

§424. Taking of oysters

A.(1) No person shall take oysters from any of the waters of the state or have such oysters in possession except in accordance with rules and regulations promulgated by the commission. For the purpose of this Subpart, all oysters in possession of any person in the state shall be deemed to be oysters taken from the waters of the state. Except as otherwise provided herein, the taking of oysters is prohibited in the water bottoms of the state of Louisiana.

(2) No person, except a Louisiana resident sixteen years of age or under, and except the spouse of a vessel's owner while on that vessel, shall harvest oysters unless he possesses a valid oyster harvesting license.

B. An oyster lessee may work on his private oyster lease, or he may designate an agent to harvest oysters on his lease with written permission, which shall be carried on the boat and subject to inspection. Such written permission shall specify a starting date and a termination date during which period the written permission will be valid.

C. Recreational oyster fishermen may harvest oysters in leased areas with the written permission from the lease holder, in personal leased areas, and in areas open to the public for the harvesting of oysters, but shall be limited to two sacks per person per day.

D. Except as otherwise provided herein, violation of any of the provisions of this Section constitutes a class four violation. Any person, common carrier, or any agent or officer thereof, who violates any of the provisions of this Section shall at the time of arrest surrender all permits or licenses held by the vessel. The captain, person, agent, officer, crew, or members thereof by whom or under whose direction the vessel was used in the illegal taking of oysters may be charged with a violation and may be ordered to pay all costs of prosecution.

E.(1) No person shall harvest, possess, sell, barter, trade, purchase, or exchange or attempt to sell, barter, trade, or exchange oysters in the state of Louisiana or in interstate commerce unless such oysters are taken from areas approved by the state health officer in accordance with R.S. 40:5.3. Unless otherwise permitted by the Department of Wildlife and Fisheries, when any vessel is found to be harvesting within an unapproved or closed area, all oysters on board the vessel shall be deemed to have been taken from unapproved or closed waters and shall be deemed to constitute a hazard to the safety, health, and welfare of the citizens of the state. In addition, no oysters taken from sources outside of Louisiana shall be sold in Louisiana, unless taken from areas approved by the state authorities having jurisdiction, and unless secured from oyster dealers whose state certifications have been endorsed by the United States Food and Drug Administration Public Health Services for interstate shipment. All oysters found in violation of this Paragraph shall be seized and ordered returned to the water. Any violation of this ~~Subsection~~ shall constitute a class ~~six~~ violation under the provisions of R.S. 56:36.

~~(2) In addition to any and all other penalties, for the first conviction of this Subsection, the court shall revoke the violator's oyster harvester's license for the period for which it was issued, and the license shall not be reinstated for one year from the date of conviction. During such revocation or suspension, the violator may be present on a vessel harvesting or possessing oysters, only if the vessel is equipped with and employs an operating vessel monitoring system as prescribed in R.S. 56:424.1. The court shall sentence the violator to perform forty hours of community service. If a litter abatement community service is available, the hours shall be served in a community service litter abatement program. (3) For the second conviction of this Subsection, the court shall revoke or suspend the violator's oyster harvester license for three years from the date of the second conviction. During such revocation or suspension, the violator~~

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may not be present on a vessel harvesting or possessing oysters. The court shall sentence the violator to perform ninety hours of community service. If a litter abatement community service is available, the hours shall be served in a community service litter abatement program.

(4) For the third and subsequent convictions of this Subsection, the court shall revoke or suspend the violator's oyster harvester license for ten years from the date of the last conviction. During such revocations or suspension, the violator may not be present on a vessel harvesting or possessing oysters. The court shall sentence the violator to perform one hundred twenty hours of community service. If a litter abatement community service is available, the hours shall be served in a community service litter abatement program.

F.(1) The act of culling oysters, which is the act of discarding undersized oysters or dead shell, shall be performed only on the open state designated public grounds or leases on which the fisherman is authorized to take oysters. At no time will the act of culling oysters be permitted in areas closed to harvesting oysters.

(2) Provisions of Paragraph (1) herein notwithstanding, the secretary may grant permits for culling and oyster harvesting to those individuals involved in molluscan depuration operations and container relaying operations on a case-by-case basis, provided that the individuals conducting such operations have fully complied with the rules and regulations of the office of public health and have been issued a permit by that office to conduct such operations.

(3) Violation of any of the provisions of this Subsection constitutes a class three violation.

G.(1) Except as otherwise provided in this Subpart, all oysters taken from the reefs of this state either for sale or consumption shall be landed in Louisiana, properly sacked or containerized and tagged in accordance with the provisions of R.S. 56:449, and the severance tax levied in R.S. 56:446 paid thereon; however, a lessee legally harvesting oysters which have been properly tagged from his own lease may land those oysters outside the state under a permit issued pursuant to rules and regulations promulgated by the department. Any fees proposed in said rules shall not exceed one hundred dollars.

(2) Any person who obtains a permit to land oysters outside the state under the provisions of this Subsection shall be required to install and use a vessel monitoring system on each vessel that will be used to transport oysters taken in Louisiana waters to another state for landing. Access to the monitoring system shall be granted to the Department of Wildlife and Fisheries. The department shall promulgate rules and regulations necessary to implement the provisions of this Paragraph.

H. Notwithstanding the provisions of this Section, employees or assigns of the Coastal Protection and Restoration Authority may survey or remove, as a sample, oysters from an oyster lease on state water bottoms in order to make determinations in matters of integrated coastal protection. In order to make such surveys or take such samples, the employees or assigns of the Coastal Protection and Restoration Authority shall first notify the leaseholder in writing of the date and time of the survey or sample at least fifteen days prior to the survey or sampling date.

This notification shall be sent by certified mail to the leaseholder at the address on file with the Department of Wildlife and Fisheries. The leaseholder may accompany the person conducting the survey or taking the sample during the survey or sampling or may authorize another person to accompany the person conducting the survey or taking the sample. Such surveys shall be conducted in the manner provided in procedures promulgated by the Coastal Protection and Restoration Authority after consideration of recommendations by the Louisiana Oyster Task Force.

I. The state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee of any of these entities, shall not be subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any lessee in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided in R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.