

PARKS AND WILDLIFE CODE
TITLE 5. WILDLIFE AND PLANT CONSERVATION
SUBTITLE D. CRUSTACEANS AND MOLLUSKS
CHAPTER 76. OYSTERS

SUBCHAPTER A. PUBLIC AND PRIVATE OYSTER BEDS

Sec. 76.001. DEFINITIONS. In this chapter:

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

(2) "Natural oyster bed" means an area where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. [2379](#)), Sec. 1, eff. September 1, 2009.

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

(b) All oyster beds not designated as private are public.
Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.003. BEDS SUBJECT TO LOCATION. Except as provided in Section [76.004](#) of this code, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department. This section does not apply to a bed or reef that has been exhausted within an eight-year period.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.004. RIPARIAN RIGHTS. (a) The lawful occupant of a grant of land in this state has the exclusive right to use any

creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 4, eff. May 19, 2011.

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

(b) The application must describe the location desired.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 65, eff.
Sept. 1, 1985.

Sec. 76.007. MAXIMUM ACREAGE UNDER LOCATION. (a) The department may not issue a certificate of 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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 41, eff. Sept. 1, 2001.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

(b) The certificate must contain:

- (1) the date of the application;
- (2) the date of the survey; and

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

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

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1979, 66th Leg., p. 908, ch. 416, Sec. 2, eff. Aug.

27, 1979; Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 46, eff.

Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 66, eff.

Sept. 1, 1985; Acts 1989, 71st Leg., ch. 448, Sec. 1, eff. Jan. 1,

1990; Acts 2001, 77th Leg., ch. 968, Sec. 42, eff. Sept. 1, 2001.

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

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

(1) a determination that the lease renewal will be based on the need for depuration of polluted oysters and other considerations specified in the oyster management plan;

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

(3) a condition that the current leaseholder will be offered a first right of refusal if the lease is renewed under this chapter; and

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

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

Added by Acts 2001, 77th Leg., ch. 968, Sec. 43, eff. Sept. 1, 2001.

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

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

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

Added by Acts 2001, 77th Leg., ch. 968, Sec. 43, eff. Sept. 1, 2001.

Sec. 76.020. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM.

(a) The commission by proclamation may establish and conduct a program to require the recovery of oyster shell or other suitable cultch material from, and replacement of oyster shell in, the coastal waters of the state to maintain or enhance public oyster reefs.

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

Added by Acts 1991, 72nd Leg., ch. 644, Sec. 1, eff. Aug. 26, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. 932), Sec. 1, eff. September 1, 2011.

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

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

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

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

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 1, eff. September 1, 2017.

Sec. 76.021. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM ACCOUNT; FEE. (a) The oyster shell recovery and replacement program account is a separate account in the game, fish, and water safety account. The account consists of money deposited to the account under this section. The account is exempt from the application of Section 403.095, Government Code.

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

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

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

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

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

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

(e) Money in the oyster shell recovery and replacement program account may be appropriated only for the recovery and enhancement of public oyster reefs under Section 76.020.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. 932), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. OYSTER PERMITS

Sec. 76.031. APPLICATION FOR PERMIT. (a) A person desiring to plant oysters on his own location or to take oysters from oyster

reefs and public water shall apply to the department for an oyster permit.

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

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

(b) The department shall:

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

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

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

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 44, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 384 (S.B. 620), Sec. 1, eff. June 15, 2007.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 80, eff. Sept. 1, 1985.

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

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

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 81, eff. Sept. 1, 1985.

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.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 82, eff. Sept. 1, 1985.

SUBCHAPTER C. OYSTER LICENSES

Sec. 76.101. OYSTER LICENSES REQUIRED. (a) No person may take or attempt to take oysters from the public water of this state

for noncommercial use by the use of a dredge or tongs without first having acquired a sport oyster boat license from the department.

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

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

(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.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1989, 71st Leg., ch. 255, Sec. 2, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 16, eff. Sept. 1, 1993.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 2, eff. September 1, 2017.

Sec. 76.102. LICENSE APPLICATION. (a) An applicant for an oyster boat license, which is not a renewal of the previous year's license, issued under this subchapter must submit to the department the boat's United States Coast Guard certificate of documentation

or 'Texas' or other state's certificate of number for a vessel or motorboat.

(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.

Added by Acts 1989, 71st Leg., ch. 255, Sec. 3, eff. July 31, 1989.

Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 17, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 26, eff. Sept. 1, 1993.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1981, 67th Leg., p. 548, ch. 229, Sec. 1, eff. Aug. 31, 1981; Acts 1989, 71st Leg., ch. 255, Sec. 4, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 69, eff. June 16, 1995.

Sec. 76.1031. LICENSE EXPIRATIONS AND TRANSFERS. (a) All licenses issued under the authority of Chapter 76 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

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

of Section 76.101(c) may be transferred to another vessel or to a new owner of the same vessel. The commission, by regulation, may prescribe requirements necessary to clarify license transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses in this chapter and for duplicate license plates or duplicate or replacement licenses.

Added by Acts 1993, 73rd Leg., ch. 365, Sec. 19, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 931, Sec. 70, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 114, eff. Sept. 1, 1997.

Sec. 76.104. LICENSE FEES. (a) Except as provided by Subsection (e) of this section, the fee for a commercial oyster boat license is \$350 or an amount set by the commission, whichever amount is more.

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

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

(d) Except as provided by Subsection (h) of this section, the fee for a commercial oyster boat captain's license is \$25 or an amount set by the commission, whichever amount is more. The definition for "resident" for this subsection is the same as the resident definition in Section 47.001 of this code.

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

(f) The fee for a sport oyster boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other

criteria established by the commission is \$40 or an amount set by the commission, whichever amount is more.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 47, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 67, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 4, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 255, Sec. 5, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 20, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 71, eff. June 16, 1995.

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

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

Added by Acts 1989, 71st Leg., ch. 255, Sec. 6, eff. July 31, 1989. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 21, eff. Sept. 1, 1993.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1989, 71st Leg., ch. 255, Sec. 8, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 23, eff. Sept. 1, 1993.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.112. OYSTER SIZE LIMITS. (a) Repealed by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

Sec. 76.114. EXCEPTION TO SIZE AND RETENTION LIMITS. (a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

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

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

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

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

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, Sec. 18, eff. Sept. 1, 1975.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. [932](#)), Sec. 3, eff. September 1, 2011.

Sec. 76.116. OYSTERS FROM RESTRICTED AREAS. (a) There is no open season for taking oysters from areas closed by the Department of State Health Services.

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

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

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 255, Sec. 10, eff. July 31, 1989; Acts 1997, 75th Leg., ch. 1256, Sec. 115, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. [2379](#)), Sec. 2, eff. September 1, 2009.

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.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. [1346](#)), Sec. 5, eff.

May 19, 2011.

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

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

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

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

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

(e-1) If it is shown at the trial of a defendant for a violation of Section 76.116 that the defendant has been convicted once within five years before the trial date of a violation of Section 76.116, the defendant is guilty of a Parks and Wildlife Code state jail felony.

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

(e-3) An offense during the commission of which the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell or an offense related to the harvest of oysters from a closed

area is a Class B Parks and Wildlife Code misdemeanor, if it is shown on the trial of the offense that the defendant has previously been convicted one time for a violation of a provision or regulation relating to:

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

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

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

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

(2) the provision or regulation violated relates to:

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

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

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

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

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

(e-5) It is a defense to prosecution under Subsection (a) for a violation of a statute or regulation adopted relating to oyster size that the defendant is a person who purchased oysters from the captain or a member of the crew of a commercial oyster boat and the purchaser was in possession of a cargo of oysters in which less than 30 percent of the oysters were less than three inches in

length along an imaginary straight line through the long axis of the shell.

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

(g) If it is shown on the trial of a defendant for a violation of Section [76.109](#) and either Section [76.115](#) or [76.116](#) occurring in the same criminal episode that the defendant has been convicted once before within five years before the trial date of a violation of Section [76.109](#) and either Section [76.115](#) or [76.116](#) occurring in the same criminal episode, the defendant is guilty of a Parks and Wildlife Code felony.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 83, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 255, Sec. 11, eff. July 31, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. [2379](#)), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. [51](#)), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 313 (H.B. [2321](#)), Sec. 1, eff. September 1, 2019.

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

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

(c) On final conviction for an offense punishable under Section [76.118](#)(e-3) or (e-4), the commercial oyster boat captain's

license of the captain of the boat used in the commission of the violation is suspended for 30 days. During the period of suspension, the holder of the suspended license may not purchase a general commercial fisherman's license or a commercial oyster fisherman's license.

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 4, eff. September 1, 2017.

Sec. 76.119. RESPONSIBILITY FOR VIOLATION. (a) If a vessel licensed as a commercial oyster boat is involved in a

violation of this chapter, the captain of the vessel licensed as a commercial oyster boat is primarily responsible for the violation. A member of the crew of a vessel licensed as a commercial oyster boat is not guilty of a violation unless the member of the crew committed the violation against the captain's orders, except for a violation of Section [76.109](#), [76.112](#), or [76.116](#), in which case each person on the vessel is responsible for the violation.

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

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

(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.

Added by Acts 1989, 71st Leg., ch. 255, Sec. 12, eff. July 31, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. [2379](#)), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. [51](#)), Sec. 5, eff. September 1, 2017.

SUBCHAPTER E. OYSTER REGULATIONS

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

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

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

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

(3) measures to manage oysters;

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

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

(6) measures which will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of oysters that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking oysters.

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

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

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

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

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

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

(h) A proclamation of the commission under this section

applies to any person who:

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

(2) purchases oysters under Section 47.0091; and

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

Added by Acts 1985, 69th Leg., ch. 633, Sec. 1, eff. June 14, 1985.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 6, eff. September 1, 2017.

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, 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 research may be conducted by the department or an agency designated by the department.

Added by Acts 1985, 69th Leg., ch. 633, Sec. 1, eff. June 14, 1985.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 381 (S.B. 387), Sec. 1, eff. June 17, 2011.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 7, eff. September 1, 2017.

SUBCHAPTER F. OYSTER LICENSE MORATORIUM

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

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

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

(1) is owned by the person;

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

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

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

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

(c) The seven members of the review board must be selected to 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 director shall adopt procedures for the election and operation of the review board. The director shall solicit and

consider recommendations from the commercial oyster boat license holders regarding the procedures and the continued need for the board.

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

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

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

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

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. [51](#)), Sec. 8, eff. June 1, 2018.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. [51](#)), Sec. 8, eff. June 1, 2018.