



INVENTORY OF STATE SUBMERGED LANDS LEASING PROGRAMS IN THE GULF OF MEXICO

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Off-bottom oyster farming occurs on state-owned submerged lands (SSL) and, as such, authorization to occupy those lands is required from the state. In general, this authorization takes the form of a lease, although the terminology varies among the Gulf states. Through this leasing process, the state grants the oyster farmer the right to use the submerged lands and the water column for a limited period of time in exchange for some sort of payment.

As a first step towards assessing the feasibility of using ecosystem services valuation to offset regulatory fees associated with oyster aquaculture in the Gulf of Mexico, the Mississippi-Alabama Sea Grant Legal Program, in collaboration with the Louisiana Sea Grant Law & Policy Program, researched the submerged lands leasing program in each of the five Gulf states. For each state, the legal team identified the responsible agency, the application process, and general regulatory framework. In addition to summarizing the leasing program in each state, the legal team identified the base annual fees (as set forth in law or regulation), when an agency may deviate from that base fee, and the method used in calculating such fees when available.

FOR EACH STATE, THE FOLLOWING INFORMATION IS SUMMARIZED:

Responsible Agency

General SSL Leasing Provisions

- Activities in the Near-shore Area
- Leasing of the Water Column
- Allowable Leasing Activities

Aquaculture Provisions

- Definition of Aquaculture
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ALABAMA

RESPONSIBLE AGENCY: THE ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES – STATE LANDS DIVISION OVERSEES USE AND MANAGEMENT OF STATE-OWNED SUBMERGED LANDS. ALA. CODE § 35-4-380; ALA. ADMIN. CODE R. 220-4-.09; ALA. ADMIN. CODE R. 220-4-.17.

GENERAL SSL LEASING PROVISIONS:

- “State owned submerged lands” means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the mean low water line beneath navigable fresh water or the mean high tide line beneath tidally-influenced waters, to which the State of Alabama acquired title on December 14, 1819, by virtue of statehood, or thereafter and which have not been heretofore conveyed or alienated. ALA. ADMIN. CODE r. 220-4-.09
- Any revenue-generating use or use that excludes traditional public uses (including navigation, fishing and swimming) must pay just compensation for the use of SSL. ALA. ADMIN. CODE r. 220-4-.09(1)(e).
- Permission to use SSL may be referred to as a “lease” or a “riparian easement.”



Activities in the Near-shore Area:

- Waterfront property owners may exercise riparian rights over waters abutting their shoreline. Riparian rights include the right to access the water, the right to construct piers, and the right to harvest oysters. Riparian owners may plant and gather oysters on submerged lands adjacent to their property extending 600 yards offshore. ALA. CODE § 9-12-22.
- Activities on SSL cannot unreasonably infringe on the riparian rights of upland property owners.
- Riparian easements are required for all revenue-generating activities.
 - To lease SSL nearshore, the applicant must demonstrate “satisfactory evidence of sufficient upland interest.” This can be done through documentation, such as a warranty deed; a certificate of title; a lease; an easement; or condominium, homeowners or similar association documents that clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity. Other forms of documentation shall be accepted if they clearly demonstrate that the holder has control and interest in the riparian uplands

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adjacent to the project area and the riparian rights necessary to conduct the proposed activity. ALA. ADMIN. CODE r. 220-4-.09.

- Single residential docks that use less than 1000 square feet of state owned submerged lands for each 100 linear feet of shoreline ownership are exempt from leasing requirements.

Leasing of the Water Column:

Alabama does not have specific provisions for leasing the water column. A shellfish aquaculture easement includes use of the overlying water column.



Allowable Leasing Activities:

Activities on state-owned submerged lands must meet the following criteria:

- Be in the public interest;
- Include sufficient upland interest;
- Be a water-dependent activity;
- Pay compensation for revenue generating uses that limit or preempt public use.

In addition to provisions addressing oil and gas development, Alabama has submerged lands leasing provisions specific to shellfish aquaculture, marinas, natural oyster reefs, and a “catch-all” provision for other activities that generate revenue and limit public use.

- *Shellfish Aquaculture Easements:* Alabama regulations include a newly created process for seeking a shellfish aquaculture easement. Easements applications are reviewed by the ADCNR – State Lands Division. ALA. ADMIN. CODE r. 220-4-.17.
- *Waterbottoms under Natural Oyster Reefs:* Alabama regulations distinguish between natural and artificial oyster reefs. Natural oyster reefs are generally open to public harvest unless they have been leased to private parties. These reefs are managed by the ADCNR – Marine Resources Division. ALA. CODE § 9-12-21. Submerged lands underlying natural oyster reefs may be leased by the Commissioner of the ADCNR. ALA. CODE § 9-12-24.

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- *Marinas/Docking Facilities:* Facilities with 10 or more wet slips require a riparian easement. The facilities riparian easement cannot be larger than 200 times the riparian waterfront footage. Facilities which use less than 10 square feet for every foot of riparian shoreline are exempt. ALA. ADMIN. CODE r. 220-4-.09.
- *Geophysical Exploration:* Alabama regulations include provisions for leasing submerged lands for geophysical exploration. ALA. ADMIN. CODE r. 220-4-.01. Activities may not: cause harm or damage to aquatic life; cause pollution; create hazardous or unsafe conditions; unreasonably interfere with or harm other uses of the area; or disturb cultural resources.
 - In addition, (1) Exploration cannot occur in any wildlife refuge, waterfowl refuge, game preserve, fish preserve or hatchery or oyster seed ground reservation without written permission from the agency in charge of such refuge, preserve, hatchery or reservation; (2) No geophysical exploration activity shall be conducted in inshore waters during the first two weeks immediately following the opening of the summer shrimping season.

AQUACULTURE PROVISIONS:

Definition of Aquaculture: Alabama defines shellfish aquaculture as “the off-bottom cultivation and harvesting of shellfish for commercial or research-oriented purposes.” For the purposes of shellfish aquaculture, the term shellfish is limited to Alabama native species of oysters, clams, or mussels and scallops. ALA. ADMIN. CODE r. 220-4-.17. Alabama regulations also distinguish between natural and artificial oyster reefs. Natural oyster reefs are generally open to public harvest unless otherwise leased. These reefs are managed by the ADCNR – Marine Resources Division. ALA. CODE § 9-12-21. Submerged lands underlying natural oyster reefs may be leased by the Commissioner of the ADCNR.



Leasing of SSL for Shellfish Aquaculture:

The ALA. ADMIN. CODE r. 220-4-.17 lays out the specific information for shellfish aquaculture easement applications. In general, to obtain an shellfish aquaculture easement the:

- Activity must be water-dependent and directly related to shellfish aquaculture;

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- Activity shall not significantly restrict public access for boating, swimming, and fishing;
- Activity shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat;
- Applicant must demonstrate capabilities to conduct the proposed activities;
- Applicant must describe potential impacts of project on the ecology of the area, including fish and wildlife habitat;
- Applicant must explain why the easement is in the public interest, or at a minimum, not contrary to the public interest.

Cultivation of non-indigenous, or hybrids of non-indigenous, plants and animals is prohibited.

Easement must be marked adequately to inform the public of the activity and identify potential navigational and safety hazards. Markers must be maintained for the life of the easement.

Additional requirements apply to applications for easements that include docks or other related structures connected to the upland that use the water column. ALA. ADMIN. CODE r. 220-4-.17.



Geographic Restrictions on Aquaculture Activities:

Shellfish aquaculture easements cannot be larger than five acres, though exceptions for mitigating or extenuating circumstances may be granted at the discretion of ADCNR.

Riparian shellfish aquaculture easements must be setback 10 feet from the riparian lines of adjoining property owners unless the easement holder has a letter of concurrence from the neighboring property owner waiving this requirement.

Shellfish aquaculture cannot unreasonably interfere with navigation. An easement will not be granted for any area closer than 100 feet from a marked navigation channel. ALA. ADMIN. CODE r. 220-4-.17.

The Department of Public Health has authority to close waters to oystering where it deems the waters unsafe. ALA. CODE § 9-12-126.

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- Oystering is not allowed in certain waters near sewage discharges and other locations that are permanently closed to oystering by the Department of Public Health. These areas are subject to change and the latest closure orders should be obtained from the Marine Resources Division or the Department of Public Health. ALA. ADMIN. CODE r. 220-3-.02.

LEASE FEE

Application Fee: \$100 for a Riparian Easement

Annual Rental Payments:

- Shellfish Aquaculture Easement (Riparian and Non-Riparian):
 - Annual fee set by ADCNR.
 - Where ADCNR determines that a competitive market exists for the easement, the easement may be competitively bid pursuant to ALA. CODE § 9-15-70.
 - Minimum fee: \$250 per acre per year.
- Other Riparian (Near-shore) Area:
 - Base Fee: the base fee for a riparian easement/lease is \$0.156 per square foot of easement annually (tied to the consumer price index, fluctuates)
 - Minimum fee: minimum annual fee of \$626.91
- Other Non-riparian Area:
 - Competitive bidding process based on appraisal values for land. The Alabama Land Sales and Lease Act applies to state owned land valued over \$20,000. Leasing of submerged lands under this provision is subject to a competitive bidding process. Through the services of an appraiser, the ADCNR – State Lands Division sets the minimum bid and advertises the parcel's availability. Applicants may submit sealed bids. The lease will be awarded to the highest bidder. ALA. CODE § 9-15-70.



FLORIDA

RESPONSIBLE AGENCY: THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION OVERSEES USE AND MANAGEMENT OF STATE-OWNED SUBMERGED LANDS. WITH RESPECT TO AQUACULTURE ACTIVITIES, HOWEVER, THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (DACS) IS THE RESPONSIBLE LEASING AGENCY.

GENERAL PROVISIONS:

Activities in the Near-shore Area:

- Within the near-shore area, leases may not infringe upon traditional common law riparian rights. FLA. ADMIN. CODE § 18-21.004(3).
 - For activities within the riparian rights zone, lease applicants must provide satisfactory evidence of sufficient upland interest. FLA. ADMIN. CODE § 18-21.008.
 - Structures and activities must be set back 25 feet within the applicable riparian rights line.



Leasing of the Water Column:

Florida has specific provisions for leasing of the water column, which may be leased for aquaculture activities. FLA. ADMIN. CODE § 18-21.020. Bottom leases include six inches of the water column above the water.

- The fees for these types of lease are different (discussed in more detail below). Both types of leases will have an annual rental fee of a fixed rate determine by the Board, but the leases have different statutory minimums. Bottom leases have a minimum fee of \$15/acre. Water column leases have a minimum fee of \$30/acre.

Allowable Leasing Activities:

Activities on SSL are limited to water-dependent activities, unless the Board of Trustees of the Internal Improvement Trust Fund determines the activity is in the public interest. FLA. ADMIN. CODE § 18-21.004(g).

- Water-dependent activity is defined as “an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereign submerged land for transportation, recreation, energy productions or transmission, or source of water, and where the use of the water or submerged lands is an integral part of the activities.”
- Public interest is defined as “demonstrable environmental, social, and economic benefits which would accrue

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to the public at large as a result of a proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or the severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.”

Prohibited activities include:

- Stilt houses, boathouses with living quarters, or other residential structures.
- Providing new road access to islands, with some exceptions.
- A use that is adjacent or surrounding an unabridged, undeveloped coastal island or undeveloped coastal island, unless approved by the Board of Trustees.

AQUACULTURE PROVISIONS:

Definition of Aquaculture:

The Florida Aquaculture Policy Act defines aquaculture as “the cultivation of aquatic organisms.”

FLA. STAT. § 597.0015.

- DACS further defines aquaculture as “the cultivation of aquatic organisms and associated activities, including, but not limited to grading, sorting, transporting, harvesting, holding, storing, growing or planting.” FLA. ADMIN. CODE § 18-21.003(10).
 - Aquaculture activities are defined as “any activities related to the production of aquaculture products, including, but not limited to, producing, storing, handling, grading, sorting, transporting, harvesting, and aquacultural support docking.” FLA. ADMIN. CODE § 18-21.003(11).



Leasing of SSL for Oyster Aquaculture:

Florida regulates oyster aquaculture activities based on two categories: on-bottom culture and off-bottom culture. On-bottom leasing includes water bottoms and six inches of the water column above the bottom. Water column leasing includes water column from six inches above water bottoms to the water surface.

- Under Florida law, a person must apply to lease a part of the bottom, water column or bed for the purpose of growing oysters or clams. FL. STAT. § 597-010.
- Fl. Stat. § 253.69 sets out the required information for an application to lease submerged lands and water

columns for aquaculture activities. The FLA. ADMIN. CODE § 18-21.021 lays out more specific information for aquaculture lease applications. In generally, to obtain an aquaculture lease the:

- Activity must be water-dependent;
- The project must be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, including: sea grasses, endangered and threatened species, wetland vegetation, and water quality;
- The applicant must describe potential impacts to the area ecology;
- The activity must not be contrary to the public interest;
- The application must include name and address of all landowners within 500 feet of the parcel; and
- The applicant must provide proof of published notice of application in local newspaper.

Geographic Restrictions on Aquaculture Activities:

- Leased areas for aquaculture leases have the following restrictions. FLA. ADMIN. CODE § 18-21.020(4).
 - Size limit:
 - For oysters, leased areas must be 10 acres or less.
 - For clams, the leased areas must be 5 acres or less.
 - Exceptions are available for larger areas if certain criteria are met.
 - Setbacks:
 - Riparian Applicants: A setback of 25 ft. from the riparian lines of adjacent properties, unless the adjacent property owners provide a letter of concurrence.
 - For non-riparian applicants, the leased area must be at least 100 feet waterward of the mean or ordinary high water mark or 100 feet waterward of existing structures and permitted activities on SSL. Upland landowners can provide a letter of concurrence to waive this setback. The Board can also require a larger setback in certain situations.
 - The leased area will also need to be setback from other activities, channels or structures to ensure safety and resource management and facilitate enforcement.
 - If the leased area is in an aquatic preserve, research reserve, marine sanctuary or state park, the activity needs to be compatible with the area's management plan and other statutory requirements.
 - Leases cannot prevent public access to harvestable resources.

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LEASE FEES:

Application Fee: \$200 for aquaculture lease

Annual Rental Payment:

For aquaculture activities, the following fees are charged:

- \$16.73 per acre annually + \$10 per acre surcharge for bottom aquaculture leases statutory minimum (tied to Consumer Price Index, fluctuates)
- \$33.46 per acre annually + \$10 per acre surcharge for water column leases statutory minimum (tied to Consumer Price Index, fluctuates)
- For other activities, the annual rental fees for standard (5-year term) and extended (up to 25 years) leases are calculated differently.
- The standard lease fee is the greatest of 6% of the annual income, the base fee or the minimum annual fee, subject to discounts, surcharges and other payments.
 - The income calculation is for wet slips. The base fee is \$0.1413/sq. ft./annum starting in 2007. The minimum annual fee is \$423.89 starting in 2007.
 - Both the base fee and minimum annual fee is increased or decreased each year on March 1 based “on the average change over time in the price paid by all urban customers for a market basket of consumer goods and services and using the Consumer Price Index.”
- The extended lease fee is the annual lease fee for standard term leases multiplied by $(1 + .01X)$, where X= the term of the lease in years.
- Additional Provisions:
 - Marinas that have 90% of their slips available to rent to public on a first come, first served basis are eligible for a 30% discount. There is also a 10% discount for participants in the clean marina program.
 - There is a 25% surcharge for new leases or lease expansions.
 - There is also an additional charge for leases in aquatic preserves.
 - Lease fees for restaurants and other non-water-dependent uses are negotiated with DEP or water management district staff.
 - Fees can be waived for government, research, education or charitable entities under certain circumstances.



LOUISIANA

RESPONSIBLE AGENCY: THE LOUISIANA OFFICE OF STATE LANDS, WITHIN THE DIVISION OF ADMINISTRATION, IS RESPONSIBLE FOR THE LEASING OF ENCROACHMENTS UPON PUBLIC LANDS, INCLUDING BEDS AND BOTTOMS OF ALL NAVIGABLE WATERS. LA. REV. STAT. § 41:1701. HOWEVER, THE SECRETARY OF THE LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES (LDWF) IS GIVEN AUTHORITY OVER ISSUING PERMITS AND LEASES FOR OYSTER-RELATED ACTIVITIES ON STATE SUBMERGED LANDS. LA. REV. STAT. § 56:425. TITLE 56 OF THE LOUISIANA REVISED STATUTES PROVIDES EXTENSIVE PROVISIONS REGARDING PERMITTING AND LEASING OF SSL FOR TRADITIONAL AND ALTERNATIVE OYSTER CULTURE. SUCH LEASING IS UNDER THE EXCLUSIVE CONTROL OF LDWF. THE OFFICE OF COASTAL MANAGEMENT WITHIN THE DEPARTMENT OF NATURAL RESOURCES (DNR) IS RESPONSIBLE FOR THE MANAGEMENT AND REGULATIONS OF THE USE OF LOUISIANA'S COASTAL MANAGEMENT ZONE. THE OFFICE OF COASTAL MANAGEMENT SETS FORTH ADDITIONAL REGULATIONS FOR SSL USE.

GENERAL SSL LEASING PROVISIONS:

Louisiana refers to its submerged lands as *navigable water bottoms*. For the seashore, sea, navigable bays (considered arms of the sea), and navigable lakes, this includes any lands lying between the highest tide of winter (known as the ordinary high water line) and the seaward extent of the state's jurisdictional limit. LA. CIV. CODE ANN. arts. 450, 451. For rivers and streams, state ownership extends between the ordinary low water marks. LA. CIV. CODE ANN. arts. 450, 456. The Office of State Lands is authorized to lease encroachments upon all state lands, including water bottoms. LA. REV. STAT. § 41:1701, 41:1701.1.



- The Office of State Lands may not grant leases on SSL without approval from the governing authority of the Parish in which the encroachment is located, the attorney general, and such other parochial or state agencies, that may have jurisdiction in the premises. LA. REV. STAT. § 41:1711.

Ownership:

In Louisiana, the ownership and title to all wild birds, and wild quadrupeds, fish, other aquatic life, the beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds, and inlets bordering on or connecting with the Gulf of Mexico within the territory or jurisdiction of the State, including all oysters and other shellfish and parts thereof grown thereon, either naturally or cultivated, and all oysters in the shells after they are caught or taken therefrom, are and remain the property of the state, and are under the exclusive control of the Wildlife and Fisheries Commission. LA. REV. STAT. § 56:3.

LOUISIANA

Leasing of the Water Column:

Louisiana does not have specific provisions for leasing the water column. However, there are specific provisions for alternative oyster aquaculture, described in more detail below.

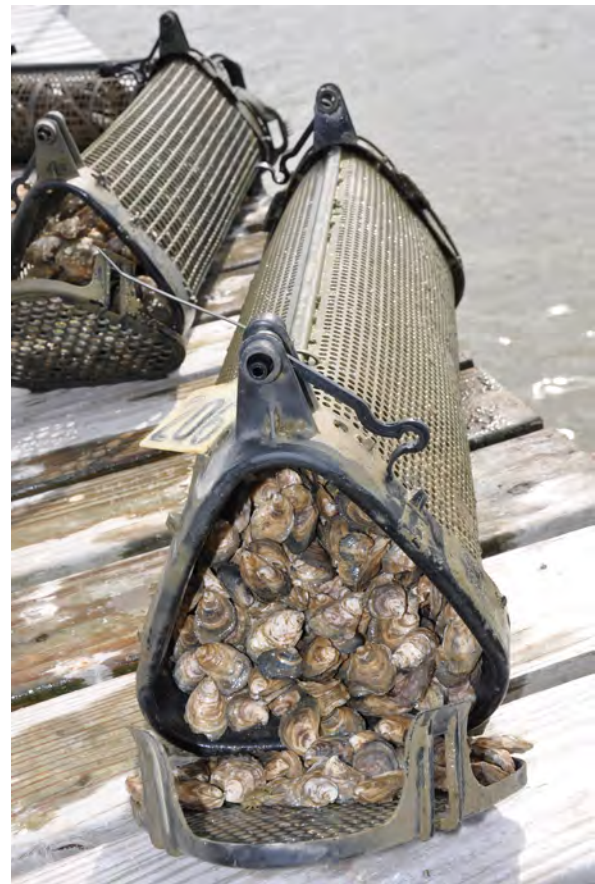
Regulations pertaining to alternative oyster culture permits recognizes a lessee's utilization of the water column and states that properly permitted persons may engage in such activities on water bottoms, in the water column, and on the water surface above the water bottoms within the permitted area. LA. REV. STAT. § 56:431.2.

Allowable Leasing Activities:

The beds and bottoms of all navigable waters and the banks or shores of bays, arms of the sea, the Gulf of Mexico, and navigable lakes belong to the state of Louisiana. Activities on such lands are to be protected, administered, and conserved to best ensure full public navigation, fishery, recreation, and other interests. LA. REV. STAT. § 41:1701.

In addition to specific SSL leasing provisions addressing oil, gas, and wind energy development, as well as detailed SSL provisions for traditional oyster leases and alternative oyster aquaculture (explained in detail below), Louisiana issues five types of water bottom lease permits: Class A, B, C, D and E.

- Class A and E lease permits are for constructing landfills upon non-eroded state lands for the purpose of reclaiming or recovering land lost through erosion by action of the water body.
- Class B permits are for construction of bulkheads or flood protection structures in proximity to the bank or shore.
- Class C permits are for construction of commercial wharves and piers.
- Class D permits are for construction of structures other than wharves and piers.



AQUACULTURE PROVISIONS:

Definition of Aquaculture:

Aquaculture is defined as the producing, raising, managing, harvesting, transporting, or marketing of aquatic livestock in privately owned waters or ponds. LA. REV. STAT. § 3:559.3. This definition does not include traditional or alternative oyster culture activities that occur on state-owned water bottoms.

LOUISIANA

Louisiana distinguishes between traditional oyster culture and alternative oyster culture. Traditional oyster culture that occurs directly on reefs, cultch or other water bottoms fall under “traditional” oyster leases. “Alternative oyster culture activity” means any on-bottom, off-bottom, or other means of cultivating or growing oysters other than directly on reefs or other water bottoms, including but not limited to the use of on-bottom cages or bags or floating, suspended, or otherwise off-bottom cages or bags, and includes the harvesting of oysters so grown or cultivated. LA. REV. STAT. § 56:431.2. Alternative oyster culture requires an additional permitting process on top of the traditional oyster lease.

Leasing of SSL for Oyster Culture:

The LDWF is authorized to grant leases on all state-owned water bottoms for oyster cultivation, bedding, and harvesting, and matters relating thereto. LA. REV. STAT. § 41:1225. Oyster farming upon submerged lands in Louisiana is subject to the Louisiana Revised Statutes, particularly Title 56, all official regulations of the Louisiana Wildlife and Fisheries Commission, local and parish ordinances, and federal laws. Any resident, firm composed of residents, or any corporation domiciled in or organized under the laws of Louisiana may lease any state-owned water bottoms and natural reefs in the water bottoms of the state. LA. REV. STAT. § 56:425.

Traditional Oyster Leases:

- Traditional oyster leases entered into begin on the day the lease is signed and continue for a term of fifteen years. Upon expiration of the lease, the owners have the first right of renewal of their leases, as long as the lease is capable of supporting oysters. If renewed, the renewal will be for another fifteen-year period. The Secretary of LDWF has sixty days from the date of expiration of the lease to execute the renewal. If they fail to do so within the sixty-day period, the lease is automatically renewed. LA. REV. STAT. § 56:428.
- A lessee has the exclusive use of the water bottoms leased and all oysters and cultch grown or placed thereon. However, this exclusive right is subordinate to the rights and responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take action in furtherance of coastal protection, conservation, or restoration. LA. REV. STAT. § 56:423.

Alternative Culture Lease Application Requirements:

- Applicant must be a natural person, if not, the person signing the application must be duly authorized to do so on behalf of the applicant.
- Applicant must be the holder of
 - A traditional State of Louisiana oyster lease and have the relevant oyster lease number available.
 - A Louisiana commercial fisherman license and have the relevant license number available.
 - A current oyster harvester license and have the relevant license number available.

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- Applicant must disclose any and all types of alternative oyster culture activities they will engage in:
 - On-bottom cages, racks, or bags.
 - Off-bottom cages, racks, or bags, suspended by poles or floats.
 - String or longline culture.
 - If a type other than those listed, applicant must provide a description.
- List of the equipment or gear the applicant plans to use.
- List of the facilities the applicant plans to use.
- Within the past three years, applicant cannot have previously been convicted of or pled guilty to a class 4 or greater oyster-related violation, as defined in the laws pertaining to wildlife and fisheries.
- Applicant must attach the following documents:
 - Plats (hard copy and shape file) showing oyster lease, proposed AOC permit area, and proposed AOC activities, facilities and equipment.
 - All necessary local, state, and federal permits necessary for the activity sought to be permitted, or documentation from the relevant agencies establishing that such permits are unnecessary, including:
 - State coastal use permit (R.S. 49:214.30);
 - Federal obstruction to navigation section 10 (33 U.S.C. 403) and/or section 9 (33 U.S.C. 401) permit;
 - Clean Water Act section 404 fill permit (33 U.S.C. 1344);
 - State water quality certification (33 U.S.C. 1341); and
 - Any other permit or authorization that may be required by a state or federal agency for the AOC activity.
 - A cost estimate to remove and properly dispose of all equipment, facilities, and other items sought to be permitted, prepared by a contractor that has a valid Louisiana Commercial Contractor License for the classification of Heavy Construction or Coastal Restoration and Habitat Enhancement, and has no familial or business relationship with the applicant
 - If the person signing the application is acting under a power of attorney, a copy of the power of attorney.



LOUISIANA

Geographic Restrictions on Traditional Oyster Leases:

- No person, partnership, or corporation is allowed to lease more than 2,500 acres of water bottoms in a traditional oyster lease. LA. REV. STAT. § 56:432.
- Leases may not be granted for any water bottom for which any lease was previously acquired by the state for integrated coastal protection, unless the executive director of the Coastal Protection and Restoration Authority approves such lease. LA. REV. STAT. § 56:425.

Alternative Oyster Culture Permits:

LDWF is authorized to issue an alternative oyster culture permit (AOC permit) to a leaseholder holding a valid traditional oyster lease of state water bottoms. The area permitted for alternative oyster culture cannot extend beyond the boundaries of the existent lease. LA. REV. STAT. § 56:431.2.

- The permittee or anyone with written authorization from the permittee may engage in alternative oyster culture activities on the water bottoms, in the water column, and on the water surface above the water bottoms within the permitted area, to the extent specified by the department in the permit. LA. REV. STAT. § 56:431.2.



Geographic Restrictions on Alternative Oyster Aquaculture Permits:

- Alternative Oyster Culture permits issued in the following areas are null and void:
 - Areas designated by the U.S. Army Corps of Engineers as a navigable channel or waterway or within 1500 hundred feet of the centerline of such channel or waterway.
 - Areas covered by a coastal use permit or drilling permit or within 1500 feet of the outside of the exterior boundaries of an area covered by a coastal use permit or drilling permit.
 - Areas designated for dredging, direct placement of dredged or other materials, or other work or activities for the construction or maintenance of a project for integrated coastal protection or within 1500 feet of the outside of the exterior boundaries of an area designated for such dredging, direct placement, or other work activities.
 - Areas located on water bottoms that are not claimed by the state, as determined by the Office of State Lands.
 - Areas otherwise determined by LDWF to be unsuitable or inappropriate for alternative oyster culture activities. LA. REV. STAT. § 56:431.2.

LOUISIANA

Other Requirements/Restrictions (applicable to all leases):

- Any person harvesting oysters in Louisiana must possess a valid oyster harvesting license, except a Louisiana resident sixteen years old or younger and the spouse of a vessel's owner while on that vessel. LA. REV. STAT. § 56:424. The captain of a vessel that is harvesting or possessing oysters in state waters must purchase an oyster harvesting license. This license requirement applies only to commercial fishermen and recreational fishermen who take more than two sacks of oysters a day. LA. REV. STAT. § 56:303.6.
- The Louisiana Coastal Protection and Restoration Authority can acquire in whole or in part any oyster lease for dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection. The leaseholder may seek compensation from the Coastal Protection and Restoration Authority pursuant to LA. REV. STAT. 56:432.1.

LEASE FEES:

Application Fee:

- Fees for a traditional oyster lease:
 - The application fee for an oyster lease is \$40.00 for land that has already been subject to an oyster lease in the past or present. However, there is currently a moratorium on applications for oyster leases on SSL that has not previously been used for oyster harvesting.
- Additional fees for an alternative oyster lease:
 - The application fee for an Alternative Oyster Culture permit is \$100.00.
- In the event that an application for any type of permit requires special work such as a special field examination or survey, the application must pay for the special work.

Annual Rental Payments:

- Rent on traditional oyster leases, which is set at \$2.00 per acre per year, is due paid no later than December 31 following the signing of the lease, and annually thereafter.
- The rental fee for an alternative oyster culture permit is \$2.00 per acre or fraction of an acre, per year (or fraction of a year through December 31, for the first year)

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RESPONSIBLE AGENCY: THE MISSISSIPPI SECRETARY OF STATE HAS AUTHORITY TO LEASE TIDELANDS AND SUBMERGED LANDS HELD BY THE STATE. IN ADDITION TO A SUBMERGED LANDS LEASE, AQUACULTURE IN MARINE WATERS MAY REQUIRE A PERMIT UNDER THE COASTAL WETLANDS PROTECTION ACT AND THE MISSISSIPPI AQUACULTURE ACT OF 1988 (MISS. CODE ANN. § 79-22-15). THESE ACTIVITIES ARE PERMITTED BY THE

GENERAL SSL LEASING PROVISIONS:

- Submerged lands cannot be leased for a period longer than 40 years.
- At the expiration of the lease, the holder of a tidelands lease has first priority to renew the lease if the leaseholder and the Secretary of State can agree on terms. MISS. CODE ANN. § 29-1-107(2).
- Lands leased to holders of a Gaming License (casinos) fall under separate provisions. MISS. CODE ANN. § 29-1-107(4).



Activities in the Near-shore Area:

- Residential littoral property owners do not require a tidelands lease for exercising their common law and statutory littoral and riparian rights. MISS. CODE ANN. § 29-15-5(2).
- Commercial or industrial uses of the riparian or littoral areas do require a lease. MISS. ADMIN. CODE § 1-11-2.4.
- The Secretary of State will not lease the riparian area to anyone other than the upland owner without the upland owner's permission.
 - The Secretary of State recognizes the special position of the upland owner and, with limited exceptions, will not lease in the littoral or riparian area to parties other than the riparian or littoral owner without the riparian or littoral owner's permission. Evidence of permission may take the form of a lease, assignment, or other written form satisfactory to the Secretary of State. MISS. ADMIN. CODE § 1-11-2.4.

Leasing of the Water Column:

Mississippi does not have specific provisions for leasing the water column. However, regulations pertaining to marine aquaculture acknowledge that certain methods (e.g., net-pen aquaculture) use nets or cages suspended

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in the water column. This suggests that an aquaculture lease (discussed below) for submerged lands from the Secretary of State would carry with it the right to use the water column. *See MISS. ADMIN. CODE § 22-1-8:03 for net pen definition.*

Allowable Leasing Activities:

There are 2 different types of submerged lands leases issued by the Mississippi Secretary of State: (1) the standard lease and (2) the aquaculture lease. MISS. ADMIN. CODE § 1-11-2.5.

Allowable activities are evaluated on the basis of the Mississippi Public Trust Tidelands Act and associated regulations. MISS. ADMIN. CODE § 1-11-2.4.



- All activities must comply with the public policy of this state which favors the preservation of the natural state of the public trust tidelands and their ecosystems and prevents the despoliation and destruction of them, except where a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the public purposes of the public trust in which such tidelands are held.
- In deciding whether to lease for a proposed commercial or industrial project, the Secretary of State will favor the location of such projects in existing, developed commercial or industrial sites in urban settings over their location in rural, residential or environmentally sensitive sites.
- In order to protect public beaches and public access to public beaches and adjoining tidelands, the Secretary of State will not grant a lease for any commercial or industrial activity adjacent to (south or waterward of) public beach areas or areas used by the public for swimming, bathing or fishing, where there exists a public seawall but no beach. Public access to Public Trust Tidelands will be a high priority in the consideration of any new lease request.

Under the Mississippi Coastal Program, a variety of activities are subject to management by the Department of Marine Resources. MISS. ADMIN. CODE § 22-1-3:2-5. This includes:

- Leasing of waterbottoms for oyster farms;
- Oil, gas, sand, gravel, and shell leasing on state lands and in coastal waters; and
- Lease or sale of coastal wetlands.

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Leases for industrial and commercial activities within the Mississippi Coastal Preserves is discouraged. Miss. ADMIN. CODE § 1-11-2.4.

AQUACULTURE PROVISIONS:

Definition of Aquaculture: “Aquaculture” means any form of agriculture that includes the process of growing, farming, cultivating and/or harvesting cultured aquatic products in marine or freshwaters and includes management by an aquaculturist (from the Mississippi Aquaculture Act of 1988, Miss. CODE ANN. § 79-22-5).

Leasing of SSL for Oyster Aquaculture:

- Mississippi regulates oyster aquaculture activities based on three categories: off-bottom culture, on-bottom culture in nearshore waters, and on-bottom culture in offshore waters. Miss. ADMIN. CODE § 22-1-8:06.
- Off-bottom culture: defined as floated or suspended operations that include, but are not limited to, long lines and rafts. Miss. ADMIN. CODE § 22-1-8:06.
 - Off-bottom culture is not allowed within 2 miles of the shoreline.
- On-bottom culture: includes any aquaculture operation that involves the use of cultch material, racks, cages, or structures to support shellfish. Miss. ADMIN. CODE § 22-1-8:06.
 - On-bottom within offshore waters:
 - Must be located more than 750 yards from the shoreline.
 - Must maintain a minimum of 6 feet of water above the on-bottom oysters at all times.
 - If the operation requires support facilities, it cannot be located within 2 miles of the shoreline.
 - On-bottom in nearshore waters:
 - Located within 750 yards of the shoreline.
 - Must minimize the disruption of the natural movement of sediment in the nearshore areas.
 - Racks and cages must be arranged in rows with adequate spacing between rows to allow for reasonable ingress and egress to the shoreline.



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- No racks or cages shall be located within 200 feet of the shoreline unless it can be proven that there will be no conflicts with the traditional user groups in the area (i.e. flounder fisherman, beachgoers, etc.).

Geographic Restrictions on Aquaculture Activities:

- Not allowed within 1,500 feet of any pipeline or submerged cable. MISS. ADMIN. CODE § 22-1-8:04.
- Not allowed within 1 mile of “habitats of special significance.” MISS. ADMIN. CODE § 22-1-8:0.
- Cannot be located within one-half mile of the centerline of a federal navigation channel. Not allowed within a safety fairway, anchorage area, or within boundary of dredged material disposal site without USACE/Coast Guard approval. MISS. ADMIN. CODE § 22-1-8:04.

LEASE FEES:

Application Fee: \$150

Annual Rental Payments: Annual rental payments for submerged lands are negotiated between the Secretary of State and the leaseholder.

- Payments for a standard lease (non-aquaculture) will not be less than \$0.07 per square foot. (\$3,049.20 per acre). Additional liability insurance and indemnity provisions also apply.
- Payments for an aquaculture lease will not be less than \$25 per acre.
- Gaming facilities (casinos) are subject to separate leasing provisions (and higher rental fees).



RESPONSIBLE AGENCY: THE TEXAS GENERAL LAND OFFICE (GLO) IS RESPONSIBLE FOR ISSUING VARIOUS TYPES OF PERMITS, EASEMENTS AND LEASES ON ALL STATE-OWNED COASTAL LANDS, INCLUDING SUBMERGED LANDS IN BAYS AND THE TIDEWATER LIMITS OF COASTAL LAKES, BAYOUS, INLETS, STREAMS, ESTUARIES, RIVERS AND CREEKS. OYSTER LEASES, PERMITS, AND LICENSES ARE ISSUED BY THE TEXAS PARKS AND WILDLIFE DEPARTMENT (TPWD). THE TEXAS DEPARTMENT OF AGRICULTURE (TDA) IS THE LEAD AGENCY CHARGED WITH REGULATION OF AQUACULTURE IN TEXAS. SPECIFICALLY, TDA IS STATUTORILY REQUIRED TO ENCOURAGE THE RAISING OF CULTURED SPECIES, DEVELOPMENT OF THE AQUACULTURE INDUSTRY AND THE MARKETING OF AQUACULTURE PRODUCTS. TEXAS AGRIC. CODE § 12 *ET SEQ.*

GENERAL SSL LEASING PROVISIONS:

The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within set boundaries, including all land that is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide. TEX. NAT. RES. CODE ANN. § 11.012.



- The Commissioner of the General Land Office may execute grants of easements or other interests in property for rights-of-way or access across, through, and under the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable streams in the public domain, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for a variety of purposes. TEX. NAT. RES. CODE ANN. § 51.291.

The State of Texas owns the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in the State and the parts of the Gulf of Mexico within its jurisdiction. The State may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters. TEX. PARKS & WILD. CODE ANN. § 1.011.

- The TPWD is tasked with regulating the taking and conservation of state-owned fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by the Parks and Wildlife Code. TEX. PARKS & WILD. CODE ANN. § 1.011.

Activities in the Near Shore Area:

- Riparian landowners in Texas may exercise the following rights without a permit or lease:
 - A riparian owner of land along any bay shore in this state may plant oysters in an area extending 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a natural oyster bed under this subsection is not exclusive. TEX. PARKS & WILD. CODE ANN. § 76.004.
 - Prior to planting, riparian owners must obtain a certificate of location from TPWD to determine that the area is not a natural oyster bed.
 - If there is a natural oyster bed on the property, the riparian owner can harvest oysters from the bed, they just cannot obtain exclusive rights to those oysters.
- When the riparian owner offers oysters harvested on their property for sale, the property owner must make an affidavit stating that the oysters were produced on their private property. TEX. PARKS & WILD. CODE ANN. § 76.005.

Leasing of the Water Column:

Separate provisions for leasing the water column above state submerged lands in Texas do not exist. Structures that encumber state-owned submerged land require leases or easements, and impacts to the water column are considered during the leasing process and are covered by the same statutes and regulations. 31 TEX. ADMIN. CODE § 155.1.

Allowable Leasing Activities:

The Texas General Land Office leases state land for many purposes, including oil and gas production, agriculture (including aquaculture), commercial development and renewable energy development.

Within the GLO, the Coastal Division issues commercial leases and easements for coastal projects that produce revenue from the private use of state-owned submerged land.

- For non-riparian land owners: coastal surface leases (referred to as a SL by the GLO) are generally issued for commercial projects on state-owned submerged lands. TEX. NAT. RES. CODE ANN. § 33.103.
 - Surface leases are typically used for drilling platforms not on a leased mineral tract, electrical substations, pumping stations, loading racks, tank farms, artificial reefs and wildlife preserves.
 - SLs can also include miscellaneous easements issued for coastal submerged lands for projects which require a right-of-way (ROW) on, across, under, or over state-owned lands.
 - Additionally, the GLO issues coastal leases to state agencies, eligible cities or counties, nonprofits, tax-exempt organizations, or scientific or educational entities for public recreation, estuarine preserves, wildlife preserves, or scientific research activities.

TEXAS

- To apply for a surface lease from the GLO, an applicant must identify the area they wish to lease, have it surveyed by a licensed surveyor, pay the fee, and submit it to the GLO for approval. SL's are the only GLO leases that will be required by the GLO for on-bottom shellfish aquaculture in state-owned bays.
 - A SL does not grant the applicant the rights needed to harvest oysters. Additional permits granting harvest rights must be obtained from TPWD.

AQUACULTURE PROVISIONS:

Definition of Aquaculture: Texas defines “aquaculture” or “fish farming” as the business of producing and selling cultured species raised in private facilities. Aquaculture or fish farming is an agricultural activity. TEX. AGRIC. CODE ANN. § 134.001. Further, oysters are considered a “cultured species,” defined as aquatic animals raised under conditions where at



least a portion of their life cycle is controlled by an aquaculturist. TEX. AGRIC. CODE ANN. § 134.001.

Leasing of SSL for Oyster Culture:

Any citizen of the United States or any domestic corporation may file a written application with the TPWD for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state. The application must describe the location. TEX. PARKS & WILD. CODE ANN. § 76.006.

- Though oysters can be found in most Texas bay systems, over 90% of the public reef areas utilized by commercial and recreational fishermen are found in Galveston, Matagorda and San Antonio Bay. According to TPWD, private oyster leases are only granted in Galveston Bay.
- According to the TPWD, the only private oyster lease operations currently allowed in Texas are on-bottom leases. However, there is currently a moratorium on the issuance of new leases. The TPWD placed a moratorium on the issuance of private oyster leases in 1989. Off-bottom operations or on-bottom operations with cages are not allowed in Texas at this time.

TEXAS

- “Private oyster leases” are defined as state water bottom leases granted by the state to individuals or corporations incorporated under the laws of Texas for the purpose of producing oysters. 31 TEX. ADMIN. CODE § 58.11. If a corporation is to hold the lease or control land under a certificate of location, the corporation must be incorporated under Texas law. TEX. PARKS & WILD. CODE ANN. § 76.008. The term of a private lease is 15 years. TEX. PARKS & WILD. CODE ANN. § 76.018.

When TPWD is accepting applications, an applicant must:

- Mark the proposed lease site or sites with temporary poles and/or buoys in such a manner that the outline of the site or sites can be clearly determined. 31 TEX. ADMIN. CODE § 58.30
- Include a description of the lease, including a plat showing approximate size and location in relation to state land tracts. 31 TEX. ADMIN. CODE § 58.30.
- Include signed letters from the U.S. Army Corps of Engineers, General Land Office, and the Seafood and Aquatic Life Group of the Texas Department of State Health Services indicating approval for the proposed lease site. 31 TEX. ADMIN. CODE § 58.30.
- Possess an oyster harvest permit from the TPWD.

Once obtained, leaseholders may:

- Place approved cultch materials onto their lease to allow spat and substrate to attach.
- Transplant oysters to a private oyster lease only under a permit issued by the TPWD. 31 TEX. ADMIN. CODE § 58.40.

Offshore Aquaculture:

- Texas does not have rules in place setting forth requirements for shellfish aquaculture operations within *inshore* waters, like bays and estuaries. However, Texas does allow *offshore* aquaculture under permit from the TPWD. No surface lease from the GLO for such operations is needed unless the operation plans to have contact with the water bottom (like placing cages on the bottom, or affixing legs of a work platform).

Geographic Restrictions on Aquaculture Activities:

An oyster bed or reef, other than a natural oyster bed, is subject to location by the department. Once located, the Department will issue a “certificate of location.” TEX. PARKS & WILD. CODE ANN. § 76.003.

- The purpose of a certificate of location is to prevent private leaseholders from “constructing” an artificial reef on an area where a natural oyster bed exists. When a new lease is proposed, TPWD goes to the area and takes samples to ascertain whether an area meets the definition of a natural oyster bed. If the area does not meet the definition, a certificate of location is issued to the leaseholder that, in conjunction with the surface lease obtained from the GLO, authorizes the establishment and culture of a private oyster bed within the lease.

TEXAS

TPWD may not issue a certificate of location for a location that includes more than 100 acres of land covered by water. TEX. PARKS & WILD. CODE ANN. § 76.007.

A person may not own, lease, or control more than 300 acres of land covered by water under certificates of location. A person who does not own, lease, or control more than 300 acres of land may act as an agent for persons who, in the aggregate, own, lease, or control more than 300 acres of land. TEX. PARKS & WILD. CODE ANN. § 76.007.

No lease will be issued for:

- A natural oyster bed as prescribed in Parks and Wildlife Code § 76.001;
- An area that has been fished as a public reef within eight years of the lease application as prescribed in Parks and Wildlife Code § 76.003;
- A bay shore area within 100 yards of the shore as prescribed in Parks and Wildlife Code § 76.004;
- An area subject to an exclusive riparian right as provided under Parks and Wildlife Code § 76.004 and § 76.005;
- An area already under certification as a private lease; or
- An area within 1,000 feet of an established lease not owned or controlled by the applicant. 31 TEX. ADMIN. CODE § 58.30.

LEASE FEES:

Application Fee:

- Private Oyster Leases: \$200.00 nonrefundable application fee. 31 TEX. ADMIN. CODE § 58.30.
- Coastal Surface Lease: \$50.00 application fee.
- Offshore Oyster Aquaculture: Annual fee for an offshore aquaculture permit is \$1,575.00. 31 TEX. ADMIN. CODE § 53.15.



Annual Rental Payments:

- Private Oyster Leases: The holder of a certificate of location of a private oyster lease must pay to the department \$6.00 per acre of location per year. Rental fees are due annually by March 1. 31 TEX. ADMIN. CODE § 58.30.
- Coastal Surface Lease: negotiable annual fee with a \$100 per year minimum.



INVENTORY OF STATE SUBMERGED LANDS LEASING PROGRAMS IN THE GULF OF MEXICO

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