

AUTHORITYNOTE: Promulgated in accordance with R.S. 56:6 and R.S. 56:435.1.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 37:3065 (October 2011), amended LR 38:2567 (October 2012).

### §535. Alternative Oyster Culture Permits

A. Definitions. For purposes of this Section, the following terms shall have the following meanings.

*Alternative Oyster Culture Activity* or *AOC Activity*—any on-bottom, off-bottom, or other means of cultivating or growing oysters other than directly on reefs or other water bottoms, including but not limited to the use of on-bottom cages or bags or floating, suspended, or otherwise off-bottom cages or bags, and includes the harvesting of oysters so grown or cultivated.

*Alternative Oyster Culture Permit, AOC Permit, or Permit*—permit authorizing AOC activity, as authorized by R.S. 56:431.2, unless otherwise specifically provided.

*Alternative Oyster Culture Permittee, AOC Permittee, or Permittee*—person to whom an AOC permit has been issued or transferred, unless otherwise specifically provided.

*Oyster Lease* or *Lease*—oyster bedding ground lease of state water bottoms, or renewal thereof, pursuant to R.S. 56:427 or 428.

*Secretary*—secretary of the Department of Wildlife and Fisheries or his designee.

B. Permits. The secretary may issue alternative oyster culture activity permits in accordance with R.S. 56:431.2 and this rule.

1. Authorized Activity. An AOC permit authorizes the permittee and, upon written authorization by the permittee, any authorized user of the permit to engage in the AOC activities specified in the permit on the permit area. The permittee, any authorized user, and any laborer, deckhand, or other person working under the direction of a permittee or authorized user may engage in such activities on the water bottoms, in the water column, and on the water surface above the water bottoms within the permit area, to the extent specified in the permit, and in accordance with the provisions of R.S. 56:431.2 and this rule.

2. Term. An AOC permit is valid for 10 years or until termination of the oyster lease containing the permitted area (including any renewal thereof) to which the permit pertains, whichever occurs first. If the lease is renewed pursuant to R.S. 56:428, the permit shall continue in effect until expiration of the 10-year term. All permits shall expire December 31 of the last year of the permitted term.

3. Transfer. An AOC permit is transferrable only with the transfer of the lease containing the permitted area, and only to the transferee of the lease. If the lease is transferred, the permit shall automatically terminate on the effective date of the transfer of the lease unless the permit is transferred simultaneously with the transfer of the lease. If the lease is transferred by succession, the permit shall be presumed to have been transferred with the lease unless the transferee of

the lease surrenders the permit to the department. Under no circumstances may the permittee be any person other than the lessee of the lease containing the permitted area. Wherever the term “permittee” is used in a permit or this rule, it includes any transferee of that permit unless the context clearly requires otherwise. The department will charge the transferee a fee of \$10 per permit for transfer of a permit.

4. Authorized Users. An AOC permittee may authorize any person holding a valid oyster harvester license pursuant to R.S. 56:303.6 and a valid commercial fisherman's license pursuant to R.S. 56:303 to engage in permitted AOC activities on the permit area. Any such authorization shall be in writing. Laborers, deckhands, and other persons working under the direction of a permittee or authorized user do not themselves need a permit or authorization. Wherever the term “permittee” is used in a permit or this rule, it includes any authorized user of that permit unless the context clearly requires otherwise.

5. Permit Availability. Persons engaged in AOC activities must show the permit upon demand to a duly authorized agent of the department. Authorized users engaged in AOC activities must also show the written authorization upon demand to a duly authorized agent of the department.

6. Permit Fee. The fee for an AOC permit is \$2 per acre or fraction of an acre, per year (or fraction of a year through December 31, for the first year).

a. AOC permit fee notices will be mailed to AOC permittees at least 30 days in advance of the due date, which is January 1 of each year.

b. During the first week of February of each year, the department will compile a list of AOC permits that are in default. After compiling the list, each AOC permittee will be notified by certified mail that his permit is in default and will be canceled if payment is not received by March 31.

7. Hours of Operation. No person shall conduct AOC activities between the hours of one-half hour after sunset and one-half hour before sunrise.

#### 8. Compliance with Other Laws

a. The permittee shall comply with all other applicable laws, regulations, and orders, including but not limited to those pertaining to oyster leases, oyster fishing, fisheries closures, coastal use permits, and obstruction to navigation, construction, wetlands, dredge, or fill permits.

b. With respect to any oysters grown, harvested, or otherwise present in or removed from the permit area, the permittee shall comply with all requirements that would be applicable under any law, regulation, or order if the oysters had been grown on the water bottom, unless otherwise provided in R.S. 56:431.2 or this rule.

9. Amendment. Upon application by the permittee, an AOC permit may be amended by the secretary, subject to the same requirements for and discretion of the secretary regarding an original permit application. The application for

the amendment shall specify all respects in which the permit is sought to be amended. A new plat and schematics shall be provided, if the permitted acreage or location or extent of permitted facilities is sought to be amended. A greater or lesser removal bond may be required, if the types or extent of the permitted AOC activities, facilities, or equipment are sought to be amended. The original term of the permit cannot be amended.

10. Termination. An AOC permit is terminable by the secretary:

a. upon conviction or guilty plea to a significant violation or repeated violations of the permit, or a Class 4 or greater oyster-related violation as defined in the laws pertaining to wildlife and fisheries, by the permittee or anyone authorized by the permittee to engage in AOC activities on the permitted area;

b. for failure to pay the annual permit fee by March 31;

c. for provision of false information in relation to the permit or the application for the permit; or

d. upon the permittee's surrender of the permit to the department.

11. Removal of Equipment. The AOC permittee shall remove all equipment, facilities, and other items used for AOC activities from the permit area within 120 days after termination, cancellation, or expiration of the AOC permit. However, the department may allow facilities or portions thereof (such as pilings below the surface of the water bottoms) to remain if authorized in writing by the Department of Natural Resources and the U.S. Army Corps of Engineers and in accordance with any such permission. The department will allow additional time for completion of removal activities during the pendency of a request for such authorization, and may also allow additional time due to extenuating circumstances upon written request by the permittee.

### C. Applications

1. Eligibility. Applications for an AOC permit shall be accepted by the department only from persons who meet the eligibility requirements provided in R.S. 56:431.2 and this rule.

a. An AOC permit may be issued only to a leaseholder holding a valid oyster lease of state water bottoms pursuant to R.S. 56:427 or 428, and only for the state water bottoms leased pursuant to that lease.

b. No AOC permit may be issued to an applicant who has been convicted of or pled guilty to a class 4 or greater oyster-related violation, as defined in the laws pertaining to wildlife and fisheries, within three years prior to the submission of the application.

2. Appearance. An applicant must appear in person at the department's Oyster Lease Survey Section office in order to apply for an AOC permit, or provide power of attorney to an agent to appear and act on the applicant's behalf.

### 3. Forms and Required Information and Materials

a. Applications shall be accepted by the department only on forms supplied by the department, which shall include at a minimum:

i. name, physical address, mailing address, telephone number, and if applicable, email address of the applicant;

ii. commercial fisherman license number and oyster harvester license number of the applicant;

iii. lessee name and lease number of the oyster lease where the applicant seeks to engage in AOC activities;

iv. description of all AOC activities sought to be permitted;

v. description of all equipment or gear sought to be permitted and the quantities thereof; and

vi. description of all facilities sought to be permitted.

b. The applicant shall outline on a department map the area sought to be permitted, and the location and horizontal and vertical physical extent of all AOC activities and related facilities sought to be permitted.

c. The applicant shall submit one application per permit sought. The secretary or his designee may grant more than one permit per lease and more than one permit per leaseholder, but permit areas cannot overlap and cannot extend across lease boundaries.

d. The applicant shall submit all other local, state, and federal permits necessary for the activity authorized by the AOC permit, specifically including state coastal use permits (R.S. 49:214.30), federal obstruction to navigation section 10 (33 U.S.C. § 403) and section 9 (33 U.S.C. § 401) permits, Clean Water Act section 404 fill permits (33 U.S.C. § 1344), and state water quality certification (33 U.S.C. § 1341); or documentation from the relevant agencies establishing that such permits are unnecessary.

e. The applicant shall submit a cost estimate to remove and properly dispose of all equipment, facilities, and other items sought to be permitted. The cost estimate must be prepared by a contractor with no familial or business relationship with the applicant and with all licenses necessary to provide such services.

f. The department may request the applicant to submit additional information or documentation.

g. The application for an AOC permit shall be accompanied by an application fee of \$100.

h. The application shall be deemed complete only upon receipt by the department of all information and documentation required by this rule, including any additional information or documentation required by the department. The secretary will consider only a complete application.

4. Plat. Prior to issuance of an AOC permit, the applicant shall submit to the department a plat meeting department specifications.

a. The plat shall comply with the following.

i. All corners of the lease and the proposed AOC permit area shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.

ii. All corners of the proposed facilities and equipment shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.

iii. Plats shall be drawn in black ink on standard oyster lease plats furnished by the Oyster Lease Survey Section, and the original shall become the property of same. The applicant shall provide a formatted ASCII file of the coordinates for each corner on the plat that complies with the Oyster Lease Survey Section's geographic information system. The plat shall contain the applicant's name, license number, and signature.

iv. The exact acreage sought to be permitted shall be shown on the plat, but for all purposes pertaining to the permit the acreage, even though calculated to the hundredth of acre, shall be rounded up to the next highest acre.

v. Application number and the applicant's name and lease number shall be shown on all plats as indicated on the original application.

vi. Use standard signs and symbols.

b. The plat shall include or be accompanied by a plot plan and schematics clearly showing the nature, location, and physical extent of all AOC activities sought to be permitted within the permit area, horizontally and vertically, and all facilities and equipment sought to be placed therein or used pursuant to the permit.

5. Investigation of State Water Bottoms. No AOC permit may be issued unless a reasonable investigation into the question of ownership is complete and, based on the findings, a determination is made that the State owns the water bottom to be covered by the AOC permit.

6. The department shall post notice of the application and a point of contact for comment on the department website, and provide such notice by email to all persons who have requested such notification in writing, at least 15 days prior to acting on the application.

7. Provision of insufficient or false information. Failure to provide information required by the department, after 30-day notification from the department by certified mail, or provision of false information, shall result in cancellation of the application and forfeiture of all fees to the department.

8. Initial Annual Fee. Upon issuance of the AOC permit, the permittee shall pay the first annual permit fee, which is \$2 per acre or fraction of an acre permitted.

D. Discretionary Provisions. The secretary shall have discretion with respect to the following provisions in any AOC permit.

1. Permitted Activities. The secretary may issue AOC permits specifying particular AOC activities that are authorized thereby, regardless of whether the AOC permit as issued deviates from the application. The types of AOC activities that may be permitted are:

a. on-bottom cages, racks, or bags;

b. off-bottom cages, racks, or bags, suspended by poles or floats;

c. string or longline culture;

d. any other AOC activity as approved by the secretary in the permit.

2. Permitted Species. Unless otherwise specifically authorized by the secretary in the permit, AOC activities may be performed using only *Crassostrea virginica* (including all subspecies thereof or triploid *Crassostrea virginica*) from the Gulf of Mexico. However, the permittee shall obtain a disease certification issued by a competent biologist and approved by the department for all oysters, including seed or spat, sourced from any location outside the State of Louisiana.

3. Permit Area. The secretary may issue AOC permits in numbers, locations, sizes, and configurations specified by the secretary, regardless of whether the AOC permit as issued deviates from the application, except:

a. no permit area may extend beyond the boundaries of an existent oyster lease;

b. no permit area may exceed 2,000 feet in length or width;

c. permit areas must be separated by at least 100 feet;

d. no AOC permit may authorize AOC activities in an area that is any of the following at the time the AOC permit is issued:

i. designated by the United States Army Corps of Engineers as a navigation channel or waterway or within 1,500 feet of the centerline of such a channel or waterway;

ii. covered by a coastal use permit or drilling permit for fixed items such as wellheads, pipelines, access channels, wharves, docks, piers, or mooring dolphins, or located within 1,500 feet of the outside of the exterior boundaries of an area covered by such a coastal use permit or drilling permit;

iii. designated for dredging, direct placement of dredged or other materials, or other work or activities for the construction or maintenance of a project for integrated coastal protection or within 1,500 feet of the outside of the exterior boundaries of an area designated for such dredging, direct placement, or other work or activities;

iv. located on land, or on water bottoms that are not claimed by the state of Louisiana, as determined by the State Land Office; or

v. otherwise determined by the department to be unsuitable or inappropriate for AOC activities. In making this determination, the department shall use the suitability mapping required by R.S. 56:431.2, any update or revision to the initial suitability mapping, any master plan or annual plan issued pursuant to R.S. 49:214.5.3, and any other information and data deemed relevant by the department, to identify areas that are unsuitable or inappropriate for AOC activities due to creation of unreasonable conflicts with other existing or anticipated uses of state waters and water bottoms. The department shall also consider the location and nature of existing AOC permits;

d. the permit area shall be located and configured so as to avoid unreasonable interference with surface navigation, passage by water craft, and any other authorized public use;

e. no fencing shall be allowed.

4. Equipment. The secretary may specify or impose limitations in the permit regarding the equipment and materials authorized or required to be used for AOC activities.

a. All equipment and materials used for AOC activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal fishing laws and regulations, as amended from time to time.

b. The secretary may impose additional requirements or limitations on equipment and materials usable or used for AOC activities from time to time.

c. Any equipment and materials used for AOC activities authorized pursuant to this Section may be transported or used in compliance with the provisions of this Section.

5. Marking. The secretary may specify or impose requirements in the permit for marking, lighting, or warning devices authorized or required in relation to AOC activities.

a. Marking, lighting, and warning devices for AOC activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal laws and regulations, as amended from time to time.

b. All areas where such equipment or materials are present on state water bottoms or in the water column shall be clearly marked. At a minimum, the AOC permittee shall comply at all times with the following requirements.

i. The AOC permittee shall place and maintain markers along the boundaries of the permit area, at intervals of 75 feet, between 3 and 12 feet above the water level.

ii. The AOC permittee shall place and maintain markers along the boundaries of the areas where AOC

facilities or equipment are actually located, at intervals of 20 feet, between 3 and 12 feet above the water level.

iii. The AOC permittee shall place and maintain buoys conforming to United States Coast Guard markings at all corners of the permit area and the areas where AOC equipment or facilities are actually located, and midway between the corners if separated by more than 1000 feet.

c. Each buoy, each main cage, bag, or float, and each structure used for AOC activities shall contain an indelible and permanent tag that includes the AOC permit number.

6. Reporting. The secretary may impose requirements in the permit for the AOC permittee to report information or data to enable the department to monitor the activities under the AOC permit or to study such activities and their results. Such information is not privileged and may be disseminated to the public.

7. Removal Bond. The secretary may require an AOC permittee to post a reasonable surety bond in an amount to be determined by the department, commensurate with the anticipated cost to remove and properly dispose of all permitted equipment, facilities, and other items. In determining the amount of the bond, the department shall consider but is not bound by the cost estimate for removal provided by the applicant, and shall take into account reasonably-anticipated cost increases through the term of the permit and any other relevant information.

E. Mandatory Provisions. The secretary shall include the following provisions in any AOC permit.

1. "This permit is terminable by the department upon significant or repeated violation of the permit or any applicable statutes, rules, or regulations by the permittee or anyone authorized by the permittee to engage in AOC activities on the permitted area."

2. "The permittee hereby indemnifies and holds harmless the State of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof against and from any claim arising as a result of operations by or for the permittee pursuant to this permit."

3. "The permittee and anyone using this permit hereby holds the State of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof harmless from any claims arising under or as a result of the issuance of this permit in relation to diversions of fresh water or sediment, dredging or direct placement of dredged or other materials, any other actions taken for the purpose of integrated coastal protection, or adverse effects on water quality, including but not limited to increased sedimentation or eutrophication or fluctuations in salinity or pH."

4. "The permittee shall remove and properly dispose of all equipment, facilities, and other items used for alternative oyster culture activities within 120 days after

termination, cancellation, or expiration of the permit, unless otherwise authorized by the department.”

#### F. Office Procedures

1. Copy Fees. A fee for all maps, leases, plats or documents, will be charged, as set forth at LAC 76:VII.501.E, as such fees may change from time to time.

#### G. Enforcement

1. Violation of an AOC permit, including conducting any AOC activity that is not expressly authorized by a permit, is a class 3 violation, as defined in R.S. 56:33.

2. Theft of or intentionally causing damage to properly permitted alternative oyster culture equipment or oysters contained in such equipment is a class 4 violation, as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:431.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:516 (March 2013).

### §537. Establishment of Recreational Reef Sites and Restriction of Oyster Harvest

A. The Wildlife and Fisheries Commission hereby establishes the following recreational reef sites as that area within the following coordinates (North America Datum 1983):

#### 1. California Point—Plaquemines Parish:

- a. 29 degrees 29 minutes 08.86 seconds N,  
89 degrees 29 minutes 11.15 seconds W;
- b. 29 degrees 29 minutes 08.63 seconds N,  
89 degrees 28 minutes 54.46 seconds W;
- c. 29 degrees 28 minutes 54.02 seconds N,  
89 degrees 28 minutes 54.73 seconds W;
- d. 29 degrees 28 minutes 54.25 seconds N,  
89 degrees 29 minutes 11.42 seconds W;

#### 2. Bay Ronquille—Plaquemines Parish:

- a. 29 degrees 20 minutes 04.46 seconds N,  
89 degrees 50 minutes 33.38 seconds W;
- b. 29 degrees 20 minutes 04.54 seconds N,  
89 degrees 50 minutes 39.29 seconds W;
- c. 29 degrees 20 minutes 07.96 seconds N,  
89 degrees 50 minutes 40.22 seconds W;
- d. 29 degrees 20 minutes 09.09 seconds N,  
89 degrees 50 minutes 44.75 seconds W;
- e. 29 degrees 20 minutes 01.34 seconds N,  
89 degrees 50 minutes 44.21 seconds W;

- f. 29 degrees 20 minutes 01.59 seconds N,  
89 degrees 50 minutes 41.69 seconds W;
- g. 29 degrees 19 minutes 50.07 seconds N,  
89 degrees 50 minutes 38.19 seconds W;
- h. 29 degrees 19 minutes 53.35 seconds N,  
89 degrees 50 minutes 34.71 seconds W;
- i. 29 degrees 19 minutes 52.76 seconds N,  
89 degrees 50 minutes 34.16 seconds W;
- j. 29 degrees 20 minutes 02.34 seconds N,  
89 degrees 50 minutes 24.99 seconds W;
- k. 29 degrees 20 minutes 05.37 seconds N,  
89 degrees 50 minutes 31.18 seconds W;

#### 3. St. Tammany East—St. Tammany Parish:

- a. 30 degrees 13 minutes 48.36 seconds N,  
89 degrees 57 minutes 15.24 seconds W;
- b. 30 degrees 13 minutes 48.36 seconds N,  
89 degrees 56 minutes 27.24 seconds W;
- c. 30 degrees 13 minutes 06.36 seconds N,  
89 degrees 56 minutes 27.24 seconds W;
- d. 30 degrees 13 minutes 06.36 seconds N,  
89 degrees 57 minutes 15.24 seconds W;

#### 4. St. Tammany West—St. Tammany Parish:

- a. 30 degrees 18 minutes 41.88 seconds N,  
90 degrees 09 minutes 24.00 seconds W;
- b. 30 degrees 18 minutes 41.88 seconds N,  
90 degrees 08 minutes 36.00 seconds W;
- c. 30 degrees 17 minutes 59.88 seconds N,  
90 degrees 08 minutes 36.00 seconds W;
- d. 30 degrees 17 minutes 59.88 seconds N,  
90 degrees 09 minutes 24.00 seconds W;

#### 5. St. Tammany Pier—St. Tammany Parish:

- a. 30 degrees 12 minutes 28.34 seconds N,  
89 degrees 47 minutes 54.03 seconds W;
- b. 30 degrees 12 minutes 27.96 seconds N,  
89 degrees 47 minutes 53.57 seconds W;
- c. 30 degrees 12 minutes 20.66 seconds N,  
89 degrees 48 minutes 01.30 seconds W;
- d. 30 degrees 12 minutes 21.03 seconds N,  
89 degrees 48 minutes 01.76 seconds W;

#### 6. North Shore—St. Tammany Parish: