gulf Coast.

2. The basic research report is submitted herewith.

3. We are pleased to report that each of the State agencies listed in the resolution -- the Attorney General's Office, the Game and Fish Commission, and especially the General Land Office -- has given full cooperation in connection with this study.

4. Your Study Committee held several meetings in Austin with the State officials concerned, and on June 6, 1958, a public hearing was conducted at Corpus Christi in which several members of the Legislature, municipal officers, county judges, navigation district officials, property owners, sportsmen, and other citizens from the Gulf Coast and inland areas participated.

5. Your Study Committee finds as follows:

a. The absence of authority in any executive agency of the State government to negotiate and consummate arrangements for the sale, lease, or other disposition of submerged areas and islands has

(1) retarded the over-all development of these State-owned lands which are potentially so important to the economy of Texas,

(2) deprived the State of much-needed revenue,

(3) specifically worked hardships upon littoral property owners, business concerns interested in the industrial development of coastal areas, and those desirous of developing home sites and recreational facilities, and

(4) resulted in either stalemate or unauthorized developments.

Evidence of the public interest in these matters is to be found in the reports of the Land Commissioner over a period of years and a great volume of recent requests on file with the General Land Office for permits to do various things which, regardless of their merits, cannot be authorized.

b. The lack of specific authority for any agency to act in the capacity of official representative of the State to negotiate with the Federal government concerning matters affecting the islands, submerged lands, and coastal waterways, or which arise in other areas of mutual concern along the Gulf Coast, has sometimes resulted in the State's interests not being fully identified and consequently protected.

c. State officials and citizens generally who were interviewed or submitted their comments in writing appear to be unanimous in their opinion that action should be taken by the Legislature to fill this long-standing vacuum -- a statutory gap which becomes more acute with the passage of time.

6. Your Study Committee respectfully presents the following recommendations:

a. That the Council recommend to the Legislature the passage of an act conferring upon the School Land Board -- since it already has related responsibilities -- certain powers and duties respecting the management, control, and disposition of the surface estate in certain State-owned submerged lands and islands.

It is the opinion of your Study Committee that such an act should stipulate that all beaches on the open Gulf of Mexico shall be considered as held in trust by the State for the use, benefit, and enjoyment of the general public and that no exclusive right to these beaches should be granted to any private interest unless specifically authorized by the Legislature. (The actual landward boundaries of State-owned shore areas will remain in doubt until the full effect of the recent decision of the Supreme Court in Luttes v. State can be determined.)

Your Study Committee further believes that the coastal counties should have a voice in the amount and character of development of

submerged lands and islands within their borders, but that final decisions relative to leases and sales must necessarily rest with a State agency.

The suggested Act, attached, has been designed to accomplish these purposes and is specifically recommended.

b. That the Council recommend to the Legislature the appropriation of sufficient funds to expand the staff of the General Land Office to assist the School Land Board in the performance of these additional duties.

c. That the Council recommend to the Legislature the passage of (1) an Act regulating the construction or maintenance of buildings, fences, walls, ditches and other obstructions on or near the shores of the Gulf of Mexico and the arms thereof which obstruct access to and along public-owned beach and shore areas, and (2) such additional legislation as may be necessary, by reason of the recent Supreme Court ruling in Luttis v. State, to assure that the general public shall have the continued use, benefit and enjoyment of the shores and beaches along the Texas Gulf Coast.

Respectfully submitted,

/s/ Bruce Reagan
Bruce Reagan, Chairman

/s/ R. H. Cory
R. H. Cory

/s/ Menton J. Murray
Menton J. Murray

/s/ Harold B. Parish
Harold B. Parish

A. R. Schwartz

APPENDIX C

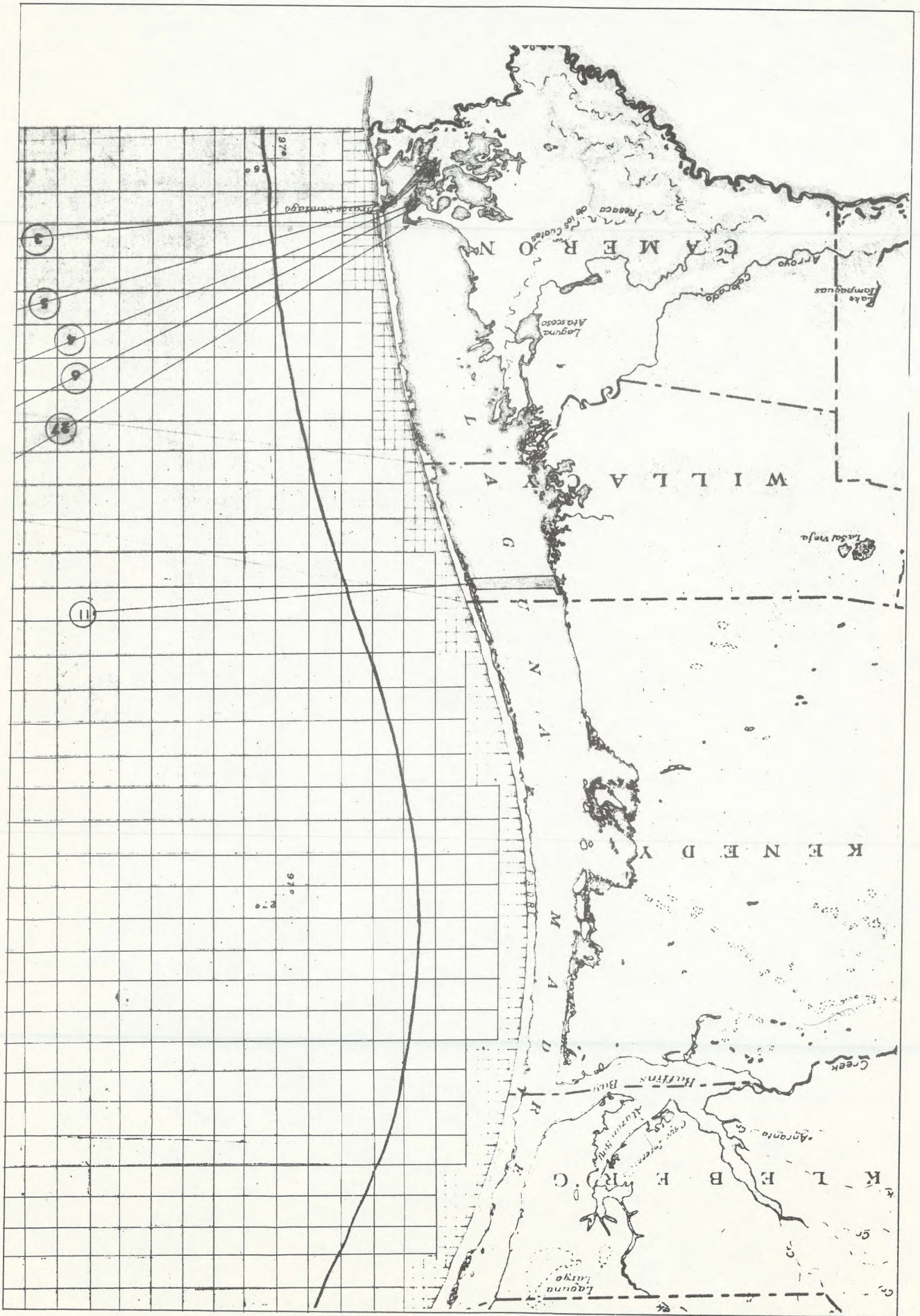
Maps Showing Location of State-Owned Submerged Lands Sold to Navigation Districts and Cities*

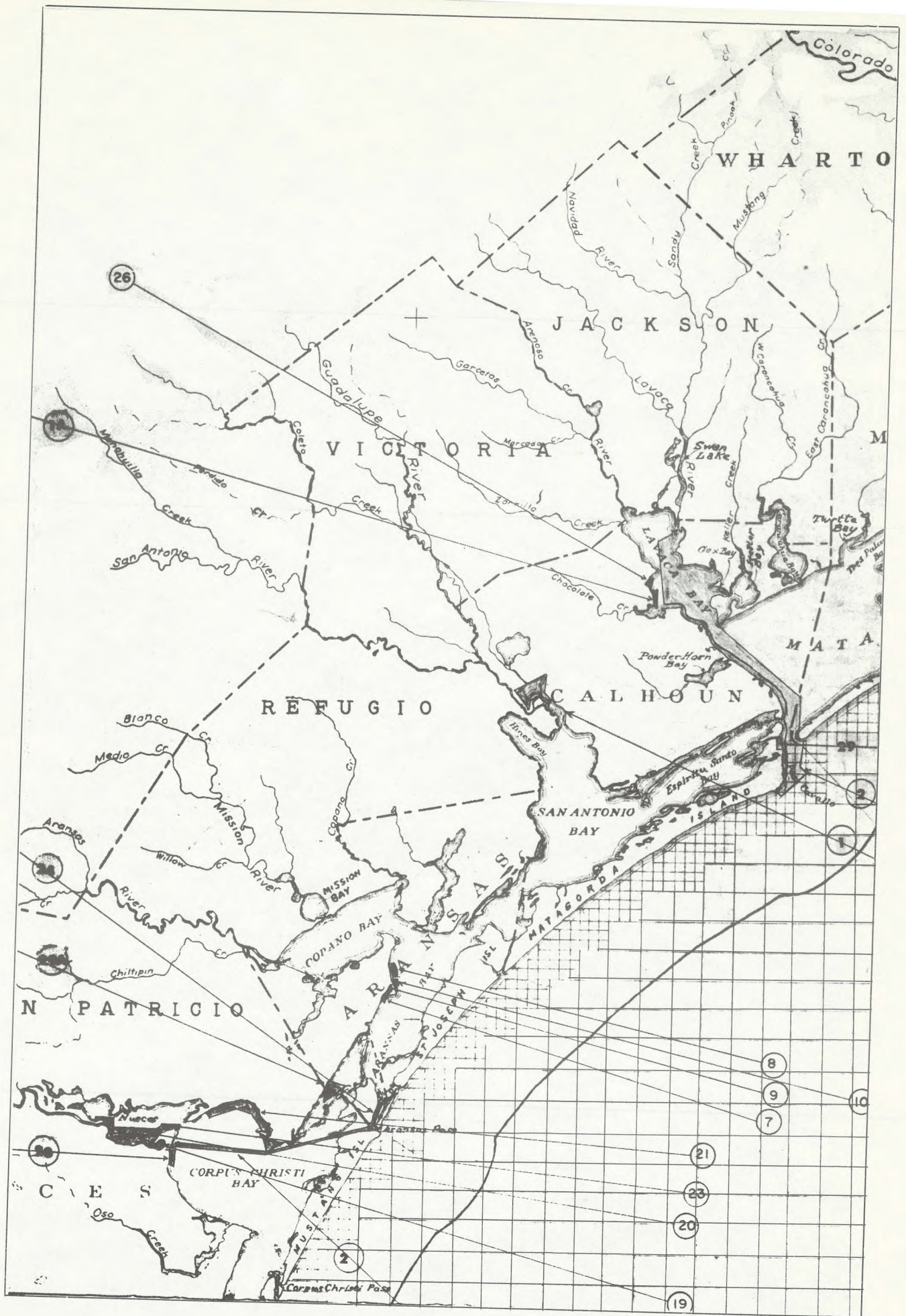
LEGEND

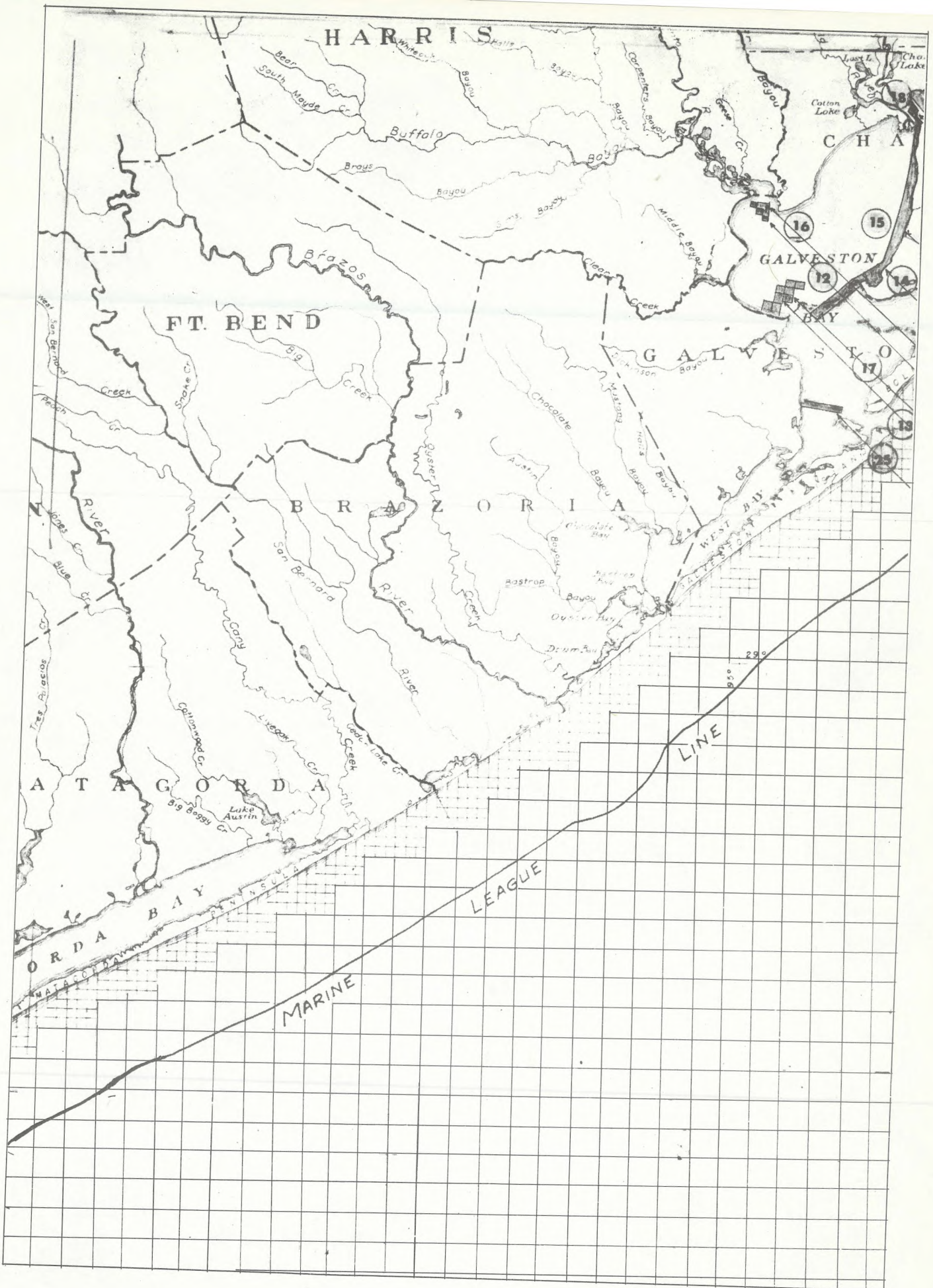
1. Mission Lake Calhoun County	2, 347.6 Ac.
1A. Calhoun County Navigation District (Matagorda County)	4, 491.97
2. West Side Matagorda Bay, Port Lavaca, Calhoun, Jackson and Matagorda Counties	47, 765.0
3. Brownsville Navigation District	102.6
4. Port Isabel San Benito Navigation District	384.67
5. Brownsville Navigation District	3, 362.64
6. Port Isabel San Benito Navigation District	87.74
7. Aransas County Navigation District No. 1	102.5
8. Aransas County Navigation District No. 1	23.93
9. Aransas County Navigation District No. 1	604.29
10. Aransas County Navigation District No. 1	956.72
11. Willacy County Navigation District	3, 117.34
12. Chambers and Liberty County Navigation District	1, 600.0
13. Chambers and Liberty County Navigation District	4, 371.0
14. Chambers and Liberty County Navigation District	3, 590.0
15. Chambers and Liberty County Navigation District	7, 247.42
16. Chambers and Liberty County Navigation District	2, 540.0
17. Chambers and Liberty County Navigation District	928.0
18. Chambers and Liberty County Navigation District	19.43
18A. Chambers and Liberty County Navigation District	4, 905.34
19. Nueces County Navigation District No. 1	2, 694.93
20. Nueces County Navigation District No. 1	390.56
21. Nueces County Navigation District No. 1	4, 140.6
22. Nueces County Navigation District No. 1	10, 301.37
23. Nueces County Navigation District No. 1	1, 945.75
23A. Port of Beaumont Navigation District	63.83
24. Aransas County Navigation District No. 1	100.39
24A. Beaumont Navigation District	2.71
25. City of Texas City, Galveston County	609.31
26. City of Port Lavaca, Calhoun County	74.5
27. City of Port Isabel	1, 172.0
28. City of Corpus Christi	705.78
29. Town Tract of Saluria	640.0
29A. City of Aransas Pass	13, 250.0

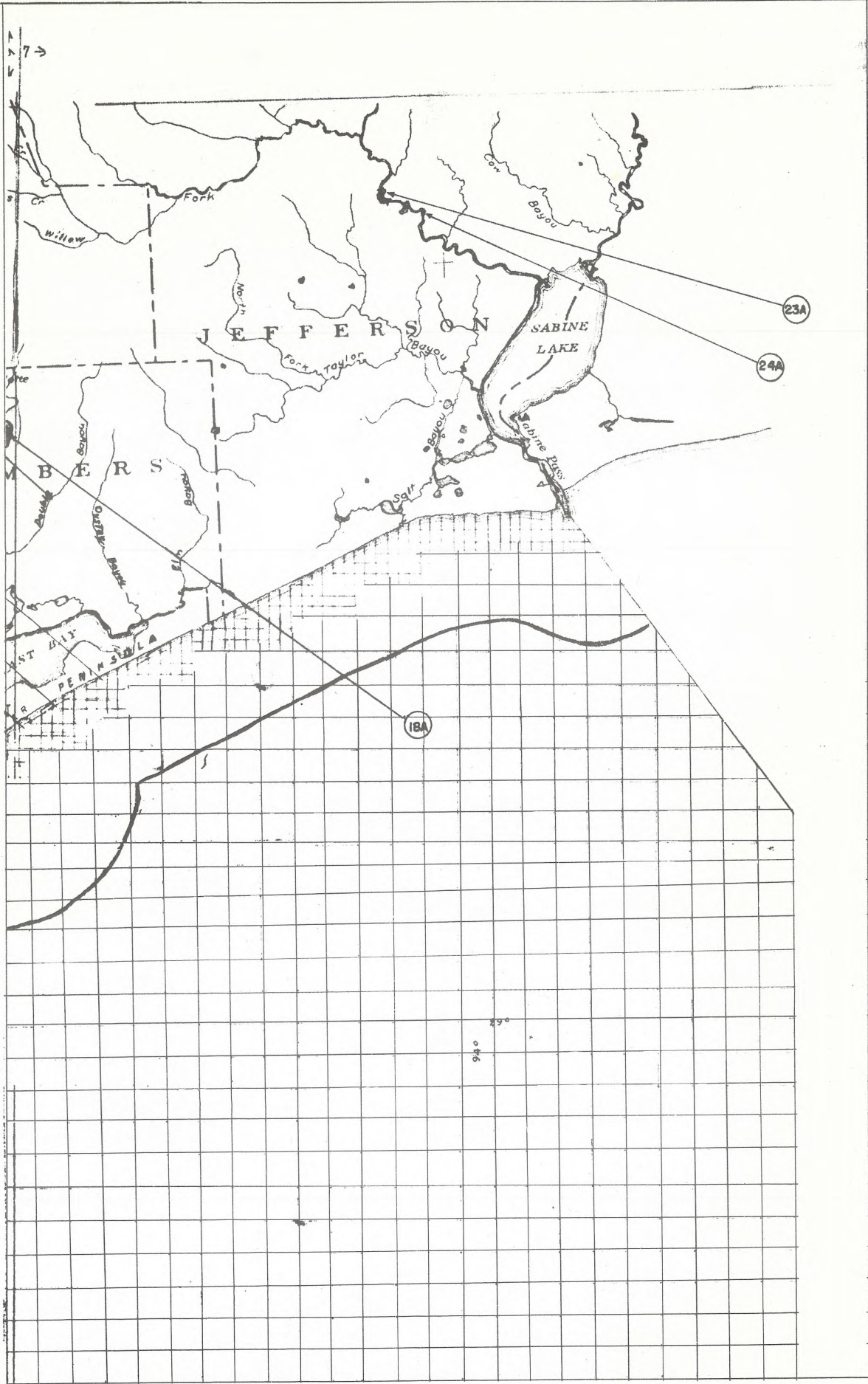
*NOTE: The Tracts hereon are not drawn to scale; but are merely shown as to their approximate location.

SOURCE: General Land Office









APPENDIX D

Areas of Texas Bays

<u>Bays</u>	<u>County</u>	<u>Water Acreage</u>	<u>Land Acreage</u>	<u>Total Acreage</u>
Bastrop Bay	Brazoria	2, 214.0		2, 214.0
Chocolate Bay	Brazoria	1, 989.6		1, 989.6
West Bay	Galveston	44, 454.5	877.5	45, 332.0
Dollar Bay	Galveston	622.4		622.4
Dickinson Bay	Galveston	1, 377.4		1, 377.4
Turtle Bay	Galveston	5, 030.0	20.4	5, 050.4
Burnett Bay	Harris	632.5		632.5
Scott Bay	Harris	775.0		775.0
Black Duck Bay	Harris	571.4		571.4
Tabbs Bay	Harris	622.4		622.4
San Jacinto Bay	Harris	2, 805.8	489.7	3, 295.5
Trinity Bay	Galveston	66, 237.6	10.2	66, 247.8
Galveston Bay	Galveston	167, 747.5	3, 815.9	171, 563.4
East Bay	Galveston	47, 984.7	20.4	48, 005.1
Oyster Bay	Brazoria	5, 548.4	30.6	5, 579.0
Drum Bay	Brazoria	1, 152.9	30.6	1, 183.5
Live Oak Bay	Matagorda	612.2		612.2
Matagorda	Calhoun Matagorda	201, 539.8	418.3	201, 958.1
Turtle Bay	Matagorda	2, 530.3		2, 530.3

<u>Bays</u>	<u>County</u>	<u>Water Acreage</u>	<u>Land Acreage</u>	<u>Total Acreage</u>
Coon Island Bay	Matagorda	1,183.5		1,183.5
Trespalacious Bay	Matagorda	10,662.1		10,662.1
Carancahua Bay	Calhoun Jackson	10,233.6		10,233.6
Keller Bay	Calhoun	5,142.3		5,142.3
Cox Bay	Calhoun	3,540.3		3,540.3
Lavaca Bay	Calhoun	36,598.1	214.2	36,812.3
Chocolate Bay	Calhoun	1,663.0		1,663.0
Espirtu Santo Bay	Calhoun	30,874.3	1,601.9	32,476.2
Shoalwater Bay	Calhoun	30,027.5	755.0	30,782.5
Barroom Bay	Calhoun	846.8		846.8
Redfish Bay	Nueces	10,662.1	459.1	11,121.2
Port Bay	Aransas	1,969.2		1,969.2
Copano Bay	Aransas Refugio	43,321.9	173.5	43,495.4
Aransas Bay	Aransas Nueces	53,453.5	1,836.5	55,290.0
St. Charles Bay	Aransas	8,519.5		8,519.5
Mission Bay	Refugio	4,040.3	20.4	4,060.7
Carlos Bay	Aransas	1,999.7		1,999.7
Mesquite Bay	Aransas	9,478.5	540.7	10,019.2
Sundown Bay	Aransas	724.4		724.4
Dunham Bay	Aransas	377.5	20.4	397.9
Ayers Bay	Aransas	1,673.3	30.6	1,703.9

<u>Bays</u>	<u>County</u>	<u>Water Acreage</u>	<u>Land Acreage</u>	<u>Total Acreage</u>
San Antonio Bay	Aransas Calhoun	57,810.2	336.7	58,146.9
Hynes Bay	Calhoun	22,844.5		22,844.5
Guadalupe Bay	Calhoun	5,009.7		5,009.7
Little Bay	Aransas	479.5		479.5
Baffin Bay	Kleberg Kenedy	30,925.5	20.4	30,945.9
Alazan Bay	Kleberg	12,692.5		12,692.5
Oso Bay	Nueces	5,509.6	30.6	5,540.2
Nueces Bay	Nueces	19,946.8	51.0	19,997.8
Corpus Christi Bay	Nueces	108,804.8	999.9	109,804.7
Cayo Del Infiernillo	Kleberg	1,765.1		1,765.1
Cayo Del Grullo	Kleberg	8,500.0		8,500.0
South Bay	Cameron	<u>3,642.5</u>	<u>275.5</u>	<u>3,918.0</u>
TOTALS		<u>1,099,370.5</u>	<u>13,080.0</u>	<u>1,112,450.5</u>

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