

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Parks and Wildlife Code
Subtitle G, Title 5
5/8/26

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1 TITLE 5. WILDLIFE AND PLANT MANAGEMENT AND CONSERVATION

2 SUBTITLE G. OYSTERS

3 CHAPTER 5301. GENERAL PROVISIONS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Revised Law

6 Sec. 5301.0101. DEFINITIONS. In this subtitle:

7 (1) "Natural oyster bed" means an area with a
8 substrate predominantly composed of oyster shell or live oysters.

9 (2) "Open season" means a period when it is lawful to
10 take oysters. (Parks & Wild. Code, Secs. 75.0101(4), 76.001(2),
11 (3).)

12 Source Law

13 Sec. 75.0101. DEFINITIONS. In this chapter:

14 (4) "Natural oyster bed" has the meaning
15 assigned by Section 76.001.

16 Sec. 76.001. DEFINITIONS. In this chapter:

17 (2) "Natural oyster bed" means an area
18 with a substrate that is predominantly composed of
19 oyster shell or live oysters.

20 (3) "Open season" means a period during
21 which it is lawful to take oysters.

22 Revisor's Note

23 Section 76.001(1), Parks and Wildlife Code,
24 defines "barrel of oysters" for Chapter 76 of that
25 code. The revised law omits that definition because
26 the term is not used in that chapter. The omitted law
27 reads:

28 (1) "Barrel of oysters" means
29 three boxes of oysters in the shell or two
30 gallons of shucked oysters without shells.
31 The dimensions of a box are 10 inches by 20
32 inches by 13-1/2 inches. In filling a box
33 for measurement, the oysters may not be
34 piled more than 2-1/2 inches above the
35 height of the box at the center.

36 Revised Law

37 Sec. 5301.0102. APPLICABILITY OF CERTAIN FEDERAL
38 REGULATIONS TO SALE OF RAW OYSTERS FOR CONSUMPTION IN THIS STATE. A
39 federal regulation that prohibits the interstate transport and sale
40 of oysters untreated postharvest does not apply to oysters:

- 1 (1) harvested from waters of this state; and
- 2 (2) sold and consumed in this state. (Parks & Wild.
- 3 Code, Sec. 76.303.)

4 Source Law

5 Sec. 76.303. SALE OF RAW OYSTERS FOR
6 CONSUMPTION WITHIN THIS STATE. Any federal
7 regulations that prohibit the interstate transport and
8 sale of oysters that have not been postharvest treated
9 do not apply to oysters harvested from waters of this
10 state and sold and consumed in this state.

11 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION AND
12 DEPARTMENT

13 Revised Law

14 Sec. 5301.0201. REGULATION BY PROCLAMATION. (a) The
15 commission by proclamation may regulate the taking, possessing,
16 purchasing, and selling of oysters.

17 (b) A proclamation issued under this section must contain
18 commission findings that support the need for the proclamation. In
19 determining the need for a proclamation, the commission shall
20 consider:

21 (1) measures to prevent the depletion of oyster beds
22 while achieving, on a continuing basis, the optimum yield for the
23 oyster industry;

24 (2) measures based on the best scientific information
25 available;

26 (3) measures to manage oysters;

27 (4) measures, where practicable, that will promote
28 efficiency in using oyster resources, except that economic
29 allocation may not be the sole purpose of the measures;

30 (5) measures, where practicable, that will minimize
31 cost and avoid unnecessary duplication in their administration; and

32 (6) measures that will enhance enforcement.

33 (c) A proclamation issued under this section may:

34 (1) prescribe the time, place, conditions, and means
35 and manner of taking oysters; and

36 (2) limit the quantity and size of oysters that may be

1 taken, possessed, sold, or purchased.

2 (d) A proclamation issued under this section prevails over:

3 (1) any conflicting provision of Subchapter C or
4 Chapter 5302, 5303, or 5304 to the extent of the conflict; and

5 (2) a proclamation issued under Chapter 5101.

6 (e) A proclamation issued under this section does not
7 prevail over an order or rule adopted by the executive commissioner
8 of the Health and Human Services Commission under Chapter 436,
9 Health and Safety Code.

10 (f) A proclamation issued under this section applies to a
11 person who:

12 (1) purchases oysters from:

13 (A) the captain of a commercial oyster boat;

14 (B) a commercial oyster boat license holder; or

15 (C) a crew member of a commercial oyster boat;

16 (2) purchases oysters under Section 5158.0804; and

17 (3) holds a shellfish certificate as defined by
18 Section 436.002, Health and Safety Code. (Parks & Wild. Code, Secs.
19 76.301(a), (b), (c), (d), (e), (h).)

20 Source Law

21 Sec. 76.301. REGULATION OF TAKING, POSSESSION,
22 PURCHASE, AND SALE OF OYSTERS. (a) The commission by
23 proclamation may regulate the taking, possession,
24 purchase, and sale of oysters. A proclamation issued
25 under this section must contain findings by the
26 commission that support the need for the proclamation.

27 (b) In determining the need for a proclamation
28 under Subsection (a) of this section, the commission
29 shall consider:

30 (1) measures to prevent the depletion of
31 oyster beds while achieving, on a continuing basis,
32 the optimum yield for the oystering industry;

33 (2) measures based on the best scientific
34 information available;

35 (3) measures to manage oysters;

36 (4) measures, where practicable, that will
37 promote efficiency in utilizing oyster resources,
38 except that economic allocation may not be the sole
39 purpose of the measures;

40 (5) measures, where practicable, that will
41 minimize cost and avoid unnecessary duplication in
42 their administration; and

43 (6) measures which will enhance
44 enforcement.

45 (c) A proclamation issued under Subsection (a)
46 of this section may limit the quantity and size of
47 oysters that may be taken, possessed, sold, or

1 purchased and may prescribe the times, places,
2 conditions, and means and manner of taking oysters.

3 (d) A proclamation of the commission under this
4 section prevails over:

5 (1) any conflicting provision of
6 Subchapter A, B, or C of this chapter to the extent of
7 the conflict; and

8 (2) a proclamation of the commission
9 issued under the Wildlife Conservation Act of 1983
10 (Chapter 61 of this code).

11 (e) A proclamation of the commission under this
12 section does not prevail over any order, rule, or
13 regulation adopted by the Commissioner of Health under
14 Subchapter D of this chapter.

15 (h) A proclamation of the commission under this
16 section applies to any person who:

17 (1) purchases oysters from the captain of
18 a commercial oyster boat, the holder of a commercial
19 oyster boat license, or a member of the crew of a
20 commercial oyster boat;

21 (2) purchases oysters under Section
22 47.0091; and

23 (3) holds a shellfish certificate, as
24 defined by Section 436.002, Health and Safety Code.

25 Revisor's Note

26 (1) Section 76.301(d)(1), Parks and Wildlife
27 Code, refers to conflicting provisions of Subchapter
28 A, B, or C, Chapter 76, of that code. Subchapters A, B,
29 and C are revised in pertinent part as Subchapter C of
30 this chapter and as Chapters 5302, 5303, and 5304 of
31 this code, and the revised law is drafted accordingly.

32 (2) Section 76.301(e), Parks and Wildlife Code,
33 refers to an "order, rule, or regulation" adopted by
34 the commissioner of health. The revised law omits
35 "regulation" for the reasons stated in Revisor's Note
36 (2) to Section 5053.0108.

37 (3) Section 76.301(e), Parks and Wildlife Code,
38 refers to an order, rule, or regulation adopted by the
39 "Commissioner of Health under Subchapter D of this
40 chapter." Subchapter D, Chapter 76, Parks and
41 Wildlife Code, was repealed by Chapter 678 (H.B.
42 2136), Acts of the 71st Legislature, Regular Session,
43 1989, which enacted the Health and Safety Code.
44 Subchapter D was revised in that act as Chapter 436,
45 Health and Safety Code. Under Section 436.112, Health

1 and Safety Code, the executive commissioner of the
2 Health and Human Services Commission has rulemaking
3 authority to enforce Chapter 436. The revised law is
4 drafted accordingly.

5 Revised Law

6 Sec. 5301.0202. OYSTER MANAGEMENT PLAN REQUIRED FOR
7 PROCLAMATIONS GENERALLY. (a) Except as provided by Subsection
8 (b), the commission may issue a proclamation under this subtitle
9 only if:

10 (1) the commission has approved and adopted an oyster
11 management plan and economic impact analysis prepared by the
12 department as provided by Section 5301.0203; and

13 (2) the proclamation is shown to be consistent with
14 the approved oyster management plan described by Subdivision (1).

15 (b) This section does not apply to a proclamation issued
16 under Chapter 5305. (Parks & Wild. Code, Sec. 76.301(g).)

17 Source Law

18 (g) The commission shall make no proclamation
19 under this chapter until it has approved and adopted an
20 oyster management plan and economic impact analysis
21 prepared by the department as provided in Section
22 76.302 of this code and unless such proclamation is
23 shown to be consistent with the approved oyster
24 management plan.

25 Revisor's Note

26 Section 76.301(g), Parks and Wildlife Code,
27 prohibits the Parks and Wildlife Commission from
28 making a proclamation under "this chapter," meaning
29 Chapter 76 of that code. The revised law substitutes
30 "this subtitle" for "this chapter" and adds language
31 clarifying that the section does not apply to a
32 proclamation issued under Chapter 5305 of this code
33 because Chapter 76, Parks and Wildlife Code, is
34 revised in each chapter of this subtitle other than
35 Chapter 5305, which is derived from Chapter 75, Parks
36 and Wildlife Code.

Revised Law

Sec. 5301.0203. RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of oysters;

(2) factors affecting the increase or decrease in oyster stocks in both an annual and long-term cycle;

(3) the use and effectiveness of dredges and other devices for the taking of oysters;

(4) industrial and other pollution of the water naturally frequented by oysters;

(5) statistical information gathered by the department on the marketing, harvesting, processing, and taking of oysters;

(6) environmental parameters in areas in which oysters may be found that may serve as limiting factors of oyster population abundance;

(7) other factors that, based on the best scientific information available, may affect the health and well-being of the economically important oyster resources; and

(8) alternative management measures for oysters that may be considered for implementation in the management regime.

(b) The department or an agency designated by the department may conduct the research. (Parks & Wild. Code, Sec. 76.302.)

Source Law

Sec. 76.302. RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of oysters;

(2) factors affecting the increase or decrease in oyster stocks in both an annual and long-term cycle;

(3) the use and effectiveness of dredges and other devices for the taking of oysters;

(4) industrial and other pollution of the water naturally frequented by oysters;

(5) statistical information gathered by the department on the marketing, harvesting,

1 processing, and taking of oysters;

2 (6) environmental parameters in areas in
3 which oysters may be found that may serve as limiting
4 factors of oyster population abundance;

5 (7) other factors that, based on the best
6 scientific information available, may affect the
7 health and well-being of the economically important
8 oyster resources; and

9 (8) alternative management measures for
10 oysters that may be considered for implementation in
11 the management regime.

12 (b) The research may be conducted by the
13 department or an agency designated by the department.

14 SUBCHAPTER C. REGULATION OF OYSTERS GENERALLY

15 Revised Law

16 Sec. 5301.0301. NIGHT DREDGING PROHIBITED. During the open
17 season, a person may not take oysters from the public water of this
18 state between sunset and sunrise. (Parks & Wild. Code, Sec.
19 76.109.)

20 Source Law

21 Sec. 76.109. NIGHT DREDGING PROHIBITED. During
22 the open season, no person may take oysters from public
23 water during the period between sunset and sunrise.

24 Revised Law

25 Sec. 5301.0302. OYSTER SIZE AND RETENTION LIMITS. (a) A
26 cargo of undersized oysters shall be determined by taking at random
27 five percent of the total cargo of oysters as a sample, of which not
28 more than five percent may measure less than three inches along an
29 imaginary straight line through the long axis of the shell.

30 (b) The commission by permit may allow the use of one or more
31 dredges of any size and cargoes in excess of 50 barrels in
32 transplanting to or harvesting from private leases.

33 (c) The commission by permit may allow the taking and
34 retention of cargoes with oysters measuring between three-fourths
35 inch and three inches in a greater percentage than five percent.
36 (Parks & Wild. Code, Secs. 76.112, 76.114.)

37 Source Law

38 Sec. 76.112. OYSTER SIZE LIMITS. (b) A cargo
39 of undersized oysters shall be determined by taking at
40 random five percent of the total cargo of oysters as a
41 sample, of which not more than five percent may measure
42 less than three inches along an imaginary straight
43 line through the long axis of the shell.

44 Sec. 76.114. EXCEPTION TO SIZE AND RETENTION
45 LIMITS. (a) The commission by permit may allow the

1 use of one or more dredges of any size and cargoes in
2 excess of 50 barrels in transplanting to or harvesting
3 from private leases.

4 (b) The commission by permit may allow the
5 taking and retention of cargoes having oysters between
6 three-fourths inch and three inches in a greater
7 percentage than five percent.

8 Revised Law

9 Sec. 5301.0303. CLOSING AND REOPENING AREAS. (a) The
10 commission may close an area to the taking of oysters if the
11 commission finds that the area is being overworked or damaged or the
12 area is to be reseeded or restocked.

13 (b) The commission by rule may establish procedures and
14 criteria for closing areas under Subsection (a).

15 (c) Before closing an area, the commission shall publish
16 notice in a daily newspaper of general circulation in the area to be
17 closed. The notice must be published at least three days before
18 the effective date of the closing.

19 (d) The commission may open closed areas when appropriate.

20 (e) The commission shall reopen an area closed under this
21 section by the beginning of the next public oyster season unless
22 sound biological data indicates that the need for closure still
23 exists.

24 (f) The commission may delegate duties and responsibilities
25 under this section to the executive director. (Parks & Wild. Code,
26 Sec. 76.115.)

27 Source Law

28 Sec. 76.115. CLOSING AREAS. (a) The commission
29 may close an area to the taking of oysters when the
30 commission finds that the area is being overworked or
31 damaged or the area is to be reseeded or restocked.

32 (b) The commission may open closed areas when
33 appropriate.

34 (c) Before closing any area, the commission
35 shall publish notice in a daily newspaper of general
36 circulation in the area to be closed. The notice
37 shall be published at least three days before the
38 effective date of the closing.

39 (d) Areas closed under this section must reopen
40 by the beginning of the next public oyster season
41 unless sound biological data indicates that the need
42 for closure still exists.

43 (e) The commission by rule may establish
44 procedures and criteria for closing areas under
45 Subsection (a).

46 (f) The commission may delegate to the executive
47 director the duties and responsibilities under this

1 section.

2 Revised Law

3 Sec. 5301.0304. OYSTERS FROM CLOSED OR RESTRICTED AREAS.

4 (a) There is no open season for taking oysters from areas closed by
5 the Department of State Health Services.

6 (b) The department may authorize by permit the
7 transplanting of oysters from restricted areas or other areas
8 designated by the department to private oyster leases.

9 (c) A person removing oysters from a restricted area or
10 other area designated by the department without a permit shall
11 replace the oysters in the beds from which the oysters were taken as
12 directed by authorized department employees. (Parks & Wild. Code,
13 Sec. 76.116.)

14 Source Law

15 Sec. 76.116. OYSTERS FROM RESTRICTED AREAS.

16 (a) There is no open season for taking oysters from
17 areas closed by the Department of State Health
18 Services.

19 (b) The department may authorize by permit the
20 transplanting of oysters from restricted areas or
21 other areas designated by the department to private
22 oyster leases.

23 (c) A person removing oysters from a restricted
24 area or other area designated by the department
25 without a permit shall replace the oysters in the beds
26 from which they were taken as directed by authorized
27 employees of the department.

28 Revised Law

29 Sec. 5301.0305. PROHIBITED POSSESSION OF OYSTERS. (a)

30 This section applies to a person who:

31 (1) purchases oysters:

32 (A) under Section 5158.0804; and

33 (B) in violation of Section 5301.0301,
34 5301.0302(a), 5304.0304, or 5349.0105 from:

35 (i) a captain of a vessel licensed as a
36 commercial oyster boat;

37 (ii) a commercial oyster boat license
38 holder; or

39 (iii) a crew member of a commercial oyster
40 boat; and

(2) holds a shellfish certificate as defined by Section 436.002, Health and Safety Code.

(b) A person to whom this section applies:

(1) may not possess the oysters purchased as described by this section; and

(2) is subject to any penalty prescribed by law. (Parks & Wild. Code, Sec. 76.119(d).)

Source Law

(d) A person who purchases oysters under Section 47.0091, who holds a shellfish certificate as defined by Section 436.002, Health and Safety Code, and who purchases oysters from a captain of a vessel licensed as a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat in violation of Section 76.109 or 76.112 or this section may not possess the oysters and is subject to any penalty prescribed by law.

Revised Law

Sec. 5301.0306. DUTY TO OBEY GAME WARDEN ORDERS. A person shall obey a lawful order issued by a game warden commissioned by the department under the authority of:

(1) this chapter;

(2) Chapter 5302, 5303, or 5304; or

(3) Section 5349.0101, 5349.0102, 5349.0104, 5349.0105, or 5349.0106. (Parks & Wild. Code, Sec. 76.117.)

Source Law

Sec. 76.117. OBEDIENCE TO ORDERS. No person may fail or refuse to obey a lawful order of a commissioned game warden of the department issued under the authority of this chapter.

Revisor's Note

Section 76.117, Parks and Wildlife Code, provides that a person may not fail or refuse to obey a lawful order issued by a commissioned game warden of the Parks and Wildlife Department under the authority of Chapter 76 of that code. For clarity, the revised law restates the provision as an affirmative duty to obey the order rather than a prohibition on failing or refusing to obey the order.

1 SUBCHAPTER D. OYSTER SHELL RECOVERY; SUSTAINABILITY OF OYSTER
2 INDUSTRY

3 Revised Law

4 Sec. 5301.0401. OYSTER SHELL RECOVERY AND REPLACEMENT
5 PROGRAM. (a) The commission by proclamation may establish and
6 conduct a program to require the recovery of oyster shells or other
7 suitable cultch material from, and replacement of oyster shells in,
8 the coastal waters of this state to maintain or enhance public
9 oyster reefs.

10 (b) The department may accept grants and donations of money
11 or materials from private or public sources to be applied to the
12 oyster shell recovery and replacement program. (Parks & Wild. Code,
13 Sec. 76.020.)

14 Source Law

15 Sec. 76.020. OYSTER SHELL RECOVERY AND
16 REPLACEMENT PROGRAM. (a) The commission by
17 proclamation may establish and conduct a program to
18 require the recovery of oyster shell or other suitable
19 cultch material from, and replacement of oyster shell
20 in, the coastal waters of the state to maintain or
21 enhance public oyster reefs.

22 (b) The department may accept grants and
23 donations of money or materials from private or public
24 sources to be applied to the oyster shell recovery and
25 replacement program.

26 Revised Law

27 Sec. 5301.0402. OYSTER SHELL RECOVERY FEES AND TAGS; OYSTER
28 BED MANAGEMENT CONSULTATION. (a) The department shall collect a
29 fee of 20 cents or a greater amount set by the commission from a
30 licensed commercial oyster fisherman for each box of oysters the
31 fisherman harvests from the waters of this state. The department
32 shall deposit to the credit of the oyster shell recovery and
33 replacement program account all revenue, less allowable costs, from
34 the fees collected under this subsection.

35 (b) The commission by rule shall adopt policies and
36 procedures for the issuance of oyster shell recovery tags or other
37 means to collect the fee imposed by this section. A tag required by
38 this section must:

39 (1) be affixed to the outside of each box of oysters at

1 the time of harvest, in the location of harvest;

2 (2) contain information required by the Department of
3 State Health Services under the National Shellfish Sanitation
4 Program; and

5 (3) remain affixed during transportation of the
6 oysters to a dealer.

7 (c) The department shall consult with members of the oyster
8 industry regarding the management of oyster beds in this state.
9 (Parks & Wild. Code, Secs. 76.021(b), (c), (d), (f).)

10 Source Law

11 (b) The department shall collect a fee of 20
12 cents or an amount set by the commission, whichever is
13 greater, from a licensed commercial oyster fisherman
14 for each box of oysters harvested by the fisherman from
15 the water of this state.

16 (c) The commission by rule shall adopt policies
17 and procedures for the issuance of oyster shell
18 recovery tags or other means to collect the fee imposed
19 by this section. A tag required by this section must:

20 (1) be affixed to the outside of each box
21 of oysters at the time of harvest, in the location of
22 harvest;

23 (2) contain information required by the
24 Department of State Health Services under the National
25 Shellfish Sanitation Program; and

26 (3) remain affixed during transportation
27 of the oysters to a dealer.

28 (d) The department shall deposit to the credit
29 of the oyster shell recovery and replacement program
30 account all revenue, less allowable costs, from the
31 fees collected under Subsection (b).

32 (f) The department shall consult with members of
33 the oyster industry regarding the management of oyster
34 beds in this state.

35 Revised Law

36 Sec. 5301.0403. OYSTER SHELL RECOVERY AND DISTRIBUTION
37 REQUIREMENT FOR CERTAIN COMMERCIAL OYSTER ACTIVITIES. (a) To
38 enhance the viability of commercial oyster fishing and ensure the
39 sustainability of the oyster industry to accommodate the highest
40 number of commercial oyster fishing boats, a person who purchases
41 oysters under Section 5158.0804 and holds a shellfish certificate
42 as defined by Section 436.002, Health and Safety Code, must:

43 (1) distribute, in an area designated by the
44 department, oyster shells or other cultch material approved by the
45 department in an amount that is not less than 30 percent of the

1 total volume of oysters purchased by the person in the preceding
2 license year; or

3 (2) pay a fee to the department in an amount calculated
4 under Subsection (c).

5 (b) The distribution of oyster shells or other cultch
6 material must be directly supervised by an agent or employee of the
7 department.

8 (c) The department shall calculate the current market cost
9 of the acquisition and deposition of cultch material on a per cubic
10 yard basis. The fee charged under Subsection (a)(2) is the market
11 cost established under this subsection multiplied by 30 percent of
12 the total volume of oysters purchased by the person in the preceding
13 license year. The fee shall be deposited to the credit of the
14 oyster shell recovery and replacement program account.

15 (d) A person who possesses oysters that do not meet the
16 requirements of Section 5301.0302(a):

17 (1) shall replace the oysters in the beds from which
18 the oysters were taken as directed by an authorized department
19 employee; and

20 (2) is subject to any penalty and must perform any
21 remedy authorized by law. (Parks & Wild. Code, Sec. 76.0205.)

22 Source Law

23 Sec. 76.0205. SUSTAINABILITY OF OYSTER
24 INDUSTRY. (a) In order to enhance the viability of
25 commercial oyster fishing and ensure the
26 sustainability of the oyster industry to accommodate
27 the highest number of commercial oyster fishing boats,
28 a person who purchases oysters under Section 47.0091
29 and holds a shellfish certificate, as defined by
30 Section 436.002, Health and Safety Code, must:

31 (1) distribute, in an area designated by
32 the department, oyster shells or other cultch material
33 approved by the department in an amount equal to not
34 less than 30 percent of the total volume of oysters
35 purchased by the person in the previous license year;
36 or

37 (2) pay a fee to the department in an
38 amount calculated under Subsection (c).

39 (b) The distribution of oyster shells or other
40 cultch material must be directly supervised by an
41 agent or employee of the department.

42 (c) The department shall calculate the current
43 market cost of the acquisition and deposition of
44 cultch material on a per cubic yard basis. The fee
45 charged under Subsection (a)(2) is the market cost

1 established under this subsection multiplied by 30
2 percent of the total volume of oysters purchased by the
3 person in the previous license year. The fee charged
4 under this section shall be deposited to the credit of
5 the oyster shell recovery and replacement program
6 account.

7 (d) A person who possesses oysters that do not
8 meet the requirements of Section 76.112:

9 (1) shall replace the oysters in the beds
10 from which they were taken as directed by an authorized
11 employee of the department; and

12 (2) is subject to any penalty and must
13 perform any remedy authorized by law.

14 CHAPTER 5302. DESIGNATION AND LOCATION OF OYSTER BEDS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Revised Law

17 Sec. 5302.0101. DESIGNATION OF PUBLIC AND PRIVATE OYSTER
18 BEDS. (a) All natural oyster beds are public.

19 (b) All oyster beds not designated as private are public.
20 (Parks & Wild. Code, Sec. 76.002.)

21 Source Law

22 Sec. 76.002. DESIGNATION OF PUBLIC AND PRIVATE
23 BEDS. (a) All natural oyster beds are public.

24 (b) All oyster beds not designated as private
25 are public.

26 Revised Law

27 Sec. 5302.0102. OYSTER BEDS OR REEFS SUBJECT TO LOCATION.

28 (a) Except as provided by Subsection (b) and Section 5302.0103, an
29 oyster bed or reef, other than a natural oyster bed, is subject to
30 location by the department.

31 (b) The department may subject a natural oyster bed to
32 location if the department determines that the bed is degraded. In
33 determining whether the bed is degraded, the department may
34 consider:

35 (1) the relative abundance of oysters in the area;

36 (2) the availability of natural cultch material in the
37 area;

38 (3) sediment overburden in the area;

39 (4) if the area is exhausted, the amount of time the
40 area has been exhausted; and

41 (5) any other criteria the department considers
42 indicative of a degraded oyster bed. (Parks & Wild. Code, Sec.

1 76.003.)

2 Source Law

3 Sec. 76.003. BEDS SUBJECT TO LOCATION. (a)
4 Except as provided by Subsection (b) and Section
5 76.004, an oyster bed or reef, other than a natural
6 oyster bed, is subject to location by the department.

7 (b) The department may subject a natural oyster
8 bed to location if the department determines that the
9 bed is degraded. In determining whether a natural
10 oyster bed is degraded, the department may consider:

11 (1) the relative abundance of oysters in
12 the area;

13 (2) the availability of natural cultch
14 material in the area;

15 (3) sediment overburden in the area;

16 (4) the amount of time that the area has
17 been exhausted, if the area is exhausted; and

18 (5) any other criteria the department
19 considers indicative of a degraded oyster bed.

20 Revised Law

21 Sec. 5302.0103. RIPARIAN RIGHTS. (a) The lawful occupant
22 of a grant of land in this state has the exclusive right to use any
23 creek, bayou, lake, or cove included within the metes and bounds of
24 the original grant for the planting or sowing of oysters.

25 (b) If a creek, bayou, lake, or cove is not included in the
26 original grant, a riparian owner has an exclusive right in the
27 creek, bayou, lake, or cove for the planting and sowing of oysters
28 for the shorter of the following distances:

29 (1) the distance to the middle of the creek, bayou,
30 lake, or cove; or

31 (2) 100 yards from the shore.

32 (c) The right of a riparian owner of land along a bay shore
33 in this state to plant oysters extends 100 yards into the bay from
34 the high-water mark or from where the land survey ceases. The right
35 to a natural oyster bed under this subsection is not exclusive.

36 (Parks & Wild. Code, Sec. 76.004.)

37 Source Law

38 Sec. 76.004. RIPARIAN RIGHTS. (a) The lawful
39 occupant of a grant of land in this state has the
40 exclusive right to use any creek, bayou, lake, or cove
41 included within the metes and bounds of the original
42 grant for the planting or sowing of oysters.

43 (b) If the creek, bayou, lake, or cove is not
44 included in the original grant, a riparian owner has an
45 exclusive right in the creek, bayou, lake, or cove for
46 the planting and sowing of oysters to the middle of the

1 creek, bayou, lake, or cove or to 100 yards from the
2 shore, whichever distance is shorter.

3 (c) The right of a riparian owner of land along
4 any bay shore in this state to plant oysters extends
5 100 yards into the bay from the high-water mark or from
6 where the land survey ceases. The right to a natural
7 oyster bed under this subsection is not exclusive.

8 Revised Law

9 Sec. 5302.0104. AFFIDAVIT OF RIPARIAN RIGHTS. (a) The
10 department may require an owner of riparian rights described by
11 Section 5302.0103 when offering oysters for sale to execute an
12 affidavit stating the oysters were produced on the owner's
13 property.

14 (b) It is prima facie evidence that oysters were produced
15 from public beds if an owner of riparian rights described by Section
16 5302.0103(a) fails to:

17 (1) hold an affidavit when required by the department;
18 or

19 (2) show the affidavit described by Subdivision (1) to
20 a game warden on request or a person to whom oysters are offered for
21 sale when required by the department. (Parks & Wild. Code, Sec.
22 76.005.)

23 Source Law

24 Sec. 76.005. AFFIDAVIT OF RIPARIAN RIGHTS. (a)
25 The department may require the owner of riparian
26 rights described in Section 76.004 of this code when
27 offering oysters for sale to make an affidavit stating
28 that the oysters were produced on his property.

29 (b) The failure of an owner of riparian rights
30 described in Section 76.004(a) to have an affidavit
31 when required by the department or to show it to a game
32 warden on request or to the person to whom the oysters
33 are offered for sale when required by the department is
34 prima facie evidence that the oysters were produced
35 from public beds.

36 SUBCHAPTER B. CERTIFICATES OF LOCATION

37 Revised Law

38 Sec. 5302.0201. APPLICATION FOR CERTIFICATE OF LOCATION.

39 (a) A citizen of the United States or a domestic corporation may
40 file with the department a written application for a certificate of
41 location authorizing the applicant to plant oysters and make a
42 private oyster bed in the public water of this state.

43 (b) The application must:

- 1 (1) describe the location desired; and
- 2 (2) be accompanied by a fee of \$20 or a greater amount
- 3 set by the commission. (Parks & Wild. Code, Sec. 76.006.)

4 Source Law

5 Sec. 76.006. APPLICATION FOR LOCATION; FEE.
6 (a) Any citizen of the United States or any domestic
7 corporation may file a written application with the
8 department for a certificate authorizing the applicant
9 to plant oysters and make a private oyster bed in the
10 public water of the state.

11 (b) The application must describe the location
12 desired.

13 (c) The application must be accompanied by a fee
14 of \$20 or an amount set by the commission, whichever
15 amount is more.

16 Revisor's Note

17 Section 76.006, Parks and Wildlife Code, provides
18 that a citizen or domestic corporation may file an
19 application for a "certificate." For clarity and
20 consistency in terminology used in this subchapter,
21 the revised law substitutes "certificate of location"
22 for "certificate" because it is clear from the context
23 that the referenced "certificate" is a certificate of
24 location and because no other type of certificate is
25 issued under Chapter 76, Parks and Wildlife Code.

26 Revised Law

27 Sec. 5302.0202. MAXIMUM ACREAGE UNDER CERTIFICATE OF
28 LOCATION. (a) The department may not issue a certificate of
29 location for a location that includes more than 100 acres of land
30 covered by water.

31 (b) A person may not own, lease, or control more than 300
32 acres of land covered by water under certificates of location. A
33 person who does not own, lease, or control more than 300 acres of
34 land may act as an agent for persons who, in the aggregate, own,
35 lease, or control more than 300 acres of land. (Parks & Wild. Code,
36 Sec. 76.007.)

37 Source Law

38 Sec. 76.007. MAXIMUM ACREAGE UNDER LOCATION.
39 (a) The department may not issue a certificate of
40 location for a location that includes more than 100

acres of land covered by water.

(b) 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.

Revised Law

Sec. 5302.0203. LEASE OR CONTROL OF LAND UNDER CERTIFICATE OF LOCATION BY CERTAIN CORPORATIONS PROHIBITED. A corporation may not lease or control land under a certificate of location unless the corporation is incorporated under the laws of this state. (Parks & Wild. Code, Sec. 76.008.)

Source Law

Sec. 76.008. LEASE OR CONTROL BY FOREIGN CORPORATION PROHIBITED. No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

Revised Law

Sec. 5302.0204. EXAMINATION AND SURVEY OF LOCATION. (a) On receipt of an application for a certificate of location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department must have the location surveyed by a competent surveyor. (Parks & Wild. Code, Sec. 76.009.)

Source Law

Sec. 76.009. EXAMINATION AND SURVEY OF LOCATION. (a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

Revisor's Note

Section 76.009, Parks and Wildlife Code, refers to an application for a "location." For clarity and consistency in terminology used in this subchapter, the revised law substitutes "certificate of location" for "location" because it is clear from the context that the referenced application is an application for

1 a certificate of location under Section 76.006, Parks
2 and Wildlife Code, revised as Section 5302.0201.

3 Revised Law

4 Sec. 5302.0205. ISSUANCE OF CERTIFICATE OF LOCATION. (a)
5 The department shall issue to each locator a certificate of
6 location signed and sealed by the executive director.

7 (b) The certificate of location must contain:

8 (1) the dates of the application and survey; and

9 (2) a description of the location by metes and bounds
10 with reference to points of the compass and natural objects by which
11 the location may be found and verified. (Parks & Wild. Code, Sec.
12 76.012.)

13 Source Law

14 Sec. 76.012. LOCATOR'S CERTIFICATE. (a) The
15 department shall issue to each locator a certificate
16 signed and sealed by the director.

17 (b) The certificate must contain:

18 (1) the date of the application;

19 (2) the date of the survey; and

20 (3) a description of the location by metes
21 and bounds with reference to points of the compass and
22 natural objects by which the location may be found and
23 verified.

24 Revisor's Note

25 Section 76.012, Parks and Wildlife Code, requires
26 the Parks and Wildlife Department to issue to each
27 locator a "certificate." The revised law substitutes
28 "certificate of location" for "certificate" for the
29 reasons stated in the revisor's note to Section
30 5302.0201.

31 Revised Law

32 Sec. 5302.0206. RIGHTS OF CERTIFICATE OF LOCATION HOLDER.

33 (a) This section applies only if the stakes or pipes and buoys
34 required by this subtitle, other than Chapter 5305, are maintained
35 in their correct positions and the certificate of location holder
36 complies with the law and the regulations that govern the fish and
37 oyster industries.

38 (b) The holder of a certificate of location issued under

1 Section 5302.0205 is protected against trespass of the location in
2 the same manner as a freeholder. (Parks & Wild. Code, Sec. 76.015.)

3 Source Law

4 Sec. 76.015. RIGHTS OF LOCATOR. (a) The holder
5 of a certificate of location as provided for in Section
6 76.012 of this code is protected in his possession of
7 the location against trespass in the same manner as are
8 freeholders.

9 (b) This section applies only as long as the
10 stakes or pipes and buoys required by this chapter are
11 maintained in their correct positions and the locator
12 complies with the law and the regulations governing
13 the fish and oyster industries.

14 Revisor's Note

15 Section 76.015(b), Parks and Wildlife Code,
16 refers to the stakes or pipes and buoys required by
17 Chapter 76 of that code. Chapter 76 is revised in each
18 chapter of this subtitle other than Chapter 5305, and
19 the revised law is drafted accordingly.

20 Revised Law

21 Sec. 5302.0207. LOCATION FEES. (a) A certificate of
22 location holder shall annually pay to the department \$6 per acre of
23 location or a greater amount set by the commission to rent the
24 location under the certificate.

25 (b) Rental fees are due annually not later than March 1.

26 (c) A certificate of location holder shall pay the
27 department a late penalty fee equal to 10 percent of the amount due
28 for any rental, transfer, sale, or renewal fee that is not paid when
29 due.

30 (d) The failure to pay any rental, transfer, sale, renewal,
31 or late penalty fee before the 91st day after the due date
32 terminates the lease. (Parks & Wild. Code, Sec. 76.017.)

33 Source Law

34 Sec. 76.017. LOCATION RENTAL FEES. (a) The
35 holder of a certificate of location shall pay to the
36 department \$6 per acre of location per year to rent the
37 location under the certificate. In lieu of that
38 payment, the commission may set the required payment
39 under this section in a greater amount.

40 (b) Rental fees are due annually by March 1.

41 (c) The holder of a certificate shall pay the
42 department a late penalty fee equal to 10 percent of
43 the amount due for any rental, transfer, sale, or

1 renewal fee that is not paid when due.

2 (d) The failure to pay any rental, transfer,
3 sale, renewal, or late penalty fee within 90 days of
4 the due date terminates the lease.

5 Revised Law

6 Sec. 5302.0208. LOCATION RENTAL LEASE TERM; RENEWAL;
7 AUCTION. (a) The term of a rental lease for a location under this
8 chapter is 15 years.

9 (b) The commission shall determine renewal procedures to
10 follow at the end of each rental lease term. The procedures must
11 include:

12 (1) a determination that the lease renewal will be
13 based on considerations specified in the oyster management plan;

14 (2) payment of a \$200 fee due on renewal of the lease;

15 (3) a condition that the current leaseholder has the
16 right to renew if the lease is renewed under this chapter; and

17 (4) any other conditions for the lease renewal that do
18 not conflict with this chapter or Chapter 5301, 5303, or 5304.

19 (c) The commission shall determine auction procedures for
20 issuing a rental lease that is not renewed by the previous
21 leaseholder under Subsection (b). (Parks & Wild. Code, Sec.
22 76.018.)

23 Source Law

24 Sec. 76.018. LOCATION RENTAL TERM; RENEWAL;
25 AUCTION. (a) The term of a rental lease for a location
26 under this subchapter is 15 years.

27 (b) The commission shall determine renewal
28 procedures to follow at the end of each lease term.
29 The procedures must include:

30 (1) a determination that the lease renewal
31 will be based on considerations specified in the
32 oyster management plan;

33 (2) payment of a \$200 fee due on renewal of
34 the lease;

35 (3) a condition that the current
36 leaseholder has the right to renew if the lease is
37 renewed under this chapter; and

38 (4) any other conditions for the lease
39 renewal that do not conflict with this chapter.

40 (c) The commission shall determine auction
41 procedures for the issuance of a lease that is not
42 renewed by the previous leaseholder under Subsection
43 (b).

44 Revisor's Note

45 (1) Section 76.018(a), Parks and Wildlife Code,

1 refers to the term of a rental lease for a location
2 under Subchapter A, Chapter 76, of that code, and
3 Section 76.018(b)(3) of that code refers to a lease
4 renewed under Chapter 76 of that code. The pertinent
5 parts of Subchapter A and Chapter 76 relating to a
6 rental lease for a location and the renewal of those
7 leases are revised in this chapter, and the revised law
8 is drafted accordingly.

9 (2) Section 76.018(b)(4), Parks and Wildlife
10 Code, requires lease renewal procedures adopted by the
11 Parks and Wildlife Commission to include any other
12 conditions for the lease renewal that do not conflict
13 with Chapter 76 of that code. The pertinent parts of
14 Chapter 76 are revised as Chapters 5301, 5302, 5303,
15 and 5304 of this code, and the revised law is drafted
16 accordingly.

17 Revised Law

18 Sec. 5302.0209. PROCEDURES FOR SALE OR TRANSFER OF LOCATION
19 RENTAL LEASE. The commission shall determine procedures for the
20 reissuance of a rental lease for a location when the lease is sold
21 or otherwise transferred. The procedures must include:

22 (1) unless the lease is inherited, payment of a \$200
23 fee due on the sale or transfer of the lease; and

24 (2) a provision that the sale or transfer does not
25 change the lease term. (Parks & Wild. Code, Sec. 76.019.)

26 Source Law

27 Sec. 76.019. PROCEDURES FOR SALE OR TRANSFER OF
28 LOCATION RENTAL. The commission shall determine
29 procedures for reissuance of a lease when the lease is
30 sold or otherwise transferred. The procedures must
31 include:

32 (1) payment of a \$200 fee due on the sale
33 or transfer of the lease unless the lease is inherited;
34 and

35 (2) a provision that the sale or transfer
36 does not change the lease term.

37 Revised Law

38 Sec. 5302.0210. PRIVATE OYSTER BED RECORDS. (a) The

1 department shall keep a list of each certificate issued for the
2 location of a private oyster bed, including for each certificate:

- 3 (1) the date of the certificate and application;
- 4 (2) when and how the application was executed;
- 5 (3) the manner in which the oyster bed bottom was
6 examined; and
- 7 (4) the amount of rent collected for the location.

8 (b) The department shall keep an account with each person
9 holding a certificate for the location of a private oyster bed,
10 showing the amounts received as rents. (Parks & Wild. Code, Secs.
11 12.003(a)(3), (b).)

12 Source Law

13 Sec. 12.003. RECORDS. (a) The department shall
14 keep a record containing the following information:

15 . . .
16 (3) a list of all certificates issued for
17 location of private oyster beds, the date of the
18 certificate and application, when and how the
19 applications were executed, and the manner in which
20 the bottoms were examined and the amount of rent
21 collected for the location;

22 . . .
23 (b) The department shall keep an account with
24 each person, firm, or corporation holding certificates
25 for the location of private oyster beds, showing the
26 amounts received as rents.

27 Revisor's Note

28 Section 12.003(b), Parks and Wildlife Code,
29 refers to a "person, firm, or corporation." The
30 revised law omits "firm, or corporation" because
31 Section 311.005(2), Government Code (Code
32 Construction Act), defines "person" to include any
33 legal entity.

34 Revised Law

35 Sec. 5302.0211. CERTIFICATES OF LOCATION FOR RESTORATION
36 PURPOSES. (a) The commission by rule shall establish a program to
37 issue certificates of location for the restoration of natural
38 oyster beds.

39 (b) Sections 5302.0201, 5302.0202, 5302.0207, 5302.0208,
40 and 5302.0209 do not apply to a program established under this

1 section.

2 (c) Rules adopted under this section may establish:

3 (1) fees, application approval requirements, lease
4 terms, and renewal procedures for leases under this section;

5 (2) the total area in each bay system for which leases
6 may be issued under this section;

7 (3) siting and marking requirements for leases under
8 this section; and

9 (4) any other requirement necessary to administer this
10 section.

11 (d) In the adoption of rules under this section, the
12 department shall coordinate with:

13 (1) the Department of State Health Services; and

14 (2) the General Land Office. (Parks & Wild. Code, Sec.
15 76.022.)

16 Source Law

17 Sec. 76.022. CERTIFICATES OF LOCATION FOR
18 RESTORATION PURPOSES. (a) The commission by rule
19 shall establish a program to issue certificates of
20 location for the restoration of natural oyster beds.

21 (b) Sections 76.006, 76.007, 76.017, 76.018,
22 and 76.019 do not apply to a program established under
23 this section.

24 (c) Rules adopted under this section may
25 establish:

26 (1) fees, application approval
27 requirements, lease terms, and renewal procedures for
28 leases under this section;

29 (2) the total area in each bay system for
30 which leases may be issued under this section;

31 (3) siting and marking requirements for
32 leases under this section; and

33 (4) any other requirement necessary to
34 administer this section.

35 (d) In adopting rules under this section, the
36 department shall coordinate with:

37 (1) the Department of State Health
38 Services; and

39 (2) the General Land Office.

40 CHAPTER 5303. OYSTER PERMIT

41 SUBCHAPTER A. PERMIT REQUIREMENTS AND PROCEDURES

42 Revised Law

43 Sec. 5303.0101. OYSTER PERMIT REQUIRED. A person must
44 submit to the department an application for an oyster permit to:

45 (1) plant oysters on that person's location; or

1 (2) take oysters from oyster reefs and public water.
2 (Parks & Wild. Code, Sec. 76.031(a).)

3 Source Law

4 Sec. 76.031. APPLICATION FOR PERMIT. (a) A
5 person desiring to plant oysters on his own location or
6 to take oysters from oyster reefs and public water
7 shall apply to the department for an oyster permit.

8 Revised Law

9 Sec. 5303.0102. PERMIT ELIGIBILITY. Only the following
10 persons may apply for an oyster permit:

11 (1) a citizen of this state; or

12 (2) a corporation that is:

13 (A) composed of citizens of the United States;
14 and

15 (B) chartered by this state to:

16 (i) engage in oyster mariculture; or

17 (ii) transact business in the purchase and
18 sale of fish and oysters. (Parks & Wild. Code, Sec. 76.031(b).)

19 Source Law

20 (b) Only those persons who are citizens of Texas
21 or corporations composed of American citizens and
22 chartered by this state to engage in the culture of
23 oysters or to transact business in the purchase and
24 sale of fish and oysters may apply for a permit.

25 Revisor's Note

26 (1) Section 76.031(b), Parks and Wildlife Code,
27 refers to certain corporations that are chartered to
28 engage in "the culture of oysters." The revised law
29 substitutes "oyster mariculture" for the quoted
30 language because, in context, the phrases have the
31 same meaning and "oyster mariculture" is more
32 consistent with modern usage.

33 (2) Section 76.031(b), Parks and Wildlife Code,
34 establishes eligibility criteria for a person to apply
35 for a "permit." Section 76.031(a), Parks and Wildlife
36 Code, revised as Section 5303.0101, requires a person
37 to apply to the Parks and Wildlife Department for an

1 "oyster permit" to plant oysters on that person's
2 location or to take oysters from oyster reefs and
3 public water. For consistency in terminology used in
4 this chapter, throughout this subchapter, the revised
5 law substitutes "oyster permit" for "permit" when it
6 is clear from the context that the referenced permit is
7 an oyster permit.

8 Revised Law

9 Sec. 5303.0103. REQUIRED CONTENT OF PERMIT APPLICATION. An
10 application for an oyster permit must:

- 11 (1) state the purpose for taking oysters; and
12 (2) give the quantity of oysters to be taken from
13 designated areas. (Parks & Wild. Code, Sec. 76.031(c).)

14 Source Law

- 15 (c) The application must:
16 (1) state the purpose for taking oysters;
17 and
18 (2) give the quantity of oysters to be
19 taken from designated areas.

20 Revised Law

21 Sec. 5303.0104. DISCRETION ON PERMIT ISSUANCE. The
22 department may issue or refuse to issue an oyster permit to any
23 applicant. (Parks & Wild. Code, Sec. 76.032.)

24 Source Law

25 Sec. 76.032. DISCRETION TO ISSUE PERMIT. The
26 department may issue or refuse to issue a permit to any
27 applicant.

28 Revised Law

29 Sec. 5303.0105. PERMIT CONDITIONS. (a) The department
30 shall require an oyster permit holder to take only the oysters
31 authorized in the permit from beds or reefs designated in the
32 permit.

33 (b) The department shall:

- 34 (1) mark the exact area of beds or reefs from which
35 oysters may be taken;
36 (2) designate the bottoms on which oysters may be
37 deposited, if the oysters are taken to be prepared for market;

1 (3) require the permit holder to cull the oysters on
2 the grounds where the oysters are to be located; and

3 (4) specify the implements that may be used to take
4 oysters.

5 (c) The department may prescribe other conditions or
6 regulations to protect and conserve oysters on public reefs and
7 beds. (Parks & Wild. Code, Sec. 76.033.)

8 Source Law

9 Sec. 76.033. CONDITIONS OF PERMIT. (a) The
10 department shall require the permittee to take only
11 the oysters authorized in the permit from beds or reefs
12 designated in the permit.

13 (b) The department shall:

14 (1) mark off the exact area of beds or
15 reefs from which oysters may be taken;

16 (2) designate the bottoms on which oysters
17 may be deposited if they are taken to be prepared for
18 market;

19 (3) require the permittee to cull the
20 oysters on the grounds where they are to be located;
21 and

22 (4) specify what implements may be used in
23 taking oysters.

24 (c) The department may make other conditions or
25 regulations to protect and conserve oysters on public
26 reefs and beds.

27 Revisor's Note

28 Section 76.033(a), Parks and Wildlife Code,
29 refers to a "permittee." The revised law substitutes
30 "permit holder" for "permittee" because, in this
31 context, the terms are synonymous and "permit holder"
32 is more commonly used.

33 SUBCHAPTER B. PERMIT HOLDER RIGHTS AND DUTIES

34 Revised Law

35 Sec. 5303.0201. OYSTERS PROPERTY OF PERMIT HOLDER. An
36 oyster taken or deposited in public water by an oyster permit holder
37 under the permit's terms is the permit holder's personal property.
38 (Parks & Wild. Code, Sec. 76.035.)

39 Source Law

40 Sec. 76.035. OYSTERS PROPERTY OF PERMITTEE.
41 All oysters taken or deposited in public water by the
42 holder of an oyster permit under the terms of a permit
43 are the personal property of the permit holder.

1 Revised Law

2 Sec. 5303.0202. MARKING OYSTER BEDS. An oyster permit
3 holder shall use buoys or other permanent markers that are easily
4 visible above the surface of the water to clearly and distinctly
5 mark the boundaries of the areas designated in the permit under
6 Section 5303.0105. (Parks & Wild. Code, Sec. 76.036(a).)

7 Source Law

8 Sec. 76.036. MARKING BEDS. (a) The holder of a
9 permit shall clearly and distinctly mark by buoys or
10 other permanent markers easily visible above the
11 surface of the water the boundaries of the areas
12 designated in the permit from which he may take or in
13 which he may deposit oysters.

14 Revisor's Note

15 Section 76.036(a), Parks and Wildlife Code,
16 requires an oyster permit holder to clearly mark the
17 "boundaries of the areas designated in the permit"
18 from which the permit holder may take or deposit
19 oysters. For clarity, the revised law adds a
20 cross-reference to Section 76.033, Parks and Wildlife
21 Code, revised as Section 5303.0105, because in context
22 the areas referred to in the quoted language are the
23 same areas required to be marked as a condition of the
24 permit issued under Section 76.033.

25 SUBCHAPTER C. PROHIBITED ACTS

26 Revised Law

27 Sec. 5303.0301. FRAUDULENT TAKING OF OYSTERS FROM PRIVATE
28 BED. A person may not fraudulently take oysters from:

- 29 (1) a private bed without the owner's consent; or
30 (2) a bed or deposit made for the purpose of preparing
31 oysters for market without the owner's consent, if the owner
32 lawfully deposited the oysters. (Parks & Wild. Code, Sec. 76.037.)

33 Source Law

34 Sec. 76.037. THEFT OF OYSTERS FROM PRIVATE BED.
35 No person may fraudulently take oysters placed on
36 private beds without the consent of the owner of the
37 private bed or from beds or deposits made for the
38 purpose of preparing oysters for market without the
39 consent of the owner of the oysters who lawfully

1 deposited them.

2 Revised Law

3 Sec. 5303.0302. INTERFERENCE WITH BUOYS OR MARKERS. (a) A
4 person may not deface, injure, destroy, or remove a buoy, marker, or
5 fence used to designate or enclose a private oyster bed or location
6 where oysters have been deposited for preparation for market
7 without the bed or location owner's consent.

8 (b) A person may not deface, injure, destroy, or remove a
9 buoy, marker, or sign the department uses to designate an area
10 closed to the taking of fish or oysters without the department's
11 consent. (Parks & Wild. Code, Sec. 76.038.)

12 Source Law

13 Sec. 76.038. INTERFERENCE WITH BUOYS OR
14 MARKERS. (a) No person may deface, injure, destroy,
15 or remove a buoy, marker, or fence used to designate or
16 enclose a private oyster bed or location where oysters
17 have been deposited for preparation for market without
18 the consent of the owner of the bed or location.

19 (b) No person may deface, injure, destroy, or
20 remove a buoy, marker, or sign of the department used
21 for designating water closed for the taking of fish or
22 oysters without the consent of the department.

23 Revisor's Note

24 Section 76.038(b), Parks and Wildlife Code,
25 refers to buoys, markers, or signs used by the Parks
26 and Wildlife Department to designate "water" closed to
27 the taking of fish or oysters without the department's
28 consent. The revised law substitutes "area" for
29 "water" because, in this context, the terms are
30 synonymous and "area" is more consistent with the
31 terminology used throughout this subtitle.

32 Revised Law

33 Sec. 5303.0303. PROHIBITED SALES. (a) A person who gathers
34 oysters for the purpose of planting or depositing for market
35 preparation on a location or private oyster bed may not sell,
36 market, or dispose of the oysters at the time the oysters are
37 gathered or for any purpose other than planting or preparing for
38 market.

39 (b) This section does not affect a person's right to sell or

1 assign an oyster location or private bed. (Parks & Wild. Code, Sec.
2 76.039.)

3 Source Law

4 Sec. 76.039. PROHIBITED SALES. (a) No person
5 gathering oysters for planting or for depositing for
6 market preparation on locations or on private oyster
7 beds may sell, market, or dispose of the oysters
8 gathered, at the time they are gathered, for any other
9 purpose than planting or preparing for market.

10 (b) This section does not affect the right of a
11 person to sell or assign an oyster location or private
12 bed.

13 CHAPTER 5304. OYSTER LICENSES

14 SUBCHAPTER A. COMMERCIAL OYSTER FISHERMAN'S LICENSE

15 Revised Law

16 Sec. 5304.0101. COMMERCIAL OYSTER FISHERMAN'S LICENSE
17 REQUIRED. A person may not take or attempt to take oysters from the
18 public water of this state without the use of a boat for
19 compensation or for sale, barter, or exchange or other commercial
20 purpose unless the person holds a commercial oyster fisherman's
21 license issued by the department. (Parks & Wild. Code, Sec.
22 76.101(b).)

23 Source Law

24 (b) No person may take or attempt to take
25 oysters from the public water of this state, without
26 the use of a boat, for pay or for the purpose of sale,
27 barter, or exchange or any other commercial purpose
28 without first having acquired from the department a
29 commercial oyster fisherman's license.

30 Revisor's Note

31 Section 76.101(b), Parks and Wildlife Code,
32 prohibits a person from engaging in certain activities
33 without "first having acquired" a commercial oyster
34 fisherman's license from the Parks and Wildlife
35 Department. Throughout this chapter, for consistency
36 in terminology used in this code, the revised law
37 substitutes "holds" for the quoted language when the
38 meaning is the same in context.

39 Revised Law

40 Sec. 5304.0102. LICENSE FEE. (a) For purposes of this

1 section:

2 (1) a person is considered a resident if the person is
3 an individual who has resided continuously in this state for more
4 than six months immediately before applying to the department for a
5 commercial oyster fisherman's license; and

6 (2) a person is considered a nonresident if the person
7 is an individual not described by Subdivision (1).

8 (b) The fee for a resident commercial oyster fisherman's
9 license is \$100 or a greater amount set by the commission.

10 (c) The fee for a nonresident commercial oyster fisherman's
11 license is \$250 or a greater amount set by the commission. (Parks &
12 Wild. Code, Secs. 47.001(12), (13), 76.104(c), (g).)

13 Source Law

14 Sec. 47.001. DEFINITIONS. In this chapter:

15 (12) "Resident" means an individual who
16 has resided continuously in this state for more than
17 six months immediately before applying for a license
18 required by this chapter from the department.

19 (13) "Nonresident" means an individual who
20 is not a resident.

21 [Sec. 76.104]

22 (c) Except as provided by Subsection (g) of this
23 section, the fee for a commercial oyster fisherman's
24 license is \$100 or an amount set by the commission,
25 whichever amount is more. The definition for
26 "resident" for this subsection is the same as the
27 resident definition in Section 47.001 of this code.

28 (g) The fee for a nonresident commercial oyster
29 fisherman's license is \$250 or an amount set by the
30 commission, whichever amount is more. The definition
31 for "nonresident" for this subsection is the same as
32 the nonresident definition in Section 47.001 of this
33 code.

34 Revisor's Note

35 (1) Section 76.104(c), Parks and Wildlife Code,
36 sets the parameters for the amount of the fee charged
37 for a commercial oyster fisherman's license "[e]xcept
38 as provided by Subsection (g)" of that section and
39 includes a definition of the term "resident." The term
40 "resident" does not appear in Section 76.104(c).
41 Section 76.104(g), Parks and Wildlife Code, sets the
42 parameters for the amount of the fee charged for a

1 nonresident commercial oyster fisherman's license and
2 includes a definition of the term "nonresident." The
3 revised law clarifies that the fee for a commercial
4 oyster fisherman's license in Section 76.104(c),
5 revised as Subsection (b) of this section, applies to a
6 resident commercial oyster fisherman's license because
7 it is clear from the context that the fee described by
8 Section 76.104(c) applies only to residents.
9 Additionally, the revised law omits "[e]xcept as
10 provided by Subsection (g)" as unnecessary because
11 Section 76.104(g) applies only to the fee for a
12 nonresident commercial oyster fisherman's license.

13 (2) Sections 76.104(c) and (g), Parks and
14 Wildlife Code, define the terms "resident" and
15 "nonresident," respectively, by means of a
16 cross-reference to Section 47.001 of that code. The
17 revised law is drafted to include the substance of
18 those definitions, which are more appropriately
19 drafted as substantive law.

20 Revised Law

21 Sec. 5304.0103. LICENSE EXPIRATION. A commercial oyster
22 fisherman's license expires on August 31 of the yearly period for
23 which the license is issued or another date set by the commission.
24 (Parks & Wild. Code, Sec. 76.103 (part).)

25 Source Law

26 Sec. 76.103. TYPES OF LICENSES; PERIOD OF
27 VALIDITY. A . . . commercial oyster fisherman's
28 license expires on August 31 of the yearly period for
29 which it is issued or another date set by the
30 commission.

31 Revised Law

32 Sec. 5304.0104. PROOF OF IDENTITY. A person oystering
33 under a commercial oyster fisherman's license must possess proof of
34 the person's identity and produce the proof to any enforcement
35 officer on request. (Parks & Wild. Code, Sec. 76.101(e) (part).)

1 Source Law

2 (e) . . . each person oystering under a
3 commercial oyster fisherman's license must possess and
4 produce on request to any enforcement officer proof of
5 the person's identity.

6 SUBCHAPTER B. COMMERCIAL OYSTER BOAT LICENSE

7 Revised Law

8 Sec. 5304.0201. COMMERCIAL OYSTER BOAT LICENSE REQUIRED.

9 Unless the person holds a commercial oyster boat license issued by
10 the department, a person may not take or attempt to take oysters
11 from the public water of this state:

12 (1) by the use of:

13 (A) a dredge, tongs, or other mechanical means;

14 or

15 (B) a boat or other vessel for compensation; or

16 (2) for sale, barter, or exchange or other commercial
17 purpose. (Parks & Wild. Code, Sec. 76.101(c).)

18 Source Law

19 (c) No person may take or attempt to take
20 oysters from the public water of this state by the use
21 of a dredge, tongs, or other mechanical means, or by
22 the use of a boat or other vessel for pay, or for the
23 purpose of sale, barter, or exchange or any other
24 commercial purpose without first having acquired from
25 the department a commercial oyster boat license.

26 Revised Law

27 Sec. 5304.0202. LICENSE FEE. (a) Except as provided by
28 Subsection (b), the fee for a commercial oyster boat license is \$350
29 or a greater amount set by the commission.

30 (b) The fee for a commercial oyster boat license is \$1,400
31 or a greater amount set by the commission for a boat that is not
32 numbered under Chapter 4052 or does not have a certificate of
33 documentation issued by the United States Coast Guard that lists an
34 address in this state for the boat owner or other criteria
35 established by the commission. (Parks & Wild. Code, Secs.
36 76.104(a), (e).)

37 Source Law

38 Sec. 76.104. LICENSE FEES. (a) Except as
39 provided by Subsection (e) of this section, the fee for

1 a commercial oyster boat license is \$350 or an amount
2 set by the commission, whichever amount is more.

3 (e) The fee for a commercial oyster boat license
4 for a boat that is not numbered under Chapter 31 of
5 this code or does not have a certificate of
6 documentation issued by the United States Coast Guard
7 that lists an address in Texas for the boat owner or
8 other criteria established by the commission is \$1,400
9 or an amount set by the commission, whichever amount is
10 more.

11 Revisor's Note

12 Section 76.104(e), Parks and Wildlife Code,
13 refers to a boat that is not numbered under "Chapter
14 31" of that code. Throughout this chapter, in this and
15 similar contexts, the revised law substitutes "Chapter
16 4052" for "Chapter 31" because the pertinent parts of
17 Chapter 31 relating to the numbering of a boat are
18 revised in Chapter 4052 of this code.

19 Revised Law

20 Sec. 5304.0203. LICENSE DISPLAY AND DESIGN. A commercial
21 oyster boat license issued under this subchapter must:

22 (1) be prominently displayed on the bow, outside the
23 wheelhouse, or at another point outside the boat designated by the
24 department, and on each side of the boat, evidencing payment of the
25 license;

26 (2) be a metal or plastic sign or emblem of sufficient
27 size to allow enforcement of this chapter and Chapters 5301, 5302,
28 and 5303; and

29 (3) have a different color or design for each license
30 period. (Parks & Wild. Code, Sec. 76.1041.)

31 Source Law

32 Sec. 76.1041. LICENSE DISPLAY AND DESIGN. (a)
33 A commercial oyster boat license issued under this
34 subchapter must be prominently displayed on the bow,
35 outside the wheelhouse, or at another point outside
36 the boat designated by the department, and on each side
37 of the boat, evidencing payment of the license.

38 (b) A commercial oyster boat license issued
39 under this subchapter must be a metal or plastic sign
40 or emblem of sufficient size to allow enforcement of
41 this chapter and have a different color or design for
42 each license period.

1 Revisor's Note

2 (1) Section 76.1041, Parks and Wildlife Code,
3 refers to a commercial oyster boat license issued
4 under Subchapter C, Chapter 76, of that code. The
5 pertinent part of Subchapter C providing for the
6 issuance of a commercial oyster boat license is
7 revised in this subchapter, and the revised law is
8 drafted accordingly.

9 (2) Section 76.1041(b), Parks and Wildlife
10 Code, requires a commercial oyster boat license to be a
11 metal or plastic sign or emblem of sufficient size to
12 allow enforcement of Chapter 76 of that code. The
13 pertinent parts of Chapter 76 are revised in this
14 chapter and in Chapters 5301, 5302, and 5303 of this
15 code, and the revised law is drafted accordingly.

16 Revised Law

17 Sec. 5304.0204. LICENSE EXPIRATION. A commercial oyster
18 boat license expires on August 31 of the yearly period for which the
19 license is issued or another date set by the commission. (Parks &
20 Wild. Code, Sec. 76.103 (part).)

21 Source Law

22 Sec. 76.103. TYPES OF LICENSES; PERIOD OF
23 VALIDITY. A commercial oyster boat license, . . .
24 expires on August 31 of the yearly period for which it
25 is issued or another date set by the commission.

26 Revised Law

27 Sec. 5304.0205. LICENSE TRANSFER TO ANOTHER VESSEL OR
28 OWNER. (a) A commercial oyster boat license may be transferred to:

- 29 (1) another vessel; or
30 (2) a new owner of the same vessel.

31 (b) The commission by regulation may prescribe:

32 (1) requirements necessary to clarify a license
33 transfer procedure; and

34 (2) a form to be used and fee to be charged for the
35 transfer of a license under this section. (Parks & Wild. Code, Sec.

1 76.1031(b) (part).)

2 Source Law

3 (b) [All licenses issued under the authority of
4 this chapter may not be transferred to another person
5 or vessel except as provided by this subsection.] A
6 license issued under the authority of Section
7 76.101(c) may be transferred to another vessel or to a
8 new owner of the same vessel. The commission, by
9 regulation, may prescribe requirements necessary to
10 clarify license transfer procedures and may prescribe,
11 by regulation, forms to be used and fees to be charged
12 for transfer of licenses in this chapter and

13 Revisor's Note

14 Section 76.1031(b), Parks and Wildlife Code,
15 provides a general prohibition on transferring a
16 license issued under Chapter 76 of that code to another
17 person or vessel, but provides an exception for
18 licenses "issued under the authority of Section
19 76.101(c)" of that code. Another provision of Section
20 76.1031(b) provides that the Parks and Wildlife
21 Commission, by regulation, may prescribe requirements
22 necessary to clarify license transfer procedures and
23 may prescribe, by regulation, forms to be used and fees
24 to be charged for transfer of licenses in Chapter 76.
25 For clarity and the convenience of the reader, the
26 revised law substitutes "commercial oyster boat
27 license" for the quoted language because a commercial
28 oyster boat license is the only license issued under
29 the authority of Section 76.101(c). Additionally, the
30 revised law applies the portion of Section 76.1031(b)
31 relating to certain license transfer regulations to
32 only the transfer of a commercial oyster boat license
33 under this section because that is the only provision
34 and license under Chapter 76 for which a license
35 transfer is authorized.

36 SUBCHAPTER C. COMMERCIAL OYSTER BOAT CAPTAIN'S LICENSE

37 Revised Law

38 Sec. 5304.0301. COMMERCIAL OYSTER BOAT CAPTAIN'S LICENSE

1 REQUIRED. The captain of a commercial oyster boat must hold a
2 commercial oyster boat captain's license to operate a commercial
3 oyster boat while taking or attempting to take oysters from the
4 public water of this state. (Parks & Wild. Code, Sec. 76.101(f).)

5 Source Law

6 (f) The captain of a commercial oyster boat must
7 hold a valid commercial oyster boat captain's license
8 to operate a commercial oyster boat while taking or
9 attempting to take oysters from the public water of
10 this state.

11 Revisor's Note

12 Section 76.101(f), Parks and Wildlife Code,
13 refers to a "valid" commercial oyster boat captain's
14 license. The revised law omits "valid" for the reasons
15 stated in Revisor's Note (1) to Section 5151.0302.

16 Revised Law

17 Sec. 5304.0302. LICENSE FEE. (a) For purposes of this
18 section:

19 (1) a person is considered a resident if the person is
20 an individual who has resided continuously in this state for more
21 than six months immediately before applying to the department for a
22 commercial oyster boat captain's license; and

23 (2) a person is considered a nonresident if the person
24 is an individual not described by Subdivision (1).

25 (b) The fee for a resident commercial oyster boat captain's
26 license is \$25 or a greater amount set by the commission.

27 (c) The fee for a nonresident commercial oyster boat
28 captain's license is \$100 or a greater amount set by the commission.
29 (Parks & Wild. Code, Secs. 47.001(12), (13), 76.104(d), (h).)

30 Source Law

31 Sec. 47.001. DEFINITIONS. In this chapter:

32 (12) "Resident" means an individual who
33 has resided continuously in this state for more than
34 six months immediately before applying for a license
35 required by this chapter from the department.

36 (13) "Nonresident" means an individual who
37 is not a resident.

38 [Sec. 76.104]

39 (d) Except as provided by Subsection (h) of this

1 section, the fee for a commercial oyster boat captain's
2 license is \$25 or an amount set by the commission,
3 whichever amount is more. The definition for
4 "resident" for this subsection is the same as the
5 resident definition in Section 47.001 of this code.

6 (h) The fee for a nonresident commercial oyster
7 boat captain's license is \$100 or an amount set by the
8 commission, whichever amount is more. The definition
9 for "nonresident" for this subsection is the same as
10 the nonresident definition in Section 47.001 of this
11 code.

12 Revisor's Note

13 (1) Section 76.104(d), Parks and Wildlife Code,
14 sets the parameters for the amount of the fee charged
15 for a commercial oyster boat captain's license
16 "[e]xcept as provided by Subsection (h)" of that
17 section and includes a definition of the term
18 "resident." The term "resident" does not appear in
19 Section 76.104(d). Section 76.104(h), Parks and
20 Wildlife Code, sets the parameters for the amount of
21 the fee charged for a nonresident commercial oyster
22 boat captain's license and includes a definition of the
23 term "nonresident." The revised law clarifies that
24 the fee for a commercial oyster boat captain's license
25 in Section 76.104(d), revised as Subsection (b) of
26 this section, applies to a resident commercial oyster
27 boat captain's license because it is clear from the
28 context that the fee described by Section 76.104(d)
29 applies only to residents. Additionally, the revised
30 law omits "[e]xcept as provided by Subsection (h)" as
31 unnecessary because Section 76.104(h) applies only to
32 the fee for a nonresident commercial oyster boat
33 captain's license.

34 (2) Sections 76.104(d) and (h), Parks and
35 Wildlife Code, define the terms "resident" and
36 "nonresident," respectively, by means of a
37 cross-reference to Section 47.001 of that code. The
38 revised law is drafted to include the substance of
39 those definitions, which are more appropriately

1 drafted as substantive law.

2 Revised Law

3 Sec. 5304.0303. LICENSE EXPIRATION. A commercial oyster
4 boat captain's license expires on August 31 of the yearly period for
5 which the license is issued or another date set by the commission.
6 (Parks & Wild. Code, Sec. 76.103 (part).)

7 Source Law

8 Sec. 76.103. TYPES OF LICENSES; PERIOD OF
9 VALIDITY. A . . . commercial oyster boat captain's
10 license, . . . expires on August 31 of the yearly
11 period for which it is issued or another date set by
12 the commission.

13 Revised Law

14 Sec. 5304.0304. REQUIRED IDENTIFICATION BY CAPTAIN. The
15 captain of a vessel licensed as a commercial oyster boat shall
16 identify the name of the captain, the vessel, and each crew member
17 to each person buying oysters. (Parks & Wild. Code, Sec.
18 76.119(c).)

19 Source Law

20 (c) The captain of a vessel licensed as a
21 commercial oyster boat shall identify the name of the
22 captain, the vessel, and each member of the crew to
23 each purchaser of oysters.

24 SUBCHAPTER D. SPORT OYSTER BOAT LICENSE

25 Revised Law

26 Sec. 5304.0401. SPORT OYSTER BOAT LICENSE REQUIRED. A
27 person may not take or attempt to take oysters for noncommercial use
28 from the public water of this state by the use of a dredge or tongs
29 unless the person holds a sport oyster boat license issued by the
30 department. (Parks & Wild. Code, Sec. 76.101(a).)

31 Source Law

32 Sec. 76.101. OYSTER LICENSES REQUIRED. (a) No
33 person may take or attempt to take oysters from the
34 public water of this state for noncommercial use by the
35 use of a dredge or tongs without first having acquired
36 a sport oyster boat license from the department.

37 Revised Law

38 Sec. 5304.0402. LICENSE FEE. (a) Except as provided by
39 Subsection (b), the fee for a sport oyster boat license is \$10 or a

1 greater amount set by the commission.

2 (b) The fee for a sport oyster boat license is \$40 or a
3 greater amount set by the commission for a boat that is not numbered
4 under Chapter 4052 or does not have a certificate of documentation
5 issued by the United States Coast Guard that lists an address in
6 this state for the boat owner or other criteria established by the
7 commission. (Parks & Wild. Code, Secs. 76.104(b), (f).)

8 Source Law

9 (b) Except as provided by Subsection (f) of this
10 section, the fee for a sport oyster boat license is \$10
11 or an amount set by the commission, whichever amount is
12 more.

13 (f) The fee for a sport oyster boat license for a
14 boat that is not numbered under Chapter 31 of this code
15 or does not have a certificate of documentation issued
16 by the United States Coast Guard that lists an address
17 in Texas for the boat owner or other criteria
18 established by the commission is \$40 or an amount set
19 by the commission, whichever amount is more.

20 Revised Law

21 Sec. 5304.0403. LICENSE EXPIRATION. (a) A sport oyster
22 boat license expires on August 31 of the yearly period for which the
23 license is issued or another date set by the commission. (Parks &
24 Wild. Code, Sec. 76.103 (part).)

25 Source Law

26 Sec. 76.103. TYPES OF LICENSES; PERIOD OF
27 VALIDITY. A . . . sport oyster boat license, or . . .
28 expires on August 31 of the yearly period for which it
29 is issued or another date set by the commission.

30 Revised Law

31 Sec. 5304.0404. SALE OF SPORT OYSTERS PROHIBITED. A person
32 may not sell oysters taken under a sport oyster boat license.
33 (Parks & Wild. Code, Sec. 76.107.)

34 Source Law

35 Sec. 76.107. SALE OF SPORT OYSTERS PROHIBITED.
36 No person may sell oysters taken under the authority of
37 a sport oyster boat license.

38 SUBCHAPTER E. PROVISIONS APPLICABLE TO OYSTER BOATS GENERALLY

39 Revised Law

40 Sec. 5304.0501. LICENSE APPLICATION REQUIREMENTS. An
41 applicant for an oyster boat license issued under this chapter that

1 is not a renewal of the preceding year's license must submit to the
2 department:

3 (1) that boat's United States Coast Guard certificate
4 of documentation; or

5 (2) a certificate of number for a vessel or motorboat
6 issued by this state or another state. (Parks & Wild. Code, Sec.
7 76.102(a).)

8 Source Law

9 Sec. 76.102. LICENSE APPLICATION. (a) An
10 applicant for an oyster boat license, which is not a
11 renewal of the previous year's license, issued under
12 this subchapter must submit to the department the
13 boat's United States Coast Guard certificate of
14 documentation or Texas' or other state's certificate of
15 number for a vessel or motorboat.

16 Revisor's Note

17 Section 76.102(a), Parks and Wildlife Code,
18 refers to "an oyster boat license . . . issued under
19 this subchapter," meaning Subchapter C, Chapter 76, of
20 that code. The quoted language does not refer to a
21 specific class of license and may refer to a license
22 for a sport oyster boat issued under Section 76.101(a)
23 or a commercial oyster boat issued under Section
24 76.101(c). Each of those subsections is revised in
25 this chapter, and throughout this subchapter the
26 revised law is drafted accordingly.

27 Revised Law

28 Sec. 5304.0502. FORM OF LICENSE. An oyster boat license
29 issued under this chapter must contain:

30 (1) the name of the boat, if the boat is registered
31 with the United States Coast Guard; and

32 (2) the number that appears on:

33 (A) the United States Coast Guard certificate of
34 documentation; or

35 (B) a certificate of number issued by this state
36 or another state. (Parks & Wild. Code, Sec. 76.102(b).)

Source Law

(b) The license issued by the department must contain:

(1) the name of the boat if the boat is registered with the United States Coast Guard; and

(2) the number appearing on the United States Coast Guard certificate of documentation or Texas' or other state's certificate of number.

Revised Law

Sec. 5304.0503. PROOF OF IDENTITY. The following persons must possess proof of the person's identity and produce the proof to any enforcement officer on request:

(1) the captain and each crew member of a licensed commercial oyster boat; and

(2) each person on a licensed sport oyster boat.
(Parks & Wild. Code, Sec. 76.101(e) (part).)

Source Law

(e) The captain and each crew member of a licensed commercial oyster boat, each person on a licensed sport oyster boat, and . . . must possess and produce on request to any enforcement officer proof of the person's identity.

SUBCHAPTER F. GENERAL LICENSE PROVISIONS

Revised Law

Sec. 5304.0601. GENERAL COMMERCIAL FISHERMAN'S LICENSE
REQUIRED FOR CERTAIN CREW MEMBERS. (a) Except as provided by
Subsection (b), each crew member of a licensed commercial oyster
boat must hold a general commercial fisherman's license to take
oysters while:

(1) the crew member is on the boat; and

(2) the boat is being used to take oysters.

(b) This section does not apply to a commercial oyster boat captain's license holder. (Parks & Wild. Code, Sec. 76.101(d).)

Source Law

(d) Each member of the crew of a licensed commercial oyster boat is required to have a general commercial fisherman's license to take oysters while they are on a licensed boat that is being used to take oysters. This subsection does not apply to the holder of a commercial oyster boat captain's license.

1 Revised Law

2 Sec. 5304.0602. LICENSE TERM. (a) A license issued under
3 this chapter is valid only during the yearly period for which the
4 license is issued without regard to the date the license is
5 acquired.

6 (b) Each yearly period for a license issued under this
7 chapter:

8 (1) begins on September 1 or another date set by the
9 commission; and

10 (2) extends through August 31 of the next year or
11 another date set by the commission. (Parks & Wild. Code, Sec.
12 76.1031(a) (part).)

13 Source Law

14 Sec. 76.1031. LICENSE EXPIRATIONS AND
15 TRANSFERS. (a) All licenses issued under the
16 authority of Chapter 76 of this code are valid only
17 during the yearly period for which they are issued
18 without regard to the date on which the licenses are
19 acquired. Each yearly period begins on September 1 or
20 another date set by the commission and extends through
21 August 31 of the next year or another date set by the
22 commission. . . .

23 Revisor's Note

24 Section 76.1031(a), Parks and Wildlife Code,
25 refers to a license issued under the authority of
26 Chapter 76 of that code. The pertinent parts of
27 Chapter 76 under which a license is issued are revised
28 in this chapter, and the revised law is drafted
29 accordingly.

30 Revised Law

31 Sec. 5304.0603. LICENSE ISSUED FOR TRANSITION PERIOD. The
32 commission by rule may:

33 (1) provide for a license term for a transition period
34 that is less than or exceeds one year; and

35 (2) set the fee for a license issued during a transition
36 period in an amount less than the amount prescribed by this chapter.
37 (Parks & Wild. Code, Sec. 76.1031(a) (part).)

1 Source Law

2 (a) . . . The commission by rule may set the
3 amount of a license fee for a license issued during a
4 transition period at an amount lower than prescribed
5 in this chapter and provide for a license term for a
6 transition period that is shorter or longer than a
7 year.

8 Revised Law

9 Sec. 5304.0604. LICENSE TRANSFER GENERALLY PROHIBITED.
10 Except as provided by Section 5304.0205, a license issued under
11 this chapter may not be transferred to another person or vessel.
12 (Parks & Wild. Code, Sec. 76.1031(b) (part).)

13 Source Law

14 (b) All licenses issued under the authority of
15 this chapter may not be transferred to another person
16 or vessel except as provided by this subsection. . . .

17 Revisor's Note

18 Section 76.1031(b), Parks and Wildlife Code,
19 provides that licenses issued under Chapter 76 of that
20 code may not be transferred to another person or vessel
21 except as provided by "this subsection," meaning
22 Section 76.1031(b). The pertinent part of Section
23 76.1031(b) providing an exception to the general
24 prohibition on license transfers is revised as Section
25 5304.0205, and the revised law is drafted accordingly.

26 Revised Law

27 Sec. 5304.0605. DUPLICATE OR REPLACEMENT LICENSE OR LICENSE
28 PLATE. The commission by regulation may prescribe a form to be used
29 and fee to be charged for a duplicate license plate or duplicate or
30 replacement license under this chapter. (Parks & Wild. Code, Sec.
31 76.1031(b) (part).)

32 Source Law

33 (b) . . . The commission . . . may prescribe, by
34 regulation, forms to be used and fees to be charged
35 . . . for duplicate license plates or duplicate or
36 replacement licenses.

37 Revised Law

38 Sec. 5304.0606. LICENSE SUSPENSION. (a) In this section,
39 "final conviction" includes:

1 (1) the imposition of deferred adjudication community
2 supervision;

3 (2) a plea of guilty; or

4 (3) a plea of nolo contendere.

5 (b) On final conviction for an offense punishable under
6 Section 5349.0101(c)(1), (d)(1), or (e), the following licenses are
7 suspended for 30 days:

8 (1) the commercial oyster boat license of the boat
9 used in the commission of the offense;

10 (2) the commercial oyster boat captain's license of
11 the captain of the boat used in the commission of the offense;

12 (3) the general commercial fisherman's license of a
13 crew member of a boat on which the offense was committed; and

14 (4) the commercial oyster fisherman's license of the
15 person who takes or attempts to take oysters without the use of a
16 boat.

17 (c) During the period of suspension:

18 (1) for a license described by Subsection (b)(2), the
19 holder of the suspended license may not purchase a general
20 commercial fisherman's license or a commercial oyster fisherman's
21 license; and

22 (2) for a license described by Subsection (b)(3), the
23 holder of the suspended license may not purchase a commercial
24 oyster boat captain's license or a commercial oyster fisherman's
25 license.

26 (d) On final conviction of a person who purchases oysters
27 for the third offense within five years of the commission of an
28 offense punishable under Section 5349.0101 for a violation of a
29 provision or regulation relating to oyster size in which the
30 conviction was for possession of a cargo of oysters in which 30
31 percent or more of the oysters measured less than three inches in
32 length along an imaginary straight line through the long axis of the
33 shell, any license issued by the department to the person is
34 suspended for 30 days. During the period of suspension, the holder

1 of the suspended license may not purchase a license issued by the
2 department for the taking or purchasing of oysters.

3 (e) Except as otherwise provided by this subsection, a
4 period of suspension described by this section must be served
5 during the open season in which the offense occurred. If less than
6 30 days remain in the season, the suspension must be served at the
7 beginning of the next open season. (Parks & Wild. Code, Sec.
8 76.1181.)

9 Source Law

10 Sec. 76.1181. SUSPENSION OF LICENSE. (a) For
11 purposes of this section, "final conviction" includes
12 a plea of guilty or nolo contendere to or the
13 imposition of deferred adjudication for an offense.

14 (b) On final conviction for an offense
15 punishable under Section 76.118(e-3) or (e-4), the
16 commercial oyster boat license of the boat used in the
17 commission of the violation is suspended for 30 days.

18 (c) On final conviction for an offense
19 punishable under Section 76.118(e-3) or (e-4), the
20 commercial oyster boat captain's license of the
21 captain of the boat used in the commission of the
22 violation is suspended for 30 days. During the period
23 of suspension, the holder of the suspended license may
24 not purchase a general commercial fisherman's license
25 or a commercial oyster fisherman's license.

26 (d) On final conviction for an offense
27 punishable under Section 76.118(e-3) or (e-4), the
28 general commercial fisherman's license of a member of
29 the crew of a boat on which the violation was committed
30 is suspended for 30 days. During the suspension
31 period, the holder of the suspended license may not
32 purchase a commercial oyster boat captain's license or
33 a commercial oyster fisherman's license.

34 (d-1) On final conviction for an offense
35 punishable under Section 76.118(e-3) or (e-4), the
36 commercial oyster fisherman's license of the person
37 who takes or attempts to take oysters without the use
38 of a boat is suspended for 30 days.

39 (e) On final conviction for the third offense
40 within five years of the commission of an offense
41 punishable under Section 76.118, for a violation of a
42 provision or regulation relating to oyster size in
43 which the conviction was for possession of a cargo of
44 oysters in which 30 percent or more of the oysters
45 measured less than three inches in length along an
46 imaginary straight line through the long axis of the
47 shell, any license issued by the department to a person
48 that purchases oysters is suspended for 30 days.
49 During the suspension period, the holder of the
50 suspended license may not purchase a license issued by
51 the department allowing the taking or purchase of
52 oysters.

53 (f) A suspension period described by this
54 section must be served during the public oyster season
55 in which the violation occurred, unless less than 30
56 days remain in the public oyster season, in which case
57 the suspension must be served at the beginning of the
58 next public oyster season.

1 Revisor's Note

2 (1) Section 76.1181(a), Parks and Wildlife
3 Code, refers to the imposition of "deferred
4 adjudication." The revised law substitutes "deferred
5 adjudication community supervision" for "deferred
6 adjudication" for the reasons stated in Revisor's Note
7 (2) to Section 5159.0501.

8 (2) Section 76.1181(f), Parks and Wildlife
9 Code, refers to the "public oyster season." For
10 clarity and consistency in terminology used in this
11 subtitle, the revised law substitutes "open season"
12 for the quoted language because it is clear from the
13 context that the season referenced is the "open
14 season" as defined by Section 76.001(3), Parks and
15 Wildlife Code, revised in this subtitle as Section
16 5301.0101(2).

17 SUBCHAPTER G. OYSTER LICENSE MORATORIUM AND BUYBACK PROGRAMS

18 Revised Law

19 Sec. 5304.0701. DEFINITIONS. In this subchapter:

20 (1) "Oyster license moratorium program" means the
21 oyster license moratorium program implemented by the department
22 under Section 5304.0704.

23 (2) "Review board" means the oyster license moratorium
24 review board established under Section 5304.0705. (New.)

25 Revisor's Note

26 The definitions of "oyster license moratorium
27 program" and "review board" are added to the revised
28 law for drafting convenience and to eliminate
29 frequent, unnecessary repetition of the substance of
30 the definitions.

31 Revised Law

32 Sec. 5304.0702. ADMINISTRATIVE PROCEDURES. The executive
33 director shall establish administrative procedures to carry out the
34 requirements of this subchapter. (Parks & Wild. Code, Sec.

1 76.404(a).)

2 Source Law

3 Sec. 76.404. PROGRAM ADMINISTRATION; RULES.
4 (a) The director shall establish administrative
5 procedures to carry out the requirements of this
6 subchapter.

7 Revised Law

8 Sec. 5304.0703. CONFLICT WITH PROCLAMATION. A commission
9 proclamation under this subchapter prevails over any conflicting
10 provision of this chapter or Chapter 5301, 5302, or 5303 to the
11 extent of the conflict. (Parks & Wild. Code, Sec. 76.406.)

12 Source Law

13 Sec. 76.406. PREVAILING AUTHORITY. A
14 proclamation of the commission under this subchapter
15 prevails over any conflicting provision of this
16 chapter to the extent of the conflict.

17 Revised Law

18 Sec. 5304.0704. OYSTER LICENSE MORATORIUM PROGRAM. (a)
19 The department shall implement an oyster license moratorium program
20 to promote efficiency and economic stability in the oyster
21 industry.

22 (b) The commission shall adopt rules necessary to
23 administer the oyster license moratorium program. (Parks & Wild.
24 Code, Secs. 76.401, 76.404(b).)

25 Source Law

26 Sec. 76.401. OYSTER LICENSE MORATORIUM PROGRAM.
27 The department shall implement an oyster license
28 moratorium program to promote efficiency and economic
29 stability in the oyster industry.

30 [Sec. 76.404]

31 (b) The commission shall adopt any rules
32 necessary for the administration of the program
33 established under this subchapter.

34 Revisor's Note

35 Section 76.404(b), Parks and Wildlife Code,
36 refers to the "program established under this
37 subchapter." For clarity and consistency in
38 terminology used in this subchapter, the revised law
39 substitutes "oyster license moratorium program" for
40 the quoted language because it is clear from the

context that the referenced program is the oyster license moratorium program implemented under Section 76.401, Parks and Wildlife Code, revised as Subsection (a) of this section.

Revised Law

Sec. 5304.0705. OYSTER LICENSE MORATORIUM REVIEW BOARD.

(a) The oyster license moratorium review board is composed of seven members elected by the commercial oyster boat license holders.

(b) A review board member must hold a commercial oyster boat license.

(c) The review board members must reflect the following geographical distribution according to the county of residence specified on the member's commercial oyster boat license:

(1) one member representing Orange, Jefferson, Chambers, and Harris Counties;

(2) two members representing Galveston County;

(3) one member representing Brazoria and Matagorda Counties;

(4) two members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) one member representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the oyster license moratorium program, including hardship and appeal cases concerning eligibility.

(e) The executive director shall:

(1) adopt procedures for the election of review board members and operation of the review board; and

(2) solicit and consider recommendations from commercial oyster boat license holders regarding the procedures described by Subdivision (1) and the continued need for the review board.

(f) The review board is not subject to Chapter 2110,

1 Government Code. (Parks & Wild. Code, Sec. 76.403.)

2 Source Law

3 Sec. 76.403. OYSTER LICENSE MORATORIUM REVIEW
4 BOARD. (a) The holders of commercial oyster boat
5 licenses shall elect an oyster license moratorium
6 review board of seven members.

7 (b) A member of the review board must be a holder
8 of a commercial oyster boat license.

9 (c) The seven members of the review board must
10 be selected to reflect the following geographical
11 distribution according to the county of residence
12 specified on the member's commercial oyster boat
13 license:

14 (1) one member representing Orange,
15 Jefferson, Chambers, and Harris Counties;

16 (2) two members representing Galveston
17 County;

18 (3) one member representing Brazoria and
19 Matagorda Counties;

20 (4) two members representing Calhoun,
21 Aransas, Nueces, San Patricio, and Refugio Counties;
22 and

23 (5) one member representing Kleberg,
24 Cameron, and Willacy Counties.

25 (d) The review board shall advise the commission
26 and department and make recommendations concerning the
27 administrative aspects of the oyster license
28 moratorium program, including hardship and appeal
29 cases concerning eligibility.

30 (e) The director shall adopt procedures for the
31 election and operation of the review board. The
32 director shall solicit and consider recommendations
33 from the commercial oyster boat license holders
34 regarding the procedures and the continued need for
35 the board.

36 (f) The review board is not subject to Chapter
37 2110, Government Code.

38 Revisor's Note

39 Section 76.403(a), Parks and Wildlife Code,
40 provides that the commercial oyster boat license
41 holders "shall elect" an oyster license moratorium
42 review board of seven members. For clarity, the
43 revised law restates the provision as a requirement
44 for the composition of the review board rather than an
45 affirmative duty on the license holders for the
46 reasons stated in Revisor's Note (1) to Section
47 5158.0416.

48 Revised Law

49 Sec. 5304.0706. ISSUANCE AND RENEWAL OF COMMERCIAL OYSTER
50 BOAT LICENSES. (a) The department may not issue or renew a
51 commercial oyster boat license unless the applicant documents to

1 the department's satisfaction that the vessel for which the license
2 is sought:

3 (1) is owned by the applicant;

4 (2) was licensed as a commercial oyster boat on the
5 date the renewal was sought or at the end of the licensing period
6 immediately preceding the period for which the license is sought;
7 and

8 (3) is intended to be licensed and used as a commercial
9 oyster boat.

10 (b) An applicant for a new or renewed commercial oyster boat
11 license for a vessel must submit to the department with the license
12 application:

13 (1) if United States Coast Guard rules require the
14 vessel to be documented, the United States Coast Guard certificate
15 of documentation for the vessel; and

16 (2) the certificate of number for the vessel as
17 required by Chapter 4052. (Parks & Wild. Code, Sec. 76.402.)

18 Source Law

19 Sec. 76.402. ISSUANCE AND RENEWAL OF COMMERCIAL
20 OYSTER BOAT LICENSES. (a) After August 31, 2005, the
21 department may not issue or renew a commercial oyster
22 boat license unless the person seeking to obtain or
23 renew the license documents to the satisfaction of the
24 department that the vessel for which the license is
25 sought:

26 (1) is owned by the person;

27 (2) was licensed as a commercial oyster
28 boat on the day the renewal was sought or at the end of
29 the licensing period immediately preceding the period
30 for which the license is sought; and

31 (3) is intended to be licensed and used as
32 a commercial oyster boat.

33 (b) An applicant for a new or renewed commercial
34 oyster boat license for a vessel must submit to the
35 department with the license application:

36 (1) the United States Coast Guard
37 certificate of documentation for the vessel, if the
38 vessel is required by United States Coast Guard rules
39 to be documented; and

40 (2) the certificate of number for the
41 vessel as required by Chapter 31.

42 Revisor's Note

43 Section 76.402(a), Parks and Wildlife Code,
44 prohibits the Parks and Wildlife Department from
45 issuing or renewing certain commercial oyster boat

1 licenses "[a]fter August 31, 2005." The revised law
2 omits the quoted language for the reasons stated in the
3 revisor's note to Section 5251.1305.

4 Revised Law

5 Sec. 5304.0707. LICENSE BUYBACK PROGRAM. (a) The
6 department shall implement a license buyback program for licenses
7 issued under this subchapter as part of the oyster license
8 moratorium program.

9 (b) The commission by rule shall establish criteria, using
10 reasonable classifications, for the department's use in selecting
11 licenses to purchase. The department or executive director shall
12 consult with the review board concerning the criteria.

13 (c) The department shall retire each license purchased
14 under the license buyback program until the commission finds that
15 management of the oyster fishery allows reissue of those licenses
16 through auction or lottery.

17 (d) The commission shall consider the social and economic
18 viability of the oyster industry and input from the review board
19 regarding the reissue of commercial oyster boat licenses through
20 auction or lottery.

21 (e) The department shall set aside an amount determined by
22 commission rule that is at least 20 percent of the fees from
23 licenses issued under this subchapter to be used only for the
24 purpose of buying back commercial oyster boat licenses from willing
25 license holders. That money shall be sent to the comptroller for
26 deposit to the credit of the game, fish, and water safety account.

27 (f) The department may solicit and accept grants and
28 donations of money or materials from private or public sources for
29 the purpose of buying back licenses issued under this subchapter
30 from willing license holders.

31 (g) Money dedicated for the purpose of buying back licenses
32 issued under this subchapter is not subject to Section 403.095,
33 Government Code. (Parks & Wild. Code, Sec. 76.405.)

Source Law

Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program for licenses issued under this subchapter as part of the oyster license moratorium program established by this subchapter.

(b) The commission by rule shall establish criteria, using reasonable classifications, for the department's use in selecting licenses to be purchased. The department or executive director shall consult with the oyster license moratorium review board concerning establishment of the criteria.

(c) The department shall retire each license purchased under the license buyback program until the commission finds that management of the oyster fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside an amount determined by commission rule that is at least 20 percent of the fees from licenses issued under this subchapter to be used only for the purpose of buying back commercial oyster boat licenses from willing license holders. That money shall be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

(e) The department may solicit and accept grants and donations of money or materials from private or public sources for the purpose of buying back licenses issued under this subchapter from willing license holders.

(f) Money to be used for the purpose of buying back licenses issued under this subchapter is not subject to Section 403.095, Government Code.

(g) The commission shall consider the social and economic viability of the oyster industry and input from the oyster license moratorium review board regarding the reissue of commercial oyster boat licenses through auction or lottery.

SUBCHAPTER Y. MISCELLANEOUS PROVISIONS

Revised Law

Sec. 5304.9801. VESSEL MONITORING SYSTEM. (a) The commission by proclamation may establish a vessel monitoring system for commercial oyster boats.

(b) Before the commission issues a proclamation under Subsection (a), the department shall consult with commercial oyster boat license holders concerning the establishment of a vessel monitoring system. (Parks & Wild. Code, Sec. 76.304.)

Source Law

Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission by proclamation may establish a vessel monitoring system for commercial oyster boats.

(b) Before the commission issues a proclamation under Subsection (a), the department shall consult with commercial oyster boat license holders concerning establishment of a vessel monitoring system.

1 CHAPTER 5305. CULTIVATED OYSTER MARICULTURE

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Revised Law

4 Sec. 5305.0101. DEFINITIONS. In this chapter:

5 (1) "Broodstock oyster" means an oyster collected for
6 the purpose of growing cultivated oysters.

7 (2) "Cultivated oyster" means an oyster grown at any
8 point in the oyster's life cycle in or on an artificial structure
9 suspended in the water or resting on the bottom.

10 (3) "Cultivated oyster mariculture" means the process
11 of growing cultivated oysters.

12 (4) "Oyster" means the Eastern oyster and the
13 subspecies of the Eastern oyster. (Parks & Wild. Code, Secs.
14 75.0101(1), (2), (3), (5).)

15 Source Law

16 Sec. 75.0101. DEFINITIONS. In this chapter:

17 (1) "Broodstock oyster" means an oyster
18 collected for the purpose of growing cultivated
19 oysters.

20 (2) "Cultivated oyster" means an oyster
21 grown at any point in the life cycle of the oyster in or
22 on an artificial structure suspended in the water or
23 resting on the bottom.

24 (3) "Cultivated oyster mariculture" means
25 the process of growing cultivated oysters.

26 (5) "Oyster" means the Eastern oyster and
27 the subspecies of the Eastern oyster.

28 Revisor's Note

29 Section 75.0101, Parks and Wildlife Code,
30 provides definitions for "this chapter," meaning
31 Chapter 75 of that code. Throughout this chapter, the
32 revised law retains references to "this chapter"
33 because the pertinent parts of Chapter 75 are revised
34 as this chapter.

35 Revised Law

36 Sec. 5305.0102. APPLICABILITY; CONFLICTS OF LAW. (a) A
37 structure used to grow oysters as part of a cultivated oyster
38 mariculture operation is not a natural oyster bed or a private
39 oyster bed and is not subject to location requirements under

Chapter 5302.

(b) The permitting and licensing requirements of Chapters 5303 and 5304, or a regulation adopted under Section 5301.0201, do not apply to activity carried out under a cultivated oyster mariculture permit issued under this chapter.

(c) A rule or proclamation issued under this section prevails to the extent of conflict over a rule or proclamation issued under:

(1) Chapter 5101; or

(2) Chapter 5301, 5302, 5303, or 5304.

(d) Section 2001.0045, Government Code, does not apply to a rule adopted under this chapter. (Parks & Wild. Code, Sec. 75.0102.)

Source Law

Sec. 75.0102. APPLICABILITY; CONFLICT OF LAWS.

(a) A structure used to grow oysters that is part of a cultivated oyster mariculture operation is not a natural oyster bed or a private oyster bed and is not subject to location requirements under Subchapter A, Chapter 76.

(b) The licensing and permitting requirements of Subchapters B, C, and F, Chapter 76, do not apply to activity carried out under a cultivated oyster mariculture permit issued under this chapter.

(c) A regulation adopted under Section 76.301 does not apply to an activity carried out under a cultivated oyster mariculture permit issued under this chapter.

(d) A rule or proclamation issued under this section prevails to the extent of conflict over a rule or proclamation issued under:

(1) Chapter 61; or

(2) Chapter 76.

(e) Section 2001.0045, Government Code, does not apply to rules adopted under this chapter.

Revisor's Note

(1) Section 75.0102(a), Parks and Wildlife Code, refers to the location requirements under Subchapter A, Chapter 76, of that code. The pertinent parts of Subchapter A, Chapter 76, relating to location requirements are revised as Chapter 5302, and the revised law is drafted accordingly.

(2) Section 75.0102(b), Parks and Wildlife Code, refers to the licensing and permitting

1 requirements under Subchapters B, C, and F, Chapter
2 76, of that code. The pertinent parts of Subchapters
3 B, C, and F, Chapter 76, relating to licensing and
4 permitting requirements are revised as Chapters 5303
5 and 5304, and the revised law is drafted accordingly.

6 (3) Section 75.0102(c), Parks and Wildlife
7 Code, refers to a regulation adopted under Section
8 76.301 of that code. Section 76.301 is revised in
9 pertinent part as Section 5301.0201, and the revised
10 law is drafted accordingly.

11 (4) Section 75.0102(d), Parks and Wildlife
12 Code, refers to a rule or proclamation issued under
13 Chapter 76 of that code. The pertinent parts of
14 Chapter 76 authorizing the issuance of a rule or
15 proclamation are revised in Chapters 5301, 5302, 5303,
16 and 5304 of this code, and the revised law is drafted
17 accordingly.

18 SUBCHAPTER B. CULTIVATED OYSTER MARICULTURE

19 Revised Law

20 Sec. 5305.0201. CULTIVATED OYSTER MARICULTURE PROGRAM. (a)
21 The commission shall adopt rules to establish a program governing
22 cultivated oyster mariculture.

23 (b) Rules adopted under the program may establish
24 requirements for:

25 (1) the location and size of a cultivated oyster
26 mariculture operation;

27 (2) the taking, possessing, transporting, moving, and
28 selling of cultivated oysters;

29 (3) the taking, possessing, transporting, and moving
30 of broodstock oysters;

31 (4) marking structures for oyster cultivation in a
32 cultivated oyster mariculture operation;

33 (5) fees and conditions for use of public resources,
34 including broodstock oysters and public water; and

(6) any other matter necessary to implement and administer this chapter.

(c) In the adoption of rules under this section, the department shall coordinate with:

- (1) the Department of Agriculture;
 - (2) the Department of State Health Services;
 - (3) the General Land Office; and
 - (4) the Texas Commission on Environmental Quality.
- (Parks & Wild. Code, Sec. 75.0103.)

Source Law

Sec. 75.0103. CULTIVATED OYSTER MARICULTURE PROGRAM. (a) The commission shall adopt rules to establish a program governing cultivated oyster mariculture.

(b) Rules adopted under the program may establish requirements for:

(1) the location and size of a cultivated oyster mariculture operation;

(2) the taking, possession, transport, movement, and sale of cultivated oysters;

(3) the taking, possession, transport, and movement of broodstock oysters;

(4) marking structures for the cultivation of oysters in a cultivated oyster mariculture operation;

(5) fees and conditions for use of public resources, including broodstock oysters and public water; and

(6) any other matter necessary to implement and administer this chapter.

(c) The department shall coordinate with the Department of Agriculture, the Department of State Health Services, the General Land Office, and the Texas Commission on Environmental Quality in the adoption of rules under this section.

Revised Law

Sec. 5305.0202. CULTIVATED OYSTER MARICULTURE PERMIT REQUIRED. (a) A person may not engage in cultivated oyster mariculture unless the person holds a cultivated oyster mariculture permit.

(b) The commission shall adopt rules to implement this section. The rules may establish requirements for:

(1) permit applications and application fees;

(2) criteria for approving, transferring, revoking, and suspending permits; and

(3) procedures for hearings related to a permit.

1 (Parks & Wild. Code, Sec. 75.0104.)

2 Source Law

3 Sec. 75.0104. CULTIVATED OYSTER MARICULTURE
4 PERMIT REQUIRED. (a) No person may engage in
5 cultivated oyster mariculture without first having
6 acquired a cultivated oyster mariculture permit.

7 (b) The commission shall adopt rules to
8 implement this section. Rules adopted under this
9 section may establish requirements for:

10 (1) permit applications and application
11 fees;

12 (2) criteria for the approval, transfer,
13 revocation, and suspension of permits; and

14 (3) procedures for hearings related to a
15 permit.

16 Revised Law

17 Sec. 5305.0203. PLACEMENT LOCATIONS FOR CULTIVATED OYSTERS
18 ON DEPARTMENT APPROVAL. (a) A person may place a cultivated oyster
19 in a natural oyster bed, a private oyster bed, or coastal waters if
20 the department in writing authorizes the placement.

21 (b) The department shall adopt best management practices
22 for authorizing the placement of cultivated oysters under this
23 section. (Parks & Wild. Code, Sec. 75.01045.)

24 Source Law

25 Sec. 75.01045. PLACEMENT OF CULTIVATED OYSTERS
26 IN CERTAIN LOCATIONS WITH DEPARTMENT APPROVAL. (a) A
27 person may place a cultivated oyster in a natural
28 oyster bed, a private oyster bed, or coastal waters if
29 the department authorizes the placement in writing.

30 (b) The department shall adopt best management
31 practices for authorizing the placement of cultivated
32 oysters under this section.

33 Revised Law

34 Sec. 5305.0204. DEPOSITION OF FEES. (a) Except as provided
35 by Subsection (b), fees collected under this chapter shall be
36 deposited to the credit of the game, fish, and water safety account.

37 (b) The department shall set aside 20 percent of the fees
38 collected under this chapter and deposit that money to the credit of
39 the cultivated oyster mariculture cleanup subaccount. (Parks &
40 Wild. Code, Secs. 75.0105(a), (c) (part).)

41 Source Law

42 Sec. 75.0105. DEPOSIT AND USE OF FEES;
43 CULTIVATED OYSTER MARICULTURE CLEANUP SUBACCOUNT. (a)
44 Except as provided by Subsection (c), fees collected
45 under this chapter shall be deposited to the credit of

1 the game, fish, and water safety account.

2 (c) The department shall set aside 20 percent of
3 the fees collected under this chapter. That money
4 shall be deposited to the credit of the cultivated
5 oyster mariculture cleanup subaccount in the game,
6 fish, and water safety account and

7 Revised Law

8 Sec. 5305.0205. PROHIBITED ACTS. (a) Except as authorized
9 by this chapter, a person may not sell or barter, or offer to sell or
10 barter, a cultivated oyster.

11 (b) A person may not place a cultivated oyster in a natural
12 oyster bed, a private oyster bed, or coastal waters, except as
13 authorized by Section 5305.0203.

14 (c) Regardless of whether a person holds a permit under this
15 chapter, a person may not place a structure related to cultivated
16 oyster mariculture on coastal public land, as defined by Section
17 33.004, Natural Resources Code, unless the person holds a lease or
18 easement under Chapter 33 or 51, Natural Resources Code. (Parks &
19 Wild. Code, Sec. 75.0106.)

20 Source Law

21 Sec. 75.0106. PROHIBITED ACTIONS. (a) No
22 person may sell or barter, or offer to sell or barter,
23 a cultivated oyster, except as authorized by this
24 chapter.

25 (b) No person may place a cultivated oyster in a
26 natural oyster bed, a private oyster bed, or coastal
27 waters, except as authorized by Section 75.01045.

28 (c) In this subsection, "coastal public land"
29 has the meaning assigned by Section 33.004, Natural
30 Resources Code. Regardless of whether a person holds a
31 permit under this chapter, no person may place a
32 structure related to cultivated oyster mariculture on
33 coastal public land unless the person first obtains a
34 lease or easement under Chapter 33 or 51, Natural
35 Resources Code.

36 SUBCHAPTER C. COMMERCIAL OYSTER MARICULTURE ADVISORY BOARD

37 Revised Law

38 Sec. 5305.0301. DEFINITION. In this subchapter, "advisory
39 board" means the commercial oyster mariculture advisory board
40 established under this subchapter. (Parks & Wild. Code, Sec.
41 75.0108(a).)

42 Source Law

43 Sec. 75.0108. COMMERCIAL OYSTER MARICULTURE
44 ADVISORY BOARD. (a) In this section, "advisory board"

1 means the commercial oyster mariculture advisory board
2 established under this section.

3 Revised Law

4 Sec. 5305.0302. ESTABLISHMENT; COMPOSITION. (a) The
5 commercial oyster mariculture advisory board is established within
6 the department to advise all state agencies with regulatory
7 authority over the commercial oyster mariculture industry.

8 (b) The advisory board consists of seven members appointed
9 by the governor as follows:

10 (1) four members who:

11 (A) represent the commercial oyster mariculture
12 industry, seafood industry, or related industries; and

13 (B) have a documented interest in the promotion
14 of entrepreneurship, free enterprise, and the increased use,
15 consumption, marketing, and sale of native oysters in this state;
16 and

17 (2) three members who:

18 (A) represent the scientific and conservation
19 community in this state; and

20 (B) have a documented interest in the
21 sustainability of the natural coastal environment of this state.

22 (c) At least one advisory board member must be a member of
23 the department's oyster advisory workgroup. (Parks & Wild. Code,
24 Secs. 75.0108(b), (c), (d).)

25 Source Law

26 (b) The commercial oyster mariculture advisory
27 board is established within the department to advise
28 all state agencies with regulatory authority over the
29 commercial oyster mariculture industry.

30 (c) The advisory board consists of seven members
31 appointed by the governor as follows:

32 (1) four members must:

33 (A) represent the commercial oyster
34 mariculture industry, seafood industry, or related
35 industries; and

36 (B) have a documented interest in the
37 promotion of entrepreneurship, free enterprise, and
38 the increased use, consumption, marketing, and sale of
39 native oysters in this state; and

40 (2) three members must:

41 (A) represent the scientific and
42 conservation community in this state; and

43 (B) have a documented interest in the
44 sustainability of the natural coastal environment of

1 this state.

2 (d) At least one advisory board member must be a
3 member of the department's oyster advisory workgroup.

4 Revised Law

5 Sec. 5305.0303. TERMS; VACANCY. (a) Advisory board
6 members serve staggered five-year terms, with the terms of one or
7 two members expiring February 1 of each year.

8 (b) If a vacancy occurs on the advisory board, the governor
9 shall appoint a replacement who meets the qualifications for the
10 vacant position to serve for the remainder of the term. (Parks &
11 Wild. Code, Secs. 75.0108(e), (f).)

12 Source Law

13 (e) Advisory board members serve staggered
14 five-year terms, with the terms of one or two members
15 expiring February 1 of each year.

16 (f) If a vacancy occurs on the advisory board,
17 the governor shall appoint a replacement who meets the
18 qualifications for the vacant position to serve for
19 the remainder of the term.

20 Revised Law

21 Sec. 5305.0304. PRESIDING OFFICER. The governor shall
22 designate an advisory board member described by Section
23 5305.0302(b)(1) to serve as the advisory board's presiding officer
24 for a one-year term. The presiding officer may vote on any matter
25 before the advisory board. (Parks & Wild. Code, Sec. 75.0108(g).)

26 Source Law

27 (g) The governor shall designate an advisory
28 board member described by Subsection (c)(1) to serve
29 as the advisory board's presiding officer for a
30 one-year term. The presiding officer may vote on any
31 matter before the advisory board.

32 Revised Law

33 Sec. 5305.0305. REIMBURSEMENT FOR EXPENSES. Advisory board
34 members serve without compensation but are entitled to
35 reimbursement for actual and necessary expenses incurred in
36 performing official duties authorized by the office of the
37 governor. (Parks & Wild. Code, Sec. 75.0108(h).)

38 Source Law

39 (h) Advisory board members serve without
40 compensation but are entitled to reimbursement for
41 actual and necessary expenses incurred in performing
42 official duties authorized by the office of the

governor.

Revised Law

Sec. 5305.0306. POWERS AND DUTIES. (a) The advisory board shall make recommendations to the governor and all relevant agencies concerning the commercial oyster mariculture industry, including recommendations regarding:

(1) promotion of the use, consumption, marketing, and sale of maricultured oysters;

(2) promotion of sustainable commercial oyster mariculture; and

(3) commercial oyster mariculture permits and regulations.

(b) In performing the advisory board's duties under this section, the advisory board may consult with:

(1) industry and academic resources; and

(2) agencies of this state and the United States, including:

(A) the department;

(B) the General Land Office;

(C) the Department of State Health Services, including the seafood and aquatic life unit;

(D) the National Marine Fisheries Service;

(E) the United States Army Corps of Engineers;

and

(F) the United States Coast Guard. (Parks & Wild. Code, Secs. 75.0108(i), (j).)

Source Law

(i) The advisory board shall make recommendations to the governor and all relevant agencies concerning the commercial oyster mariculture industry, including recommendations regarding:

(1) the promotion of the use, consumption, marketing, and sale of maricultured oysters;

(2) the promotion of sustainable commercial oyster mariculture; and

(3) commercial oyster mariculture permits and regulations.

(j) In performing the advisory board's duties under this section, the advisory board may consult with:

(1) industry and academic resources; and

1 (2) agencies of this state and the United
2 States, including the:

- 3 (A) department;
4 (B) General Land Office;
5 (C) Department of State Health
6 Services, including the seafood and aquatic life unit;
7 (D) National Marine Fisheries
8 Service;
9 (E) United States Army Corps of
10 Engineers; and
11 (F) United States Coast Guard.

12 Revisor's Note

13 Section 75.0108(j), Parks and Wildlife Code,
14 authorizes the commercial oyster mariculture advisory
15 board to consult with certain entities in performing
16 the advisory board's duties under Section 75.0108 of
17 that code. The pertinent parts of Section 75.0108
18 relating to the advisory board's duties under that
19 section are revised as this section, and the revised
20 law is drafted accordingly.

21 Revised Law

22 Sec. 5305.0307. APPLICATION OF OTHER LAW. Chapter 2110,
23 Government Code, does not apply to the advisory board. (Parks &
24 Wild. Code, Sec. 75.0108(k).)

25 Source Law

26 (k) Chapter 2110, Government Code, does not
27 apply to the advisory board.

28 CHAPTER 5349. ENFORCEMENT

29 Revised Law

30 Sec. 5349.0101. GENERAL CRIMINAL PENALTIES. (a) A person
31 commits an offense if the person violates:

32 (1) a provision of:

33 (A) Subchapter C, Chapter 5301; or

34 (B) Subchapter A, B, C, D, E, or F, Chapter 5304;

35 or

36 (2) a commission regulation adopted under a provision
37 described by Subdivision (1).

38 (b) Except as otherwise provided by this section, an offense
39 under this section is a Class C Parks and Wildlife Code misdemeanor.

40 (c) An offense under this section related to the harvest of

1 oysters from a closed area is a Class B Parks and Wildlife Code
2 misdemeanor if it is shown on the trial of the offense that the
3 defendant has previously been convicted:

4 (1) one time for a violation of a provision or
5 regulation related to:

6 (A) the harvest of oysters from a closed area; or

7 (B) oyster size and the defendant was in
8 possession of a cargo of oysters in which 30 percent or more of the
9 oysters measured less than three inches in length along an
10 imaginary straight line through the long axis of the shell; or

11 (2) two or more times for a violation of a provision or
12 regulation related to the harvest of oysters from a closed area or
13 oyster size.

14 (d) An offense under this section related to oyster size is
15 a Class B Parks and Wildlife Code misdemeanor if:

16 (1) during the commission of the offense the defendant
17 was in possession of a cargo of oysters described by Subsection
18 (c)(1)(B) and it is shown on the trial of the offense that the
19 defendant has previously been convicted one time for a violation of
20 a provision or regulation relating to:

21 (A) the harvest of oysters from a closed area; or

22 (B) oyster size and the defendant was in
23 possession of a cargo of oysters described by Subsection (c)(1)(B);
24 or

25 (2) it is shown on the trial of the offense that the
26 defendant has previously been convicted two or more times for a
27 violation of a provision or regulation relating to the harvest of
28 oysters from a closed area or oyster size.

29 (e) An offense otherwise punishable under Subsection (b) is
30 a Class A Parks and Wildlife Code misdemeanor, with an attendant
31 license suspension under Section 5304.0606, if it is shown on the
32 trial of the offense that:

33 (1) the provision or regulation violated relates to:

34 (A) the harvest of oysters from a closed area; or

1 (B) oyster size and the defendant was in
2 possession of a cargo of oysters described by Subsection (c)(1)(B);

3 (2) the defendant is the captain or a crew member of a
4 commercial oyster boat; and

5 (3) the defendant has previously been convicted two or
6 more times for a violation of a provision or regulation related to:

7 (A) the harvest of oysters from a closed area; or

8 (B) oyster size and the defendant during both
9 offenses was in possession of a cargo of oysters described by
10 Subsection (c)(1)(B).

11 (f) An offense under this section for a violation of a
12 commission regulation adopted under Section 5301.0301, 5304.0101,
13 5304.0104, 5304.0201, 5304.0301, 5304.0401, 5304.0404, 5304.0503,
14 or 5304.0601 is a Class B Parks and Wildlife Code misdemeanor.

15 (g) Subject to Subsections (h) and (j), an offense under
16 this section for a violation of Section 5301.0301, 5304.0101,
17 5304.0104, 5304.0201, 5304.0301, 5304.0401, 5304.0404, 5304.0503,
18 or 5304.0601 is a Class B Parks and Wildlife Code misdemeanor,
19 except that the offense is a Class A Parks and Wildlife Code
20 misdemeanor if it is shown on the trial of the offense that, during
21 the five-year period preceding the trial date of the offense, the
22 defendant has previously been convicted one time of a violation of
23 one of those sections.

24 (h) An offense under this section for a violation of Section
25 5301.0301 and either Section 5301.0303 or 5301.0304 in the same
26 criminal episode is a Class A Parks and Wildlife Code misdemeanor,
27 except that the offense is a Parks and Wildlife Code felony if it is
28 shown on the trial of the offense that, during the five-year period
29 preceding the trial date of the offense, the defendant has
30 previously been convicted one time of a violation of Section
31 5301.0301 and either Section 5301.0303 or 5301.0304 in the same
32 criminal episode.

33 (i) An offense under this section for a violation of Section
34 5301.0304 is a Parks and Wildlife Code state jail felony if it is

1 shown on the trial of the offense that, during the five-year period
2 preceding the trial date of the offense, the defendant has
3 previously been convicted one time of a violation of that section.

4 (j) An offense under this section for a violation of Section
5 5301.0301, 5301.0304, 5304.0101, 5304.0104, 5304.0201, 5304.0301,
6 5304.0401, 5304.0404, 5304.0503, or 5304.0601 is a Parks and
7 Wildlife Code felony if it is shown on the trial of the offense
8 that, during the five-year period preceding the trial date of the
9 offense, the defendant has previously been convicted two or more
10 times of a violation of one or more of those sections.

11 (k) Each day of a continuing violation is a separate
12 offense.

13 (l) It is a defense to prosecution under this section for a
14 violation of a statute or regulation relating to oyster size that
15 the defendant:

16 (1) purchased oysters from the captain or a crew
17 member of a commercial oyster boat; and

18 (2) was in possession of a cargo of oysters in which
19 less than 30 percent of the oysters measured less than three inches
20 in length along an imaginary straight line through the long axis of
21 the shell. (Parks & Wild. Code, Sec. 76.118.)

22 Source Law

23 Sec. 76.118. PENALTIES. (a) Except as provided
24 in Subsections (b), (c), (e-2), and (e-3), a person who
25 violates a provision of this subchapter or a
26 regulation of the commission issued under this
27 subchapter commits an offense that is a Class C Parks
28 and Wildlife Code misdemeanor.

29 (b) A person who violates Section 76.101,
30 76.107, or 76.109 or a regulation of the commission
31 issued under one of those sections commits an offense
32 that is a Class B Parks and Wildlife Code misdemeanor.

33 (c) A person who violates Sections 76.109 and
34 either Section 76.115 or 76.116 in the same criminal
35 episode commits an offense that is a Class A Parks and
36 Wildlife Code misdemeanor.

37 (d) Each day of a continuing violation
38 constitutes a separate offense.

39 (e) If it is shown at the trial of a defendant
40 for a violation of Section 76.101, 76.107, or 76.109
41 that the defendant has been convicted once within five
42 years before the trial date of a violation of Section
43 76.101, 76.107, or 76.109, the defendant is guilty of a
44 Class A Parks and Wildlife Code misdemeanor.

45 (e-1) If it is shown at the trial of a defendant

1 for a violation of Section 76.116 that the defendant
2 has been convicted once within five years before the
3 trial date of a violation of Section 76.116, the
4 defendant is guilty of a Parks and Wildlife Code state
5 jail felony.

6 (e-2) An offense related to oyster size or the
7 harvest of oysters from a closed area is a Class B
8 Parks and Wildlife Code misdemeanor if it is shown on
9 the trial of the offense that the defendant has
10 previously been convicted at least twice for a
11 violation of a provision or regulation relating to
12 oyster size or the harvest of oysters from a closed
13 area.

14 (e-3) An offense during the commission of which
15 the defendant was in possession of a cargo of oysters
16 in which 30 percent or more of the oysters measured
17 less than three inches in length along an imaginary
18 straight line through the long axis of the shell or an
19 offense related to the harvest of oysters from a closed
20 area is a Class B Parks and Wildlife Code misdemeanor,
21 if it is shown on the trial of the offense that the
22 defendant has previously been convicted one time for a
23 violation of a provision or regulation relating to:

24 (1) oyster size and the defendant was in
25 possession of a cargo of oysters in which 30 percent or
26 more of the oysters measured less than three inches in
27 length along an imaginary straight line through the
28 long axis of the shell; or

29 (2) the harvest of oysters from a closed
30 area.

31 (e-4) The punishment for an offense otherwise
32 punishable under Subsection (a) is a Class A Parks and
33 Wildlife Code misdemeanor, with an attendant license
34 suspension under Section 76.1181, if it is shown on the
35 trial of the offense that:

36 (1) the defendant is the captain of a
37 commercial oyster boat or a member of the crew of a
38 commercial oyster boat;

39 (2) the provision or regulation violated
40 relates to:

41 (A) oyster size and the defendant was
42 in possession of a cargo of oysters in which 30 percent
43 or more of the oysters measured less than three inches
44 in length along an imaginary straight line through the
45 long axis of the shell; or

46 (B) the harvest of oysters from a
47 closed area; and

48 (3) the defendant has previously been
49 convicted at least two times for a violation of a
50 provision or regulation relating to:

51 (A) oyster size and the defendant
52 during both offenses was in possession of a cargo of
53 oysters in which 30 percent or more of the oysters
54 measured less than three inches in length along an
55 imaginary straight line through the long axis of the
56 shell; or

57 (B) the harvest of oysters from a
58 closed area.

59 (e-5) It is a defense to prosecution under
60 Subsection (a) for a violation of a statute or
61 regulation adopted relating to oyster size that the
62 defendant is a person who purchased oysters from the
63 captain or a member of the crew of a commercial oyster
64 boat and the purchaser was in possession of a cargo of
65 oysters in which less than 30 percent of the oysters
66 were less than three inches in length along an
67 imaginary straight line through the long axis of the
68 shell.

1 (f) If it is shown at the trial of a defendant
2 for a violation of Section 76.101, 76.107, 76.109, or
3 76.116 of this code that the defendant has been
4 convicted two or more times within five years before
5 the trial date of a violation of Section 76.101,
6 76.107, 76.109, or 76.116 of this code, the defendant
7 is guilty of a Parks and Wildlife Code felony.

8 (g) If it is shown on the trial of a defendant
9 for a violation of Section 76.109 and either Section
10 76.115 or 76.116 occurring in the same criminal
11 episode that the defendant has been convicted once
12 before within five years before the trial date of a
13 violation of Section 76.109 and either Section 76.115
14 or 76.116 occurring in the same criminal episode, the
15 defendant is guilty of a Parks and Wildlife Code
16 felony.

17 Revisor's Note

18 Section 76.118(a), Parks and Wildlife Code,
19 creates an offense for a violation of a provision of
20 Subchapter C, Chapter 76, of that code or a regulation
21 adopted by the Parks and Wildlife Commission under
22 that subchapter. Subchapter C is revised in pertinent
23 part in this code as Subchapter C, Chapter 5301, and
24 Subchapters A, B, C, D, E, and F, Chapter 5304, and the
25 revised law is drafted accordingly.

26 Revised Law

27 Sec. 5349.0102. CRIMINAL PENALTIES RELATED TO OYSTER
28 PERMITS. (a) A person commits an offense if the person violates
29 Chapter 5303 or a commission regulation adopted under that chapter.

30 (b) Except as otherwise provided by this section, an offense
31 under this section is a Class C Parks and Wildlife Code misdemeanor.

32 (c) Except as otherwise provided by this section, an offense
33 under this section for a violation of Section 5303.0301 or
34 5303.0302 is a Class B Parks and Wildlife Code misdemeanor.

35 (d) If it is shown on the trial of the offense that, during
36 the five-year period preceding the trial date of the offense, the
37 defendant has previously been convicted one time of a violation of
38 Section 5303.0301 or 5303.0302, the offense is a Class A Parks and
39 Wildlife Code misdemeanor.

40 (e) If it is shown on the trial of the offense that, during
41 the five-year period preceding the trial date of the offense, the
42 defendant has previously been convicted two or more times of a

violation of Section 5303.0301 or 5303.0302, the offense is a Parks and Wildlife Code felony. (Parks & Wild. Code, Sec. 76.040.)

Source Law

Sec. 76.040. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a regulation adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 76.037 or Section 76.038 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that he has been convicted once within five years before the trial date of a violation of Section 76.037 or 76.038 of this code, he is guilty of a Class A Parks and Wildlife Code misdemeanor.

(d) If it is shown at the trial of the defendant that he has been convicted two or more times within five years before the trial date of a violation of Section 76.037 or 76.038 of this code, he is guilty of a Parks and Wildlife Code felony.

Revisor's Note

Section 76.040(a), Parks and Wildlife Code, creates an offense for a violation of a provision of Subchapter B, Chapter 76, of that code or a regulation adopted by the Parks and Wildlife Commission under that subchapter. Subchapter B is revised in pertinent part as Chapter 5303 of this code, and the revised law is drafted accordingly.

Revised Law

Sec. 5349.0103. CRIMINAL PENALTIES RELATED TO CULTIVATED OYSTER MARICULTURE. (a) In this section, "final conviction" includes:

(1) the imposition of deferred adjudication community supervision or deferred disposition;

(2) a plea of guilty; or

(3) a plea of nolo contendere.

(b) A person commits an offense if the person violates:

(1) Section 5305.0202(a) or 5305.0205; or

(2) a rule adopted under Chapter 5305.

(c) An offense under Subsection (b)(1) is a Class B Parks and Wildlife Code misdemeanor, except that the offense is a Class A

1 Parks and Wildlife Code misdemeanor if it is shown on the trial of
2 the offense that, during the five-year period preceding the trial
3 date of the offense, the defendant has previously been convicted of
4 an offense under Subsection (b)(1).

5 (d) An offense under Subsection (b)(2) is a Class C Parks
6 and Wildlife Code misdemeanor, except that the offense is a Class B
7 Parks and Wildlife Code misdemeanor if it is shown on the trial of
8 the offense that, during the five-year period preceding the trial
9 date of the offense, the defendant has previously been convicted
10 two or more times of an offense under Subsection (b)(2).

11 (e) If conduct constituting an offense under this section
12 also constitutes an offense under Section 33.112, Natural Resources
13 Code, the actor may be prosecuted under this section, Section
14 33.112, Natural Resources Code, or both. (Parks & Wild. Code, Sec.
15 75.0107.)

16 Source Law

17 Sec. 75.0107. PENALTIES. (a) For purposes of
18 this section, "final conviction" includes a plea of
19 guilty or nolo contendere to or the imposition of
20 deferred adjudication or deferred disposition for an
21 offense.

22 (b) A person commits an offense if the person
23 violates:

24 (1) Section 75.0104(a) or 75.0106; or

25 (2) a rule adopted under this chapter.

26 (b-1) An offense under Subsection (b)(1) is a
27 Class B Parks and Wildlife Code misdemeanor, except
28 that the offense is a Class A Parks and Wildlife Code
29 misdemeanor if it is shown on the trial of the offense
30 that the defendant has been previously convicted of an
31 offense under Subsection (b)(1) during the five-year
32 period preceding the date of the trial of the current
33 offense.

34 (b-2) An offense under Subsection (b)(2) is a
35 Class C Parks and Wildlife Code misdemeanor, except
36 that the offense is a Class B Parks and Wildlife Code
37 misdemeanor if it is shown on the trial of the offense
38 that the defendant has been previously convicted of an
39 offense under Subsection (b)(2) two or more times
40 during the five-year period preceding the date of the
41 trial of the current offense.

42 (c) If conduct constituting an offense under
43 this section also constitutes an offense under Section
44 33.112, Natural Resources Code, the actor may be
45 prosecuted under this section, Section 33.112, Natural
46 Resources Code, or both.

47 Revisor's Note

48 Section 75.0107(a), Parks and Wildlife Code,

1 refers to the imposition of "deferred adjudication."
2 The revised law substitutes "deferred adjudication
3 community supervision" for "deferred adjudication"
4 for the reasons stated in Revisor's Note (2) to Section
5 5159.0501.

6 Revised Law

7 Sec. 5349.0104. CRIMINAL PENALTY FOR CERTAIN PROCLAMATION
8 VIOLATIONS. (a) A person commits an offense if the person violates
9 a proclamation issued under Section 5301.0201 or 5304.9801.

10 (b) An offense under this section is a Class C Parks and
11 Wildlife Code misdemeanor. (Parks & Wild. Code, Sec. 76.301(f).)

12 Source Law

13 (f) A person who violates a proclamation issued
14 under this subchapter commits an offense that is a
15 Parks and Wildlife Code Class C misdemeanor.

16 Revisor's Note

17 Section 76.301(f), Parks and Wildlife Code,
18 creates an offense for a violation of a proclamation
19 issued under Subchapter E, Chapter 76, of that code.
20 The pertinent parts of Subchapter E authorizing the
21 issuance of a proclamation are revised as Sections
22 5301.0201 and 5304.9801, and the revised law is
23 drafted accordingly.

24 Revised Law

25 Sec. 5349.0105. RESPONSIBILITY FOR VIOLATION INVOLVING
26 COMMERCIAL OYSTER BOAT. (a) If a vessel licensed as a commercial
27 oyster boat is involved in a violation of Chapter 5301, 5302, 5303,
28 or 5304, the captain of the vessel is primarily responsible for the
29 violation.

30 (b) Except as otherwise provided by this subsection, a crew
31 member of a vessel licensed as a commercial oyster boat involved in
32 a violation of Chapter 5301, 5302, 5303, or 5304 is not guilty of
33 the violation unless the crew member committed the violation
34 against the captain's orders. Each person on the vessel is
35 responsible for a violation of Section 5301.0301, 5301.0302(a), or

1 5301.0304.

2 (c) The owner of a vessel licensed as a commercial oyster
3 boat involved in a violation of Chapter 5301, 5302, 5303, or 5304 is
4 not guilty of the violation unless the owner knowingly directed,
5 authorized, permitted, agreed to, aided, or acquiesced in the
6 violation. (Parks & Wild. Code, Secs. 76.119(a), (b).)

7 Source Law

8 Sec. 76.119. RESPONSIBILITY FOR VIOLATION. (a)
9 If a vessel licensed as a commercial oyster boat is
10 involved in a violation of this chapter, the captain of
11 the vessel licensed as a commercial oyster boat is
12 primarily responsible for the violation. A member of
13 the crew of a vessel licensed as a commercial oyster
14 boat is not guilty of a violation unless the member of
15 the crew committed the violation against the captain's
16 orders, except for a violation of Section 76.109,
17 76.112, or 76.116, in which case each person on the
18 vessel is responsible for the violation.

19 (b) The owner of a vessel licensed as a
20 commercial oyster boat involved in a violation of this
21 chapter is not guilty of the violation unless the owner
22 knowingly directed, authorized, permitted, agreed to,
23 aided, or acquiesced in the violation.

24 Revisor's Note

25 Section 76.119, Parks and Wildlife Code, refers
26 to a commercial oyster boat that is involved in a
27 violation of Chapter 76 of that code. The pertinent
28 parts of Chapter 76 are revised as Chapters 5301, 5302,
29 5303, and 5304 of this code, and the revised law is
30 drafted accordingly.

31 Revised Law

32 Sec. 5349.0106. LIMITATION ON PROSECUTION OF OFFENSE
33 INVOLVING TAKING OYSTERS FROM OYSTER PERMIT HOLDER'S BED. A person
34 may not be prosecuted for taking oysters from an oyster permit
35 holder's bed unless the boundaries are established and maintained
36 as provided by Section 5303.0202. (Parks & Wild. Code, Sec.
37 76.036(b).)

38 Source Law

39 (b) No person may be prosecuted for taking
40 oysters from the bed of a permittee unless the
41 boundaries are established and maintained as provided
42 in this section.

Revisor's Note

(1) Section 76.036(b), Parks and Wildlife Code, refers to a "permittee." The revised law substitutes "permit holder" for "permittee" for the reasons stated in the revisor's note to Section 5303.0105. Additionally, the revised law clarifies that the permit is an "oyster" permit because it is clear from the context that the referenced permit is an oyster permit issued under Subchapter B, Chapter 76, of that code, revised in pertinent part as Chapter 5303.

(2) Section 76.036(b), Parks and Wildlife Code, prohibits a person from being prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided by Section 76.036. The pertinent part of Section 76.036 is revised as Section 5303.0202, and the revised law is drafted accordingly.