

§431.2. Alternative oyster culture; permits

A. Alternative Oyster Culture Permits.

(1) The provisions of R.S. 3:559.1 through 559.13, R.S. 56:412, 431.1, and 579.1 notwithstanding, the department is authorized to issue an alternative oyster culture permit (AOC permit) to a leaseholder holding a valid oyster lease of state water bottoms pursuant to R.S. 56:427 or 428. The area permitted for alternative oyster culture shall not extend beyond the boundaries of an existent lease. 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 permit. No AOC permit may be issued until the department has completed the suitability mapping required in Subsection C of this Section.

(2) An AOC permit authorizes the permittee and, upon written authorization by the permittee, 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 the alternative oyster culture activities specified by the department in the permit on the permitted area. The permittee may engage in such activities on the water bottoms, in the water column, and on the water surface above the water bottoms within the permitted area, to the extent specified by the department in the permit, and in accordance with the provisions of this Section.

(3) The department may issue AOC permits in numbers, locations, sizes, and configurations specified by the department.

(4) An AOC permit shall be transferrable only with and to the extent of any transfer of the lease, and only to the transferee of the lease; however, the permitted leaseholder 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 alternative oyster culture activities pursuant to the AOC permit. An AOC permit shall be valid for ten years or until termination of the lease, including any renewal thereof, to which the permit pertains, whichever occurs first. If the lease is renewed pursuant to R.S. 56:428, the AOC permit shall continue in effect until expiration of the ten-year term.

(5) The department shall promulgate, in accordance with the Administrative Procedure Act, rules and regulations to implement the provisions of this Section.

B. Application and Permitting.

(1) The application for an AOC permit shall be accompanied by an application fee of one hundred dollars. The fee for the permit shall be two dollars per year per acre permitted, not to exceed one thousand dollars per permit per year.

(2) Based on the initial suitability mapping required by this Section, any update or revisions 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, the department may

grant an AOC permit for a different location, size, or configuration, and for different alternative oyster culture activity than what was requested in the application.

(3) No AOC permit shall authorize alternative oyster culture activities in an area that is any of the following at the time the AOC permit is issued, and any permit that includes such areas is null and void, but only to the extent that it includes such areas:

(a) Designated by the United States Army Corps of Engineers as a navigable channel or waterway or within fifteen hundred feet of the centerline of such channel or waterway.

(b) Covered by a coastal use permit or drilling permit or within fifteen hundred feet of the outside of the exterior boundaries of an area covered by a coastal use permit or drilling permit.

(c) 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 fifteen hundred feet of the outside of the exterior boundaries of an area designated for such dredging, direct placement, or other work or activities.

(d) Located on water bottoms that are not claimed by the state, as determined by the state land office.

(e) Otherwise determined by the department to be unsuitable or inappropriate for alternative oyster culture activities.

(4) No coastal use or drilling permit holder or agent thereof shall be liable to any holder of an AOC permit, any person to whom such permit has been transferred, or any other person authorized by the AOC permit holder to engage in alternative oyster culture activities, for any damage to or loss of equipment or materials used in alternative oyster culture activities within the AOC permit area, or for any damage to or loss of any oysters being grown or cultivated within the AOC permit area as a consequence of alternative oyster culture activities, where both of the following are true:

(a) The coastal use or drilling permit, or any modification to it, was issued prior to the time that the AOC permit was issued.

(b) Such damage arises out of or results from the conduct of any activity authorized by or permitted under the coastal use or drilling permit, except to the extent that the damage or loss arises from violation of any state or federal environmental law or regulation or occurs outside the area of the coastal use permit or drilling permit.

(5) The state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof shall be held harmless from any claim arising as a result of operations by or for a permittee pursuant to an AOC permit, and the permittee shall indemnify the state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof against any such claim. Prior to engaging in alternative

oyster culture activities pursuant to an AOC permit, the permittee shall have obtained all other local, state, and federal permits necessary for such activity.

(6) The department may specify or impose limitations regarding the equipment and materials authorized to be used for alternative oyster culture activities. All equipment and materials used for alternative oyster culture activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal fishing laws and regulations. Any equipment and materials used for alternative oyster culture activities authorized pursuant to this Section may be transported or used in compliance with the provisions of this Section.

(7) The department may specify or impose requirements for marking, lighting, or warning devices in relation to alternative oyster culture activities. All areas where such equipment or materials are present on state water bottoms shall be clearly marked. Marking, lighting, and warning devices for alternative oyster culture activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal fishing laws and regulations.

(8) The department may impose requirements for the permittee to report information or data necessary or appropriate for the department to monitor the activities under the permit or to study such activities and their results.

(9) The department may require a permittee to post a reasonable removal bond in amounts to be determined by the department.

(10) Any AOC permit shall be terminable by the department and shall include language that provides for such termination 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 alternative oyster culture activities on the permitted area.

(11) Permit violations shall be considered a class three violation punishable under the provisions of R.S. 56:33. Theft of or intentionally causing damage to properly permitted alternative oyster culture equipment or to oysters contained in such equipment shall be considered a class four violation punishable under the provisions of R.S. 56:34.

C. Suitability mapping.

(1) The department shall undertake and complete suitability mapping by December 31, 2012, such mapping intended to identify areas of potential conflict between alternative oyster culture activities and other existing or anticipated uses of state waters and water bottoms, including but not limited to integrated coastal protection projects as defined in R.S. 49:214.2. The department shall complete this suitability mapping prior to promulgating any rules or regulations to implement the provisions of this Section and prior to issuing any AOC permits.

(2) The department shall use the **initial** suitability mapping required by this Section to determine areas that are unsuitable or inappropriate for alternative oyster culture activities due to creation

of unreasonable conflicts with other existing or anticipated uses of state waters and water bottoms. However, after July 1st, 2017 the initial suitability map shall not be determinative as to whether an area is suitable for alternative oyster culture. The department shall base all rules, regulations, and decisions regarding AOC permits on the initial suitability mapping, any updated or revision to the initial revised suitability mapping information available, Coastal Use Permit requirements, 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.

D. Coastal protection, conservation, or restoration.

(1) The state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof shall be held harmless from any claims arising under or as a result of the issuance of any AOC 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. Any AOC permit granted to any individual or other entity shall include language which shall hold harmless from all such claims the state, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof.

(2) All AOC permits shall be subordinate to the rights or responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take any action in furtherance of integrated coastal protection. For purposes of this Section, "integrated coastal protection" shall have the same meaning as provided for by R.S. 49:214.2.

E. Definitions.

(1) For purposes of this Section, "alternative oyster culture activity" means any on-bottom, off-bottom, or other means of cultivating or growing oysters other than directly on reefs or other water bottoms, including but not limited to the use of on-bottom cages or bags or floating, suspended, or otherwise off-bottom cages or bags, and includes the harvesting of oysters so grown or cultivated.

(2) For purposes of this Section, equipment and materials used for alternative oyster culture activities are excluded from the definition of "fishing gear" provided in R.S. 56:8(57).

Acts 2012, No. 293, §3, eff. May 25, 2012.