

# **The Parks and Wildlife Department's Commercial Fishery Programs**

# The Parks and Wildlife Department's Table of Contents

<b>Summary .....</b>	<b>5</b>
----------------------	----------

Section 1:

<b>Oyster-Bed Leases, Coastal Commercial Fisheries, and Inland Commercial Fisheries Did Not Recover Approximately \$9.3 Million of Their Costs in Fiscal Year 1999 .....</b>	<b>6</b>
--	----------

The Oyster-Bed Lease Program Cost \$1 for Every \$0.50 of Revenue It Generated in Fiscal Year 1999 .....	7
---	---

The Coastal Commercial Fishery Programs Did Not Recover Approximately \$6.1 Million of Their Costs in Fiscal Year 1999 .....	8
--	---

The Inland Commercial Fishery Programs Recovered Less Than 1 Percent of Their Costs.....	9
---	---

Section 2:

<b>Estimated Value and Appraisals of Oyster-Bed Leases.....</b>	<b>11</b>
---	-----------

Section 3:

<b>Oyster-Bed Lease Agreements Do Not Appear to Protect the Interests of the State .....</b>	<b>13</b>
--	-----------

Section 4:

<b>Comparison With Other States' Oyster-Bed Programs.....</b>	<b>16</b>
---	-----------

<b>State Auditor's Recommendations .....</b>	<b>19</b>
--	-----------

<b>The Parks and Wildlife Department's Response .....</b>	<b>20</b>
---	-----------

## Summary

The Parks and Wildlife Department (Department) is not recovering the full cost of administering its commercial coastal and inland fishery programs. The Department did

Figure 1:  
The Department did not recover approximately \$9.3 million of commercial fishery administration costs.

Fiscal Year 1999 Commercial Fishery Programs			
Program	Revenue	Costs	Deficit
Coastal Fisheries	\$ 3,234,145	(\$ 9,337,376)	(\$ 6,103,231)
Inland Fisheries	\$ 3,429	(\$ 3,195,556)	(\$ 3,192,127)
<b>Total</b>	<b>\$ 3,237,574</b>	<b>(\$ 12,532,932)</b>	<b>(\$ 9,295,358)</b>

Source: The State Auditor's Office developed estimates based on the Law Enforcement Division's timekeeping data and other divisions' staff estimates, and applied them based on the number of licenses issued by fishery.

not recover approximately \$9.3 million of the costs for administering the commercial fishery programs in fiscal year 1999.

The Department has not assessed the financial status of the individual fishery programs to determine whether costs could be reduced or whether the fee structure is reasonable. The Department cannot accurately determine the amount of resources it expends on administering each fishery or oyster-bed lease because it does not have a sound cost

allocation method. Also, the oyster-bed leases do not appear to protect the interests of the State because they lack basic terms and conditions. For example, the lease agreements do not include:

- Defined time period for the length of each lease
- Clear terms for consideration/amount due per acre leased
- Provisions that allow the State to buy back the leases
- Provisions that reserve the State's right to renew, amend, cancel, or otherwise modify the agreements

In addition, the estimated value of the Department's oyster-bed leases exceeds the income realized by the State for these leases.

The State Auditor's Office did not review the Department of Health's role in the commercial fishery programs, nor did we audit the financial systems that produced the numbers used in this report. This study focused on the financial aspects of the commercial fisheries, not on assessing economic impact or environmental concerns.

## Oyster-Bed Leases, Coastal Commercial Fisheries, and Inland Commercial Fisheries Did Not Recover Approximately \$9.3 Million of Their Costs in Fiscal Year 1999

Information provided by the State Auditor's Office

In fiscal year 1999, the Parks and Wildlife Department (Department) did not recover approximately \$9.3 million of the costs of administering its commercial fishery programs.

Not only is the Department not recovering what it costs to administer the programs, but the State is also not earning any money for the fish and shellfish that are harvested or for the use of submerged state-owned land. The revenue for the programs comes from the sale of commercial fishing licenses and rent. The Department does not have a sound method for accurately determining the costs of administering each individual commercial fishery program, which prevents it from knowing whether it could reduce its costs or restructure its fees. As a result, the costs not recovered for these programs are financed by revenue from recreational and other licenses.

Commercial Fisheries
Inland Commercial Fisheries
• Shellfish (mussels and clams)
• Finfish
Coastal Commercial Fisheries
• Crab
• Oysters
• Oyster-Bed Leases
• Shrimp
• Finfish
• Menhaden

Many areas within the Department (including law enforcement, regulatory oversight, environmental protection, and administrative services) support the commercial fishery programs. Because most of these areas do not have estimated percentages to allocate cost by fishery program or to track staff time at a detailed level, the Department has to rely on broad estimates when budgeting for the fishery programs. According to the Department, its focus has been to protect the State's resources; therefore, the Department reviews costs by resource rather than by individual commercial fishery program. In addition, Department staff members expressed the difficulty some divisions have in tracking resource management costs by individual fishery because costs are incurred through

sampling activities that benefit numerous fishery programs.

Currently, the Department allocates an estimated percentage of its budget to commercial fisheries, which includes all coastal and inland fishery programs (see text box). The Department develops this percentage by having each division estimate the benefits it provides to groups of the public, such as anglers, commercial fisherman, and boaters. This exercise results in broad estimates, not the information by commercial fishery program that the Department needs to determine whether it could reduce its costs or restructure its fees. In addition, the areas could not provide support to show how the estimates were derived. (One exception is the Law Enforcement Division, which tracks staff time at a detailed level. The Law Enforcement Division incurs most of the costs related to the commercial fishery programs. Law Enforcement costs include not only costs to enforce laws and regulations but also costs to protect the State's natural resources.)

The Department has no accurate way to determine the actual costs associated with the individual commercial fishery programs. Although the Department did not have a sound cost allocation method, the State Auditor's Office developed estimates based on the number of licenses issued and applied them based on the Law Enforcement Division's timekeeping data and other divisions' staff estimates.

Section 1-A of this report provides detailed cost and fee information on the oyster-bed leases. Section 1-B contains detailed information on all of the coastal commercial fishery programs, including the oyster-bed leases. Section 1-C discusses the costs and fees for inland commercial fishery programs.

Section 1-A: Information provided by the State Auditor's Office

**The Oyster-Bed Lease Program Cost \$1 for Every \$0.50 of Revenue It Generated in Fiscal Year 1999**

Table 1

Revenue and Costs for Oyster-Bed Leases			
Fiscal Year	License Fees and Lease Revenue	Management and Enforcement Costs	Deficit
1998	\$ 50,119	(\$ 96,810)	(\$ 46,691)
1999	\$ 47,404	(\$ 95,190)	(\$ 47,786)

Source: The State Auditor's Office developed estimates based on the Law Enforcement Division's timekeeping data and other divisions' staff estimates and applied them based on the number of licenses issued.

The Department spent \$1 for every \$0.50 of revenue the private oyster-bed lease program generated (see Table 1). Because the Department has not assessed the costs associated with administering the oyster-bed leases, it cannot determine the reasonableness of its

fee structure. Parks and Wildlife Code, Chapter 76, Section 301, Subsection 5, which establishes the oyster-bed leases, states that the "[Parks and Wildlife] Commission shall consider measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration."

The Department provides oyster licensing services and production and game law enforcement services. The Department charges rental fees, license fees, and permit fees. These fees may be too low to cover the Department's costs for providing these services. While the Parks and Wildlife Code allows the Parks and Wildlife Commission to charge more for leases and fees than the minimums prescribed in statute, the Commission has not raised the leases and fees.

- In 1983, the Legislature increased the statutory minimum rental fee for the oyster beds in the Parks and Wildlife Code to \$3 per acre per year. In 1985, the Legislature amended the Code to allow the Parks and Wildlife Commission to set a higher rental fee for the oyster-bed leases. The fee has not been increased since 1983. Due to the limited entry into the private oyster-bed leases, a competitive market has been created for these leases. An independent appraiser estimated the value of these leases at \$1,000 per acre (see Section 2). This estimated value is the amount that individuals are willing to pay for the rights to the private oyster-bed leases.
- Oyster Boat and Oyster Fisherman licenses originated in 1989, and the fees have not been adjusted since. The Oyster Boat license fee is \$350 for resident fishermen and \$1,400 for non-resident fishermen. The Oyster Fishermen license fee is \$100 for resident and \$250 for non-resident fishermen. These

licenses must be renewed annually. These licenses allow people to take or attempt to take oysters from the public waters of the State for the purpose of sale, barter, or exchange, or for any other commercial purpose.

- In 1993, an Oyster Boat Captain license was added, and the fee has not been adjusted since. The fee is \$25 for resident fishermen and \$100 for non-resident fishermen and must be renewed each year. These licenses allow people to operate commercial oyster boats while taking or attempting to take oysters from the public waters of the State.

(Oyster Boat, Oyster Fisherman, and Oyster Boat Captain licenses are required for leaseholders as well as for oystermen using the public reefs.)

According to the Parks and Wildlife Code, Section 76.017, rental fees from oyster-bed leases are due on March 1 of each year, and failure to pay when due terminates the lease. The Department did not receive all 1998 and 1999 payments by the deadline. Although the amount of the overdue rental fees is insignificant, the Department has never imposed a late fee or terminated a lease for non-payment. Furthermore, the Department granted permits to transplant and harvest oysters to the leaseholders that had not paid their rental fees:

- Thirty-five percent (15 of 43) of the March 1, 1999, lease payments were late. Two of these late payments were not received until one year after the due date.
- None of the 43 leaseholders paid the rental fee by the March 1, 1998, due date. The amount of time that lapsed between the due date and the date payment was received ranged from a few days to five months.

In addition, the agreements for these leases do not appear to protect the interests of the State (see Section 3). While only the oyster-bed lease program has been discussed in detail in this section, similar issues exist with the other commercial fishery programs.

Section 1-B: Information provided by the State Auditor's Office

### **The Coastal Commercial Fishery Programs Did Not Recover Approximately \$6.1 Million of Their Costs in Fiscal Year 1999**

The coastal commercial shrimp, crab, finfish, oysters, and oyster-bed lease fishery programs did not recover approximately \$6.1 million of their costs in fiscal year 1999 (see Table 2 on the next page). Because the Department has not assessed its costs associated with administering the individual fishery programs, it cannot determine the reasonableness of its fee structure or whether costs could be reduced. The menhaden fishery is the only commercial fishery program with a positive cash flow into the Department.

See Appendix 7 for a complete table of the coastal commercial fishery programs' license revenues and costs for fiscal years 1998 and 1999.

The Coastal Fishery Division prepared revenue and cost estimates over a year ago for the fishery programs based on budget and fee estimates. The Coastal Fishery Division stated that the “figures should be considered estimates since there are few accounting methods available to accurately charge Department work performed to a specific fishery. The results should be used with caution.” The State Auditor’s Office found that the Department still does not have a sound method in place to allocate costs by commercial fishery or to analyze such information.

According to the Department, its focus has been to protect the State’s resources; therefore, the Department reviews costs by resource rather than by individual

commercial fishery program. In addition, the Department expressed the difficulty that some divisions have in tracking resource management costs by individual fishery because costs are incurred through sampling activities that benefit numerous fishery programs.

Commercial licenses and fees may be too low to generate sufficient revenue to cover the Department’s

Table 2

Fiscal Year 1999 Revenue and Costs for Coastal Commercial Fishery Programs			
Fishery	License Fees, Grants, and Lease Revenue	Management and Enforcement Costs	Contribution/(Deficit)
Shrimp	\$ 2,548,232	\$ 6,128,429	\$ (3,580,197)
Crab	177,584	482,842	(305,258)
Finfish	183,094	1,874,274	(1,691,180)
Oysters	142,351	727,289	(584,937)
Oyster-bed Leases	47,404	95,190	(47,785)
Menhaden	77,939	29,353	48,586
Other <sup>a</sup>	57,540	N/A	57,540
Combined	\$ 3,234,145	\$ 9,337,376	\$ (6,103,231)

<sup>a</sup> Includes General Fishing Commercial License revenue. There is no method to accurately determine what would constitute a “general fishery.” Therefore, it is assumed that revenues benefit the whole coastal program and that related Department costs were absorbed by the other fisheries.

Source: The State Auditor’s Office developed estimates based on the Law Enforcement Division’s timekeeping data and other divisions’ staff estimates and applied them based on the number of licenses issued.

management and enforcement costs. The fees for some commercial fishing and boat licenses have not been increased in the past 10 years. The Parks and Wildlife Code allows the Commission to set fee amounts for commercial licenses. Increasing the fees charged for these licenses is one way to help reduce future deficits between fishery revenues and the costs expended by the Department to manage, regulate, and enforce them. According to the Department, any increase in fees should be prudent to minimize disruption to the economic stability of the fisheries, given their current economic conditions.

Section 1-C: Information provided by the State Auditor’s Office

### The Inland Commercial Fishery Programs Recovered Less Than 1 Percent of Their Costs

The inland commercial finfish and shellfish programs recovered less than 1 percent of what it costs to manage and enforce them (see Table 3 on the next page). These two

small programs are the only commercial fishery programs administered by the Inland Fisheries Division. Because the Department has not assessed the costs associated with administering these fishery programs, it cannot determine the reasonableness of its fee structure or whether costs could be reduced. (See Appendix 7 for a complete table of the inland commercial fishery programs' license revenues and costs for fiscal years 1998 and 1999.)

These two small commercial fishery programs require very little administrative oversight by the Inland Fisheries Division, and the costs to the Division for administration are negligible. However, the enforcement costs for these programs are significant. Law enforcement efforts are spent on deterring illegal commercial activity on the State's freshwaters. Although the inland programs are small in comparison to the coastal program, the inland fisheries are spread out across the State's freshwater reservoirs and rivers, while the coastal fisheries are concentrated in the coastal bays. Therefore, some of these costs may be unavoidable.

Table 3

Fiscal Year 1999 Revenue and Costs for Inland Commercial Fishery Programs			
Fishery	License Fees	Management and Enforcement Costs	Deficit
Non-Game Fish (Finfish)	\$ 3,100	(\$ 2,677,203)	(\$ 2,674,103)
Mussel and Clam (Shellfish)	329	(518,353)	(518,024)
<b>Combined</b>	<b>\$ 3,429</b>	<b>(\$ 3,195,556)</b>	<b>(\$ 3,192,127)</b>

Source: The State Auditor's Office developed estimates based on the Law Enforcement Division's timekeeping data and other divisions' staff estimates and applied them based on the number of licenses issued.

Commercial licenses and fees may be too low to generate sufficient revenue to cover the Department's management and enforcement costs. The \$50 fee for the permit to sell non-game fish has not been increased since 1991, and the \$30 resident and

\$800 non-resident mussel and clam fishing license fee has not increased since 1993. The Parks and Wildlife Code allows the Commission to set fee amounts for commercial licenses.

According to the Department, the freshwater shellfish (mussels and clams) fishery provides very little economic benefit to the State. Furthermore, the current harvesting of freshwater mussels could be negatively affecting the health of the resource and putting the State in danger of further federal environmental restrictions. In addition, only 11 Resident Commercial Mussel and Clam Fisherman licenses were sold in fiscal year 1999. For these reasons, the program may be susceptible to elimination.



## Estimated Value and Appraisals of Oyster-Bed Leases

Information provided by the Comptroller of Public Accounts

The estimated value of the 2,327 acres held in 43 leases is \$1,000 per acre, for a total value of \$2,327,000. A moratorium on new leases increases the value of current leases that can be, and are, passed down through generations and privately bought and sold among a limited group of individuals. Although leases have been bought and sold for a century, little information exists on the actual sale prices. State law requires only that the leaseholders file a request with the Department to transfer the permit to new ownership. Official lease transfer notices filed in the county clerks' offices and obtained for this study state only that the new leaseholder paid either \$1 or \$10 "and other consideration."

However, Department staff in the Seabrook office kept track of sale amounts through personal conversations and word-of-mouth. In addition, a certified appraiser conducted personal interviews with leaseholders. Of the 13 known sales since 1985, the average sale price was \$665 per acre. Adjusted for inflation by the Consumer Price Index, that figure rises to \$745 per acre in year 2000 dollars. (See Table 4.) Four sales in particular were considered by the appraiser to be a good indication of value, raising the estimated value to \$1,000 per acre. (See Appendix 3.)

Table 4

Known Lease Sales						
Lease No.	Acres	Actual Sales Price	Date	Actual Price per Acre	Adjusted price per Acre (2000)	Adjusted Sales Price (2000)
268-A	50.00	\$ 5,000	8-10-87	\$ 100	\$ 150.79	\$ 7,540
299-A	100.00	\$ 106,074	6-11-91	\$ 1,061	\$ 1,334.43	\$ 133,443
301-A	100.00	\$ 20,000	1-24-85	\$ 150	\$ 238.80	\$ 23,880
357-A	33.32	Sold With 301-A				
403-A	46.60	\$ 50,000	5-18-94	\$ 1,073	\$ 1,240.25	\$ 57,796
404-A	45.80	\$ 11,000	5-27-94	\$ 240	\$ 277.41	\$ 12,705
405-A	11.00	\$ 45,000	4-24-95	\$ 2,005	\$ 2,253.65	\$ 24,790
406-A	11.44	Sold With 405-A				
407-A	17.08	\$ 17,080	5-18-94	\$ 1,000	\$ 1,155.87	\$ 19,742
411-A	21.77	\$ 21,770	5-18-94	\$ 1,000	\$ 1,155.87	\$ 25,163
424-A	61.23	\$ 34,000	5-27-94	\$ 555	\$ 641.51	\$ 39,280
425-A	37.20	\$ 11,000	5-27-94	\$ 296	\$ 342.14	\$ 12,728
426-A	44.73	\$ 65,000	5-24-94	\$ 1,453	\$ 1,679.48	\$ 75,123
<b>Totals</b>	<b>580.17</b>	<b>\$385,924</b>				<b>\$ 432,190</b>
		<b>Weighted Averages</b>		\$ 665.19		\$ 744.94

Sources: Parks and Wildlife Department and U.S. Department of Labor Consumer Price Index

Both the private oyster-bed reefs and the oyster shells (whether or not the oysters themselves are alive) are state property. Live oysters on private oyster-bed leases are personal property, according to state law.

## Oyster-Bed Lease Agreements Do Not Appear to Protect the Interests of the State

Information  
provided by the  
State Auditor's  
Office

The 43 active oyster-bed lease agreements do not appear to contain basic terms and conditions to protect the interest of the State. The Department is authorized to issue oyster-bed leases under Parks and Wildlife Code (Code), Chapter 76. However, the Code does not provide specific guidance as to the nature, terms, or conditions according to recently issued Attorney General Opinion JC-0237.

The oldest existing lease was issued in 1954. The most recent issuance was in 1983. In 1989, the Department instituted a moratorium on the issuance of new leases, which continues to this day.

The Department did not use a competitive process to issue these leases. Leaseholders simply completed the paperwork, marked the lease site, paid the application fee, participated in a public hearing, and received a certificate of location agreement for a private oyster bed. These private leaseholders have advantages over other oystermen because:

- They can harvest from the public reef during Texas' oyster season (November 1 to April 30).
- They can transplant oysters from the restricted reefs and later harvest them from their private leases when the public reef season is closed (May to October by permit).
- The Department patrols and protects their leases from poachers.

The oyster-bed lease agreements issued between 1954 and 1983 do not include:

- Defined time period for the length of each lease
- Clear terms for consideration/amount due per acre leased
- Provisions that allow the State to buy back the leases
- Provisions that reserve the State's right to renew, amend, cancel, or otherwise modify the agreements

Lease agreements issued in the 1950s and 1960s require leaseholders to notify the Department of transfers or changes in assignment. Lease agreements issued in the 1970s and 1980s require leaseholders to secure prior written consent from the Department for transfers and changes in assignment. In addition, the Code allows U.S. residents and domestic corporations (corporations for profit incorporated under the laws of Texas) to lease private oyster beds, but limits them to no more than 100 acres.

Because the lease agreements do not contain specific terms and conditions, and the Code does not provide specific guidance, private oyster-bed leases have been:

- Virtually held in perpetuity over the years. The leases issued by the Department did not have terms, so leaseholders held ownership with no competition for renewal of the leases as long as they paid the annual rental fee. In addition, the Department never reissued the original lease agreements to incorporate and update terms and conditions.
- Sold and transferred by leaseholders many times over the years. For example, the original owner of a lease issued in 1954 held the lease until he sold it in 1976. The individual that bought the lease still owns it today. Neither of these individuals was required by the Department to renew the lease in a competitive process. According to research information provided by the Comptroller of Public Accounts' independent appraiser, recent transaction values indicate that leases were sold for an average of \$665 per acre. Although leaseholders are authorized to sell their oyster-bed leases, the State realizes no income from these sales.
- Purchased and held on behalf of minor children in what may be an attempt to circumvent the intent of the 100-acre limit. A 37.2-acre lease was purchased from an existing leaseholder in 1986. The assignment of the lease was recorded in the name of the trustees for two minor children and signed by the trustees. At the same time the trustees purchased leases in each of their names. One trustee purchased leases totaling 84.25 acres, and the other trustee purchased 83.00 acres and an additional 92.4 acres as the president of a company. All of these leases were sold in 1994. These transactions are not atypical. Other related parties simultaneously held leases in excess of 100 acres.
- Purchased and held by a non-Texas corporation. One lease appears to be in conflict with the Parks and Wildlife Code. A corporation incorporated in Louisiana purchased a 61-acre lease from a leaseholder in 1994. This corporation still holds the lease today.

Senator Bill Ratliff requested an Attorney General Opinion regarding Parks and Wildlife Code, Chapter 76, due to the lack of terms and conditions in the agreements. In addition, it was unclear as to whether the leases were held in perpetuity by current leaseholders.

The Attorney General recently issued an opinion (JC-0237) regarding the State's oyster-bed leases, concluding:

- An oyster-bed lease authorized under Chapter 76 of the Parks and Wildlife Code is a periodic, year-to-year lease that may be terminated at the end of any lease year by the State after giving reasonable notice of termination. A Chapter 76 oyster-bed lease does not create a perpetual leasehold interest.
- An oyster-bed leaseholder is authorized to sell or convey the oyster-bed lease. The lease does not expire on the death of the leaseholder.
- Chapter 76 does not prohibit a family member or family business partner from acting as an agent for other leaseholders; rather, it proscribes the "control" of more than 100 acres of submerged land by the same person. No person may

exercise power or authority over more than 100 acres of submerged land pursuant to one or more oyster-bed leases. Control over more than 100 acres of land covered by water pursuant to another person's oyster-bed lease is not a "lease-breaking condition" that allows the State to cancel the lease by which such control is exercised.

The Attorney General Opinion clarifies that the Department has the authority to terminate existing leases and to change the method of awarding these leases. See Appendix 2 for a complete copy of the Attorney General Opinion.

## Comparison With Other States' Oyster-Bed Programs

Information  
provided by the  
Comptroller of  
Public Accounts

According to the National Marine Fisheries Service, 19 other states also harvest oysters. In 1998, Texas production ranked third behind top producers Louisiana and Washington State. Other top producers—Mississippi, Connecticut, and Florida—were also surveyed. These states comprise 93 percent of the total 1998 oyster production. (See Appendix 6 for information on state oyster landings.)

### Louisiana

Louisiana's oyster program began in 1870. Jurisdiction over the program resides with the Louisiana Department of Natural Resources (DNR). Louisiana approves leases on a first-come, first-served basis, with few restrictions. This means that leases are awarded to individuals as long as they provide DNR with a survey of the area proposed for lease, certify that the area is not already leased, and provide an affidavit that they will comply with certain conditions.

Leases have a 15-year term at an annual fee of \$2 per acre. Leaseholders are allowed to hold more than one lease and up to a maximum 1,000 acres per entity. A shorter term may be required if the area is in a coastal restoration impact area. A leaseholder may break a lease at any time. State residency is required for leaseholders. A lease renewal application is required, and the Department approves renewals. Leases can be transferred as long as the transfer is recorded with the Department; no approval is required.

As of January 2000, there were over 8,800 leases covering more than 415,000 acres of submerged land. Records dating back to 1959 indicate that both the number of acres leased and the number of individual leaseholders increased every year. Lease sizes vary, although they are most commonly 20 to 50 acres.

Lease areas are subject to enforcement patrol, gaming inspections, and health inspections. The DNR provides enforcement patrol and gaming inspections and mediates disputes between leaseholders. The Department of Health and Hospitals conducts health inspections.

Oil and gas leases share many of the same areas with oyster-bed leases. Conflicts between oil and gas companies and fishermen occasionally develop when oil and gas rigs tear out the oyster bottoms. DNR established an Oyster Lease Damage Evaluation Board to help with such disputes, although many are resolved in court. Oil and gas seismic surveys must be coordinated with individual leaseholders.

### Washington

The Department of Natural Resources (DNR) administers the state's oyster leasing program. The state began leasing oyster bottoms in 1895. The Department of Health determines water quality and product quality issues. The Fish and Wildlife Department (FWD) oversees the biology aspect of aquaculture farming.

The DNR's standard lease agreement has a 10-year term. DNR manages approximately 250 leases for 80 leaseholders. Currently, leaseholders are not limited to the number of acres they may lease. Leases are not renewed automatically; leaseholders must apply for renewal. Barring any violations or unpaid rents, leases are usually extended. An oyster lease may be sold or assigned to another party. If leaseholders sell or assign their leases, they must notify DNR of the lease assignment and file proper documentation.

FWD classifies oyster grounds into four groups by productivity. It further classifies oyster grounds into either "on-ground" or "off-ground" cultures. (Off-ground cultures involve placing nets and fences underwater from which oysters hang in sacks or packets.) After determining the class and type of culture, annual rental charges are based on the number of acres leased and the average of the previous five years' production.

Generally, the leaseholders in Puget Sound pay \$145 per acre per year for on-ground culture and \$116 per acre per year for off-ground culture. On the West Coast, class two beds pay \$141 per acre per year, class three pay \$85 per acre per year, class four pay \$48 per acre per year and class five \$32 per acre per year for buffer land.

### **Mississippi**

Mississippi's oyster lease program dates back to the 1890s. The Mississippi Department of Marine Resources (DMR) oversees the oyster program. A leaseholder must have been a resident of the state for at least five years. One lease per individual is allowed with a maximum 100 acres per lease. The lease fee is \$1 per acre. The state shell retention fee for both public and lease areas is \$0.15 per sack.

Leases are renewable every year over a 25-year period. After the 25-year period, leaseholders must rebid for the lease. If the original leaseholder does not receive the bid, the new leaseholder must compensate the original leaseholder for any upgrades. Currently three leases exist.

Leases are transferable with Department approval. Leaseholders are required to work the lease areas every year and must provide a brief annual report to DMR. Leaseholders are also responsible for obtaining all required environmental permits, including those for wetlands. The wetlands permit fee is \$500. Any oil and gas operator planning seismic surveys in or near oyster grounds must coordinate with individual leaseholders.

DMR conducts health inspections and mediates disputes between leaseholders.

### **Connecticut**

Connecticut's oyster program dates back to the 1840s when a Town Oyster Ground Committee provided oversight. By the 1860s, a state program was needed to oversee the industry leasing. The state came up with a perpetual grant or franchise. The oystermen took ownership and were required to pay an annual fee of \$0.60 per acre, which gave them the right to plant, cultivate and harvest shellfish. These grants were

grandfathered when a new leasing system was established in 1915. Today, if the taxes owed on the franchise remain unpaid for five years, the lease reverts back to the state.

In 1915, the state began a competitive bid lease program. If a person wants to lease acreage, the Connecticut Department of Agriculture will advertise the lease through public notice and accept sealed bids. The state does not initiate leasing. The minimum bid is \$2 per acre. Acreage bids can range from \$50 to \$200 per acre depending on the attributes of the lease, water quality and competition in the area. Once a bid is accepted and a lease signed, lease terms range from a minimum of 3 years to a maximum of 10 years.

On average, the leases usually rent for \$24 per acre annually. Lease size is limited to 500 acres, and an individual cannot own more than two leases. The state has a transplant relay program to move mildly polluted oysters to private leases.

Connecticut has approximately 61,000 acres of oyster reefs being farmed by 35 companies. The state also has public oyster lands that were recognized by court decree establishing a boundary around the beds. However, private oystermen find strict limitations on the types of equipment they can use on public reefs make harvesting from these reefs economically infeasible.

#### **Florida**

The aquaculture division of the Department of Agriculture oversees Florida's oyster-bed leasing program. There are approximately 3,500 acres and 770 leaseholders. About one-half of the leases are under an older, expired program, and about one-half are under a program that was initiated in the 1980s.

The new program provides leases on a first-come first-serve basis with a \$15 per acre per year rental fee and a \$200 upfront processing fee. Leases are for a 10-year term. The applicant must include a business plan, which is referenced in the lease. Generally, lease renewal is automatic, but more controversial leases must be reviewed before the Board of Trustees consisting of the governor and six cabinet members.



## State Auditor's Recommendations

1. The Department should immediately begin capturing accurate cost information on the commercial fishery programs. Management should develop a sound cost allocation method. The methodology and basis used should be documented. With a good cost allocation method in place, management can determine whether costs could be reduced.
2. Management should determine whether the fee structure for the commercial licenses is reasonable, based on the results of program costs analysis. The Department should establish a review schedule of costs and fee structure. Management should make the necessary recommendations to the Parks and Wildlife Commission for any fee increases. Department management and the Commission should take into consideration the commercial value of the licenses when setting the fees.
3. The Department should determine whether the State would be best served by continuing the private oyster-bed leases and whether additional leases would benefit the State.
4. Management should determine whether the rental fee for the oyster-bed leases is reasonable, based on the results of program costs analysis. It should make recommendations to the Parks and Wildlife Commission concerning any adjustments to the rental fee for the lease period commencing March 1, 2001, or as soon as possible thereafter. Management and the Commission should take into consideration the commercial value of the leases when setting the fees. At the same time, management should reissue the lease agreements to incorporate terms and conditions to protect the interests of the State.
5. Management should enforce Parks and Wildlife Code, Chapter 76, Section 76.017 (d), which states that "failure to pay any rental when due terminates the lease."
6. The oyster-bed lease agreements should be reissued when any transfer or sale of a current lease occurs to incorporate terms and conditions to protect the interests of the State.
7. Management should consider setting an expiration term for the existing private oyster-bed leases. At the end of this time period, leases would be renewed under some type of competitive process. In determining how to structure the competitive process, safeguards should be built in to ensure that the oyster beds are not destroyed or over-harvested.

# The Parks and Wildlife Department's Response



COMMISSIONERS  
LEE M. BASS  
CHAIRMAN, FT. WORTH  
CAROL E. DINKINS  
VICE-CHAIR, HOUSTON  
ERNEST ANGELO, JR.  
MIDLAND  
JOHN AVILA, JR.  
FT. WORTH  
RICHARD (DICK) HEATH  
DALLAS  
ALVIN L. HENRY  
HOUSTON  
KATHARINE ARMSTRONG IDSAL  
SAN ANTONIO  
NOLAN RYAN  
ALVIN  
MARK E. WATSON, JR.  
SAN ANTONIO  
PERRY R. BASS  
CHAIRMAN-EMERITUS  
FT. WORTH  

---

ANDREW SANSON  
EXECUTIVE DIRECTOR

December 5, 2000

Mr. Lawrence F. Alwin, CPA  
State Auditor  
Office of the State Auditor  
1501 North Congress Avenue  
Austin, Texas 78701

Dear Larry:

Please find enclosed the department's response to the final draft of "A Joint Study Report on the Parks and Wildlife Department's Commercial Fisheries Programs and the General Land Office's Leases of State-Owned Lands."

The Report does a good job of describing and analyzing some very complex issues. The long history of these commercial fisheries and lease programs makes it especially appropriate that such a thorough review was conducted. The conclusions in this Report will be most useful in addressing these important issues.

I want to compliment you on the professionalism displayed by all of your staff on this project. It was a pleasure to work with them. If you require additional information, please contact Gene McCarty, Chief of Staff, at 389-4651.

Sincerely,

  
Andrew Sansom  
Executive Director

AS:HRO:klp

Enclosure

*Give Thanks for  
the Memories...*



Lone Star Legacy.

*Give to the  
Lone Star Legacy  
Endowment Fund*

4200 SMITH SCHOOL ROAD  
AUSTIN, TEXAS 78744-3291  
512-389-4800  
www.tpwd.state.tx.us

*To manage and conserve the natural and cultural resources of Texas for the  
use and enjoyment of present and future generations.*

1. *The department agrees that these cost accounting methodologies should be reviewed for possible improvement. The department will begin that task immediately. However, the department believes that a cost benefit analysis should be a consideration before changing cost accounting procedures. The department does capture cost information for its fishery operations, although it is not as detailed as some other operations. The department believes this information is, in general, adequate to determine cost reduction needs.*

*The department has not seen a need in the past to differentiate between commercial and recreational fishery costs. Our mandate is to manage and protect the fishery resource. In doing so, the department does not view the resource as commercial versus recreational. In addition, as the Auditor has stated, the commercial fishery program has not been mandated as a self-supporting program.*

*Allocation of time to commercial and recreational fisheries, especially with field sampling, is difficult because sampling gear is not specific to these two activities. For example, a trawl sample will catch shrimp, crabs, and fish, all of which can effect both the management of commercial and recreational fisheries and non-consumptive use.*

2. *The department agrees that a formal review schedule to examine license fees would be beneficial. The department does periodically review the fee structure for its commercial licenses. For example, in August, 2000 the department increased the shrimp and seafood dealer license fees. Since the commercial fisheries program is not mandated by statute as a cost recovery program, license fees have not been tied to costs.*

*Recovering resource rent (monies earned beyond a reasonable business profit) from commercial fisheries is a management goal in all of the department commercial fishery management plans. However, many of these commercial fisheries are economically depressed and essentially have no resource rent to provide.*

*In most cases, the department would have to raise license fees substantially to recover its operational and administrative costs. Economic impact analysis has shown that the local and regional value of fisheries could be jeopardized if large license fee increases were imposed. In addition, fisheries contribute to the economic health of the state more than just through the license fees paid.*

3. *The Oyster Fishery Management Plan adopted by the Commission in 1988 specifically addressed the functioning of the oyster lease program. It recommended a continuation of the program because of the social, economic, and health benefits to the state. However, it recommended a moratorium on issuing any new leases because the current amount was adequate for the management goal. The department has annually reviewed the request for new leases and found the present strategy and number appropriate. The department agrees that these annual reviews should continue in conjunction with input from other state agencies.*

4. *The department will review the rental fee for the oyster leases to determine if it is reasonable and, if appropriate, will provide recommendations to the Parks and Wildlife Commission.*

*The department agrees that new terms and conditions should be developed with oyster lease holders. Outreach efforts with appropriate stakeholders will begin as soon as possible to discuss options for new conditions, such as the appropriate length of a lease and transfer of leases.*

5. *The Department will enforce the terms of Chapter 76 that require the termination of a lease when the rental fee is not received by the due date.*
6. *The department agrees that lease agreements should be reviewed based on the Attorney General opinion issued June 22, 2000. The recent Attorney General's opinion regarding oyster leases noted that the current statutes provide little guidance in many areas of the program's administration. The department has not historically inferred powers on itself for regulating industries when the statutes are silent or ambiguous. Legislative clarification on some broad management authority and principals would be helpful in developing new lease program terms and conditions to protect the interest of the state.*

*The department agrees that new terms and conditions should be developed with oyster lease holders. Outreach efforts with appropriate stakeholders will begin as soon as possible to discuss options for new lease conditions, such as the appropriate length of a lease and transfer of leases.*

7. *The department agrees that new terms and conditions of oyster leases, including expiration and renewal issues, should be developed as soon as possible.*

*Chapter 76 of the Parks and Wildlife Code does not set an expiration term or mention a competitive award process. The Attorney General opinion does state that the leases are periodic, year-to-year leases that may be terminated at the end of any lease year after giving reasonable notice of termination. The Opinion does not address the award process. Legislative clarification on these issues would be helpful in developing new lease program terms and conditions to protect the interest of the state.*

*Conditions for renewing leases have historically been a very contentious issue for all fisheries managed with these types of license limitation systems. Once a business invests capital in a fishery, there is incentive to know that capital is protected for the long term. Developing a competitive process for lease renewals is a logical goal for the state to maximum its return on the harvest of public resources. However, the stability of businesses is also something the state benefits from in the form of tax revenues, employment, etc. The development of these renewal policies should be done with maximum input from all appropriate stakeholders.*