
APPENDIX A. PERMITTING REVIEW, ACQUISITION & ISSUES¹

The following is a comprehensive list of necessary permits and contacts for offshore aquaculture facilities in U.S. federal waters and state waters in the Gulf of Mexico. The following agencies have some regulatory or consultative authority regarding an aspect of offshore aquaculture.

A. Federal Agencies

1) National Marine Fisheries Service

Authority

Under the Magnuson Stevens Fishery Conservation and Management Act, the National Marine Fisheries Service (NMFS) has regulatory responsibilities that will affect aquaculture development in the EEZ. The NMFS is responsible for managing commercial fishing operations, which include aquaculture activities. (50 C.F.R. § 229.2 (2004).

For scientific research, the NMFS requires the applicant to apply for a Letter of Acknowledgment and the NMFS will inform the other agencies (the U.S. Coast Guard and state agencies, if necessary) that this activity is occurring in federal waters in the Gulf of Mexico.

Permit

The necessary item is a Letter of Acknowledgment by NMFS to conduct research in federal waters. This letter should be addressed to the South Regional Administrator, Dr. William Hogarth, explaining the proposal and including a copy. Mr. Pete Eldridge of NMFS recommended that a Principle Scientist contact Dr. Roy Crabtree who can help to construct the letter requesting the Letter of Acknowledgment.

An Exempted Fishing Permit from NMFS is required to hold juvenile fish in federal waters. For commercial facilities in the Gulf of Mexico, the NMFS currently requires a commercial harvesting permit.

Contact

Southeast Regional Office
Sustainable Fisheries Division
9721 Executive Center Drive North
St. Petersburg, FL 33702
Phone: (727) 570-5305
Fax: (727) 570-5583

¹ This appendix represents a portion of a more complete document: Kristen M. Fletcher and Ginger Weston. The Legal & Regulatory Environment: Offshore Aquaculture Permitting Process in the Gulf of Mexico, Report published by Mississippi-Alabama Sea Grant Legal Program, available at <http://www.olemiss.edu/orgs/SGLC/Offshore%20Aquaculture.pdf> (last visited 9/2/04).

2) U.S. Army Corps of Engineers

Authority

Under Section 10 of the Rivers and Harbors Act of 1899, as extended by the Outer Continental Shelf Lands Act (OCSLA), the Corps requires a permit for the creation of “any obstruction” in federal waters to preserve unhindered navigational access of the nation’s waters. (33 U.S.C. § 403 (2004).)

The OCSLA extended the Corps’ section 10 authority into the EEZ allowing the agency to regulate “installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing or producing resources from [the outer continental shelf].” (43 U.S.C. § 1333(a), (e) (2004).)

Permit

The necessary permit is the Section 10 Permit; a Nationwide or General permit may be available in which case the Corps issues a letter of permission that serves as the permit. The Corps considers a broad range of potential environmental and other impacts before issuing or denying a Section 10 permit for an open ocean aquaculture facility. These include effects and cumulative impacts upon the water quality; effects of the facility or structure on recreation, fish, and other wildlife; pollution; economic factors; safety; aesthetics; protection of navigational integrity; and accurate charting of any structures (if facility is present beyond the specified time, it is added to permanent chart).

There are several scenarios for receiving permission from the Corps:

a. Letter of Permission

If the structure to which the cage is attached does not interfere with navigation, the Corps will not require a permit, and will issue a Letter of Permission that states the Corps has reviewed the applicant’s proposal and will allow the proposed activities to be conducted as proposed. The letter serves as a permit from the Corps.

b. Existing Scientific Permits

There are also several existing General and Nationwide permits for scientific research in the Gulf. When the Corps receives the information regarding the structure and plans, it will determine if the project fits within one of those programs.

c. Anchoring/Mooring Structure Permit

Any permit issued by the Corps will be conditioned on compliance with the Coast Guard regulations regarding required marking (by lights, etc) of all structures. Moreover, the pilings or anchoring devices used to moor the cage, both in the Sound and out in the Offshore waters, will constitute “Permanent Anchorage” and, therefore, be subject to permitting by the Corps and Coast Guard regulations for marking.

Contacts

Mobile District (E of Pearl River)
U.S. Army Corps of Engineers
Mobile District
P.O. Box 2288
Mobile, AL 36628-0001
Phone: (334) 690-2658

Vicksburg District (W of Pearl River)
U.S. Army Corps of Engineers
Vicksburg District
4155 Clay Street
Vicksburg, MS 39180
Phone: (601) 631-7071

Galveston District (coastal Texas)
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229
Phone: (409) 766-3004

Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4790
Jacksonville, FL 32232-0019
Phone: (904) 232-1650
Fax: (904) 232-2237

New Orleans District
U.S. Army Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267
Phone: (504) 862-2201
Fax: (504) 862-1724

3) U.S. Environmental Protection Agency

Authority

Under Section 318 of the Clean Water Act, the EPA has asserted jurisdiction to require point source pollution discharge permits for aquaculture projects in the open ocean. (Regulations are located at 40 C.F.R. § 122.24 (NPDES)). The EPA delegates its authority for state water issues in Mississippi to the Mississippi Department of Environmental Quality.

In addition, the Ocean Dumping Act (33 U.S.C. § 1412 (2004)) grants authority to the EPA to permit the dumping of material into U.S. waters when such dumping will not unreasonably degrade or endanger human health or the marine environment, ecological systems, or economic potentialities. The criteria for reviewing such permits include the need for the proposed dumping; the effect of such dumping on human health and welfare, including economic, aesthetic, and recreational values; the effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shorelines and beaches; and the effect of such dumping on marine ecosystems.

Permit

The necessary permit is the National Pollution Discharge Elimination System (NPDES) permit which can be acquired through MDEQ. Also, an Ocean Discharge Permit may be necessary, depending on the amount of waste from the facility. The EPA is more

concerned with the amount of feed put into the water than with the amount of waste actually existing in an offshore cage.

Contact

For Alabama, Mississippi and Florida
USEPA, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 303033104
Phone: (404) 562-9387

For Louisiana and Texas
USEPA, Region 6
1445 Ross Ave.
Dallas, TX 75203
Phone: (214) 665-6444

4) Gulf of Mexico Fisheries Management Council

Authority

The Gulf of Mexico Fishery Management Council (Council) is one of eight regional Fishery Management Councils, which were established by the Fishery Conservation and Management Act in 1976 (now called the Magnuson-Stevens Fishery Conservation and Magnuson Act). The Council is responsible for managing fishery resources in federal waters in the Gulf of Mexico (generally, from state waters seaward to 200 miles). According to the NOAA Office of General Counsel, aquaculture farms are subject to the Magnuson-Stevens Act because harvesting fish from the EEZ by U.S. vessels constitutes "fishing" under the Act. This gives the Council the authority to manage aquaculture in the EEZ and requires it to amend appropriate fishery management plans to accommodate proposed farms.

On the regulatory front, the Fisheries Management Councils are becoming involved in the decisionmaking process for offshore permitting for aquaculture. Because permitgranting may involve the granting of exclusive use in a designated area to an aquaculture business, the traditional users of the resource must be incorporated into the regulatory process.

Permit

There is no necessary permit but the Council has issued a Mariculture Policy and, under new Essential Fish Habitat regulations, an applicant may be required to provide information about potential impacts to fishing habitat and information to amend fishery management plans. The Council is responsible for commenting on the proposed facility.

At the time of the project, the Council Executive Director recommended writing a letter to the Council explaining the facility and future plans, possibly making a presentation to the Council at its monthly. The Corps usually consults with the Council and/or the director during the application process.

Contact

Executive Director
Gulf of Mexico Fishery Management Council
The Commons at Rivergate
3018 U.S. Highway 301 North, Suite 1000
Tampa, Florida 336192266
Phone: (813) 228-2815, (888-833-1844 (toll-free))
Fax: (813) 225-7015

5) Department of Agriculture

Authority

The National Aquaculture Act Development Act of 1980 established a coordinating group, the Joint Subcommittee on Aquaculture (JSA), chaired by the U.S. Department of Agriculture. The JSA has been responsible for developing the National Aquaculture Development Plan, which identifies the relative roles of the U.S. Departments of Agriculture, Interior, and Commerce, and establishes a strategy for the development of an aquaculture industry in the United States.

Permit

None. The Department of Agriculture provides research and a variety of services (see http://ag.ansc.purdue.edu/aquanic/jsa/federal_guide/usda.htm) but has not maintained a regulatory role in mariculture.

Contact

Southern Regional Aquaculture Center
Delta Research and Extension Center
Mississippi State University
127 Experiment Station Road
P.O. Box 197
Stoneville, Mississippi 38776
Phone: (662) 6863285
Fax: (662) 6863569

6) U.S. Coast Guard

Authority

The U.S. Coast Guard is responsible for the regulation and enforcement of various activities in the navigable waters of the U.S. and requires that such aquaculture-related structures are marked with lights and signals in order to ensure safe passage of vessels. Installation and maintenance of the markers must be done by the aquaculturist as long as the structures are located in navigable waters. The Coast Guard provides detailed requirements for markings.

Permit

The requirements for marking structures are often included as stipulations for permit approval with the Corps of Engineers or EPA. The aquaculturist must ensure markings are done properly but does not need to file an individual application directly with the Coast Guard.

Contact

For offshore Texas, Louisiana, Mississippi, Alabama and Florida (W of Appalachicola)
Chief of Private Aid to Navigation
Eighth Coast Guard District
Hale Boggs Federal Bldg.
501 Magazine St.
New Orleans, LA 70130-3396
Phone: (504) 5896235
Fax: (504) 589-6654

For offshore Florida (E of Appalachicola)
U.S. Coast Guard Seventh District
Aids to Navigation
Federal Building
51 SW 1st Avenue
Miami, FL 33130
Phone: (305) 350-5654

7) U.S. Fish and Wildlife Service

Authority

When there is federal involvement (a permit, license, funding, etc.) in a permit under review by the Corps, the FWS comments on the proposed action under authority of:

- Fish and Wildlife Coordination Act (general to all species, including plants)
- Endangered Species Act
- Marine Mammal Protection Act (very limited authority)

The FWS has not exercised its authority under the MMPA in the southeast but is more often used in other parts of the country depending upon the presence of certain marine mammals.

The FWS contact during the project advised that the agency would probably have no involvement in a “cage culture” environment unless the agency discovered that a “take” of some covered species was involved. If a private entity were undertaking a commercial venture, the FWS would not comment unless asked to do so, and the responsibility to avoid any take rests on the private entity.

Permit

Comment/Review only.

Contact

Assistant Field Supervisor
Baldwin County, Alabama Field Office
P. O. Box 1190
Daphne, AL 36526
Phone: (334) 441-5181
Fax: (334) 441-6222

8) Minerals Management Service

Authority

The Outer Continental Shelf Lands Act established jurisdiction over submerged lands on the outer continental shelf and the Minerals Management Service has authority over lease sites on the shelf. Consult the MMS if the project will be near or attached to an oil or gas platform or if ownership will be transferred.

Permit

For platform removal approval or transfer of ownership.

Contact

Gulf of Mexico OCS Region
1202 Elmwood Park Blvd.
New Orleans, LA 70123-2394
Phone: (504) 736-2894

B. Alabama

1) Alabama Department of Conservation and Natural Resources

Authority

This agency has no written policies with regard to offshore mariculture but the Department of Conservation may consider on or offshore mariculture proposals on a casebycase basis.

Lands Division—Permit

A standard lease from the state is required, called a Bottom Lease.

Marine Resources Division – Permit

Comments on proposals in the interest of the State Wildlife & Fisheries for the state.

Contact

Director of Marine Resources
P. O. Drawer 458
Gulf Shores, AL 36547
Phone: (334) 9687577 or 9687576
Fax: (334) 9687307

2) Alabama Department of Environmental Management

Authority

The ADEM regulates discharge into public waters of the state and has authority over the state's Coastal Area Management Program. (Alabama Code 9-7-20.) The responsibilities of the Alabama Coastal Program are divided between the Alabama Department of Economic and Community Affairs (ADECA) and the Alabama Department of Environmental Management and advised by the Coastal Resources Advisory Committee (CRAC). ADECA is responsible for overall management of the program including planning, fiscal management, and public information and education. ADEM is responsible for coastal area permitting, regulatory and enforcement functions, and for water quality regulation (Alabama Code § 22-22-9). The program goal is to protect and, where possible, to enhance or restore coastal resources.

Permit

Discharge permit, and Consistency Review.

Contact

ADEM, Chief, Permits & Services Division	ADECA, Coastal Programs Office
P.O. Box 301463	1208 Main Street
Montgomery, AL 361301463	Daphne, AL 36526
Phone: (334) 2717714	Phone: (334) 6260042
Fax: (334) 2717950	Fax: (334) 6263503

C. Florida

Florida enacted its Aquaculture Policy Act in the late 1980s and established the Department of Agriculture and Consumer Services (FDACS) as the lead agency. The Florida Aquaculture Plan was recently updated and proposed rules are soon to be adopted making FDACS a "one-stop shop" for aquaculture in Florida. The Bureau of Aquaculture Development provides extension and education services, assistance with business and production plan development, and guides applicants through the application processes to obtain permits from other agencies, all at no charge. This agency does conduct scheduled annual inspections of all certified aquaculture facilities.

1) Florida Department of Agriculture and Consumer Services

Authority

The Florida Department of Agriculture and Consumer Services is the state's lead aquaculture agency. FDACS administers the Aquaculture Certification program under Florida Code § 597 and the Sovereign Submerged Lands Leasing Program under Florida Code § 253. Details on the Certification and Leasing programs can be found on Florida's official aquaculture website (see www.floridaaquaculture.com).

Permit

Aquaculture Certification

To obtain the Aquaculture Certification, an aquaculturist must provide to FDACS' Bureau of Aquaculture Development a plan for compliance with Florida's Best Management Practices for Aquaculture or obtain an exemption from the Bureau of Aquaculture Development. The Best Management Practices are set out in Florida Administrative Code proposed rule 5L-3. The various exemptions are also listed in proposed rule 5L-3, and they include systems not making discharges into waters of the state, those engaged in certain marine bi-valve culture systems which circulate natural sea water without adding anything to the water, fee-fishing sites with less than 1,000 pounds of fish per acre, and individual production units producing less than 10,000 pounds per year of product.

An application may be obtained from the Bureau of Aquaculture Development, and requires the names, address and phone number of the applicant, information on the facility location, a description of the production facilities and a list of the products cultured together with estimates of annual production. The fee for application is \$50.00, and the Certification expires on June 30 of each year.

Sovereign Submerged Lands Lease

Submerged lands owned by the State of Florida may be leased for aquaculture activities, upon the recommendation of FDACS to the Board of Trustees of the Internal Improvement Trust Fund (the "Board"). The Board is composed of the Florida Legislature, the Governor and his Cabinet.

The Bureau of Aquaculture Development (the "Bureau") provides applicants with the AquaPak, which includes an application form, guidelines for completion and a list of steps involved in the application review and approval process. First, the lease site must be identified and submitted with a description of the proposed activity, a business plan, and a \$200.00 application processing fee. The Bureau then conducts a comprehensive four to six week review of the proposal and makes a site inspection to determine the suitability of the site for the proposed use. Once a satisfactory review has been performed, there is a public notice period, and the Bureau makes its recommendation to the Board. The Board makes all final leasing determinations, and the entire application

process can be completed in six months to one year. Current lease rates are \$15.95 per acre per year, with a \$5.00 per acre surcharge.

Contact

Florida Department of Agriculture and Consumer Services
Bureau of Aquaculture Development
Bureau Chief
1203 Governor's Square Boulevard
Tallahassee, Florida 32301
Phone: (850) 4885471
Fax: (850) 410-0893

2) Florida Department of Environmental Protection

Authority

The Department of Environmental Protection (FDEP) administers Florida's NPDES permitting authority. Because of recent streamlining in the aquaculture regulatory process in Florida, an NPDES permit may or may not be required for an aquaculture facility.

Permit

NPDES permits are not required of aquaculture facilities in compliance with the FDACS' Best Management Practices for storm and wastewater. If, however, a facility is large enough to require an individual NPDES permit under the federal guidelines, FDEP will require NPDES permitting. Most larger farms are required to obtain an NPDES permit from FDEP. Any dredge or fill activities will also require a permit from FDEP.

Contact

Florida Department of Environmental Protection
Industrial Wastewater Section
2600 Blair Stone Rd.
Tallahassee, FL 32399-2400
Phone: (850) 9215330
Fax: (850) 488-6579

3) Florida Fish & Wildlife Conservation Commission

Authority

Since the streamlining of Florida's regulatory program for aquaculture, the Fish & Wildlife Conservation Commission (FWCC) has very limited authority over the marine species in the state. The remaining authority is derived from Florida Statutes section 372.072 (4)(a).

Permit

FWCC's permitting authority has been relegated to FDACS, but aquaculturists who plan to cultivate game/sport fish, such as redfish, snook or sea trout, are required to work with FWCC to ensure compliance with FWCC guidelines and procedures designed to control poaching of wild stock.

Contact

Bureau Chief
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 323991600
Phone: (850) 4870554
Fax: (850) 487-4847

4) Florida Water Management Districts

Each of the five districts permits consumptive uses of Florida's water resources within their district, but a permit is not required for aquaculture facilities using tidal body salt water exclusively. Local ordinances are likely to require a permit for fresh or brackish waters consumed from an aquifer or well, but only when an annual average of more than 100,000 gallons/day will be consumed or the intake pipe has a diameter of four (4) inches or more.

D. Louisiana

Louisiana is developing its marine aquaculture program. Limited permitting for mariculture is allowed (Title 56, section 579) on private property in the coastal zone. The users must show separation of domestic stock from wild stock and sets reporting requirements. The regulations currently apply to oyster cultivation only, which is done in brackish waters. Louisiana has no permitting provisions for public waters.

1) Louisiana Department of Wildlife and Fisheries

Authority

Louisiana currently has no permit system for offshore aquaculture facilities in public waters. The agency with authority is the Louisiana Department of Wildlife and Fisheries.

Permit

A Mariculture Permit may be required after the coastal use permit issued by Department of Natural Resources and a lease from State Land Office have been obtained.

Contact

Habitat Programs Manager
Marine Fisheries Division, Louisiana Department of Wildlife & Fisheries
P. O. Box 98000
Baton Rouge, LA 70898
Phone: (225) 765-2956

2) Louisiana Department of Natural Resources

Authority

Louisiana Department of Natural Resources relies heavily on the assessment made by Wildlife and Fisheries in the regulation of coastal uses. Past mariculture issues involved cultivation of redfish inshore in old abandoned oil and gas canals. If activities complied with Health and Wildlife and Fisheries regulations and the users held a Wildlife and Fisheries permit, DNR waived involvement. In the past, DNR has gotten involved in the past when a significant structure was erected that affected wetlands.

Permit

Coastal Use Permit, if required after the Wildlife and Fisheries assessment.

Contact

Coastal Management Division Administrator
Office of Coastal Restoration & Management
P. O. Box 44487
Baton Rouge, LA 70804
Phone: (225) 342-7591
Fax: (225) 342-9439

3) Louisiana State Land Office

Authority

The State Land Office has authority over the use of the water bottoms and air space above the water in the state. (Louisiana Revised Statutes Ann. section 30:172.)

Permit

For commercial ventures, Louisiana's SLO charges \$0.02/sq. ft. to lease a water bottom. The Lands Office advised that when projects have a scientific or otherwise public purpose, the SLO looks for exceptions to the fee requirement, usually successfully. The state does, however, want to be held harmless and would require an indemnification agreement to cover any damages suffered, such as vessel collisions with the structure.

Contact

Contract/Grants Reviewer (Oversees water bottom leases and permits)
Lands Manager (Makes recommendations to Director of SLO)
Louisiana State Land Office
P. O. Box 44124
Baton Rouge, LA 70804
Phone: (225) 342-0120
Fax: (225) 342-5458

4) Louisiana Department of Environmental Quality

Authority

The Department of Environmental Quality has authority over the water quality for the waters of Louisiana. (Louisiana Revised Statutes Ann. section 30:2074).

Permit

Cheryl Lejeun, Industrial Permits Coordinator, advised that NPDES water permits would be required by Louisiana DEQ for an some aquaculture activities, but not usually for those conducted for scientific or research purposes.

Contact

Industrial Permits Coordinator
Office of Environmental Services
P. O. Box 82135
Baton Rouge, LA 70884-2135
Phone: (225) 765-0199
Fax: (225) 765-0222

E. Mississippi

1) Mississippi Department of Agriculture

Authority

Under the Mississippi Aquaculture Act of 1988, the Department of Agriculture and Commerce is the responsible agency for permitting aquaculture activities in both fresh and marine waters. The law states:

“The Department shall issue a cultivation permit for any aquaculture facility located, in whole or in part, in the Mississippi Sound, the Gulf of Mexico, or bays or estuaries thereof at such time that such facility complies with all state and federal requirements to protect marine resources.” Miss. Code Ann. § 79-22-17 (1999).

The Department must approve the proposed aquaculture facility design and may conduct periodic inspections. The Department may prohibit the culturing of any species at any location if it determines that it would be detrimental to the public interest and presents its determination in writing with supporting justification.

When you apply with the Department of Agriculture, the agency will distribute the permit application to other federal and state agencies. These agencies are:

U.S. Army Corps of Engineers
Environmental Protection Agency
Mississippi Department of Marine Resources
Mississippi Department of Environmental Quality
Mississippi Secretary of State's Office

Permit

Aquaculture Permit.

Contact

P.O. Box 1609
Jackson, MS 392151609
Phone: (601) 3591100
Fax: (601) 3546290

2) Mississippi Department of Marine Resources

Authority

The Mississippi Department of Marine Resources has responsibility for regulating activities under the Mississippi Coastal Wetlands Protection Act that affect any coastal wetland. (Miss. Code Ann. § 49-27-5 (1999)). Generally, any aquaculture operation that is to be sited in an area below the high tide line, in coastal wetlands, or in areas suitable for water-dependent industries must obtain a permit from the DMR.

One obstacle facing aquaculture in Mississippi waters is the completion by DMR of the Marine Aquaculture Environment Monitoring Program Guidelines, which were drafted for an earlier aquaculture project but never completed.

Permit

The necessary permit is the wetlands permit but the DMR will also be responsible for granting consistency under the Mississippi Coastal Program and the Coastal Zone Management Act.

For information purposes, DEQ's concerns during the last project were hundred of lbs of feed/day, the length of time cage in place and how long various species will actually be captured and held.

Contact

Mississippi Department of Marine Resources
Coastal Ecology
1141 Bayview Ave, Ste 101
Biloxi, MS 39530
Phone: (228) 3745000
Fax: (228) 3745008

3) Mississippi Secretary of State

Authority

The Secretary of State is responsible for permitting uses and conserving the state lands, including public trust tidelands, of Mississippi. Aquaculture activities that propose to use the water column or sea bottom require an aquaculture lease from the Secretary. The amount of annual rent is negotiated and the parcel is required to be identified and well-marked.

Permit

The necessary permit is an Aquaculture Lease of Public Trust Tidelands.

Contact

Office of the Secretary of State
P.O. Box 97
Gulfport, MS 39502-0097
Phone: (228) 864-0254
Fax: (228) 864-0325

4) Mississippi Department of Environmental Quality

Authority

The Mississippi Department of Environmental Quality is responsible for regulating discharges into the waters of Mississippi. (Miss. Code Ann. § 49-17-1, et. al. (1999).) In addition, the EPA has delegated its authority for state water issues in Mississippi to the Mississippi Department of Environmental Quality, making the MDEQ responsible for granting NPDES permits.

Permit

The MDEQ will determine the need for an NPDES permit for marine net-pen aquaculture on a case-by-case basis. The MDEQ contact, Mr. Steve Spengler advised that a permit may not be necessary for temporary research sites. MDEQ requires scientific information during the application process, and suggests contacting this agency before filling out a DEQ application.

The possible necessary permits are:

NPDES Discharge Permit
Water Quality Certification
Possible Health Department (if living quarters are constructed on the site)

Contact

Mississippi Department of Environmental Quality
P.O. Box 20305
Jackson, MS 392891305
Phone: (601) 9615171
Fax: (601) 9615349

F. Texas

1) Texas Department of Agriculture

Authority

The Texas Department of Agriculture (TDA) is the lead agency charged with regulation of aquaculture in Texas. Specifically, TDA is statutorily required to encourage the raising of cultured species, development of the aquaculture industry and the marketing of aquaculture products. Texas Agriculture Code § 12 et seq.

The Agriculture Code authorizes both TDA and the Texas Parks and Wildlife Department to adopt rules to carry out their respective duties. It also authorizes TDA to establish record-keeping requirements for commercial aquaculture facilities. Texas Agriculture Code § 134 et seq. As of July 1, 2000, TDA is still working to promulgate these requirements.

Permit

An Aquaculture License must be obtained from TDA prior to beginning operations. Texas Agriculture Code § 134.011(b)(2). A standardized form is to be submitted together with \$100.00 to TDA. The same form is used for Fish Farm Vehicle Licenses required by § 134.012, below. Before an Aquaculture License will be granted by TDA, an applicant must obtain either a permit for wastewater disposal or a Certificate of Exemption from Texas Natural Resource Conservation Commission (TNRCC). Copies of all applications are sent to TPWD and TNRCC for review within 10 days of receipt by TDA.

In addition to the Aquaculture License, an aquaculturist in Texas must obtain Fish Farm Vehicle Licenses from TDA for all vehicles used to transport cultured species from a private facility for sale. Texas Agriculture Code §134.012. Licenses must be purchased for each truck in operation, including vehicles from which fish are sold by a non-aquaculturist. The only exemption is for the vehicle owned and operated by the holder of an

aquaculture license, and a copy of the aquaculture license must be kept in the vehicle. The cost is \$100.00 per vehicle, and the form is attached as Exhibit F1.

Penalties

The penalty for unlawfully fishing or taking fish from an aquaculture facility is the penalty imposed for a third degree felony, and all other statutory violations are Class C, B and A misdemeanors. Texas Agriculture Code § 134.023

The Texas Water Code provides for institution of suit by state agencies for injunctive relief and civil penalties. Texas Water Code § 7.

Contact

Texas Department of Agriculture
Regulatory Division
P.O. Box 12847
Austin, Texas 78711
Phone: (512) 463-7604
Fax: (512) 463-8225

2) Texas Natural Resource Conservation Commission (TNRCC) Water Quantity

Authority

TNRCC is charged with approving water appropriation permits for mariculture operations using brackish or marine waters. Permits are generally required to appropriate water belonging to the State of Texas. Texas Water Code § 11 et seq.

Permit

No permit is required to appropriate waters for mariculture activities, but notice must be given to TNRCC of intent to appropriate water for mariculture activities. Texas Water Code § 11.1421. Notice must be given prior to appropriating, and each appropriation must be reported. No permit is required to appropriate water from the Gulf, its adjacent bays and arms for mariculture operations. The amount appropriated is that “appropriate” to the mariculture activities as determined by TNRCC.

TNRCC may, after notice and hearing, issue an order requiring interruption or reduction of the appropriation if it determines there is an interference with the “natural productivity” of bays and estuaries because of low freshwater inflows.

Contact

Texas Natural Resource Conservation Commission
Division of Water Permits and Resource Management
P.O. Box 13087
Austin, TX 787113087
Phone: (512) 239-6373
Fax: (512) 239-2214 or 239-4770

Water Quality

Permit

Commercial shrimp-culture facilities in the coastal zone must obtain a site-specific wastewater discharge permit from TNRCC. Texas Agriculture Code § 134.013. Prior to issuance of the permit, an applicant must provide an environmental report on the conditions at the proposed site. The report must assess potential impacts on sensitive aquatic habitats, significant impacts related to the construction or operation of the facility and any mitigation actions proposed by the applicant. The report must be provided to TNRCC and TDA. TNRCC must consider this report before making a determination on the wastewater discharge permit, and TDA will only require the report if the proposed activity will occur within the coastal zone, which is defined by the TPWD. TNRCC is required to establish guidelines for this report and its requirements. Licenses are valid for two years.

All other aquaculture operations must obtain either an individual permit, permission from TNRCC to operate under a General Permit, or a Certificate of Exemption. Individual permits are obtained in much the same way as the shrimp-culture permits described above, and the cost is approximately \$350.00. As of July 10, 2000, the General Permit is still in the promulgation stages, having just been submitted for public notice and comment. The anticipated cost for application review under the General Permit is \$100.00. Applicants for Certificates of Exemption are required to complete the application under Texas Administrative Code §30.321, Subchapter O. Only those facilities that recycle all water, rely only upon evaporation or otherwise conduct no activities recognized as discharge by TNRCC can be certified as exempt.

An aquaculture-specific facility fee limit is imposed by Texas Water Code § 26.0292, which limits total fees to \$5,000 annually. Fees are assessed according to the pollutant load of the facility.

Contact

Texas Natural Resource Conservation Commission
Wastewater Permitting
Phone: (512) 239-4618

3) Texas Parks and Wildlife Department

Authority

The Texas Parks and Wildlife Commission (TPWD) is required by the Agriculture Code to adopt rules regulating exotics and enforce them. Texas Agriculture Code § 134.020. TPWD regulates exotic fish, shellfish, and aquatic plant species in order to protect indigenous Texas species and aquatic habitats. TPWD is required to make a list of exotics for which a permit will be required, define the zone inside which exotics will be excluded, approve shellfish disease specialists for the disease free certification of exotics, adopt rules to regulate exotics, and issue Exotic Species Permits for the possession, propagation, sale and transportation of exotics under TPWD Code § 66.007. Additionally, TPWD is authorized to inspect aquatic products at the dealer/handler's place of business during normal business hours, and no person may refuse the inspection. P&WD Code § 47.037.

TPWD also has the water quality control enforcement authority for violations affecting aquatic life and wildlife. Water Code § 26.129. Section 66 of the TPWD Code prohibits any person from catching or taking aquatic life from any private waters without consent, TPWD Code § 66.002, and defines the penalties for violations of that prohibition in TPWD Code § 66.012.

Statistical information on the harvest of aquatic products in Texas must be gathered and compiled by TPWD under TPWD Code § 66.019.

Permit

The TPWD Code, like the Agriculture Code, requires aquaculturists and those transporting aquatic products to obtain and keep the standard fish farm vehicle/aquaculture licenses. TPWD Code § 66.014. A special license issued by TPWD is required to collect, hold or propagate indigenous fish or aquatic life, when Texas law regulates those activities. TPWD Code § 43.021.

A dealer's license must be obtained by any person transporting aquatic products or bringing them into the state under TPWD Code § 47.018, and aquatic products transportation invoices must be prepared by the shipper and kept with the products under TPWD Code § 47.0181. Wholesale fish dealers not licensed under §134.011 of the Agriculture Code must be licensed by TPWD. TPWD Code § 47.009. The same license requirements are imposed upon retail fish dealers under TPWD Code § 47.011 and upon bait fish dealers under TPWD Code § 47.014.

A permit must be obtained from TPWD for introduction of any aquatic products into public waters, and the Department is charged with establishing the rules and regulations governing those permits. TPWD Code § 66.015. This section exempts native "non-game" fish, as defined by the Commission, except where threatened or endangered fish are present.

TPWD Rules § 57.111 et seq. outline TPWD's regulation of exotics. Prior to importing live exotic shellfish, documentation of the inspection and certification of the exotics as disease-free must be provided to TPWD, and the importer must receive acknowledgment that such documentation has been received. Monthly certification is required for certain species, and additional examinations and certifications are required before the first discharge of waste in any calendar year.

To obtain an Exotic Species Permit, an applicant must possess either a valid Fish Farmer's License, a TNRCC permit for operation of a wastewater treatment facility, a TPWD approved research proposal or operate a public aquarium. The application fee is \$250.00, and the applicant must complete TPWD's application form and submit an accurate-to-scale plat of the facility. TPWD Rules § 57.117. Applicants must also meet all the disease free certification requirements in TPWD Rules § 57.114, and facilities located within the exclusion zone must submit and obtain approval of an Emergency Plan to prevent the release or escape of exotics during a natural catastrophe, such as a hurricane or flood. Permits expire every year on December 31.

Contact

Texas Parks and Wildlife Department
Inland Fisheries
4200 Smith School Road
Austin, Texas 7744
Phone: (512) 389-8037
Fax: (512) 389-4388

4) Texas Agency Cooperation

Generally

TNRCC must provide copies of applications for aquaculture wastewater discharge permits to TDA and TPWD. All three agencies shall each appoint one representative to review aquaculture wastewater discharge permits. Texas Agriculture Code § 134.031. TPWD has the authority in consultation with TNRCC to establish guidelines that identify sensitive aquatic habitats in the coastal zone, those guidelines to be used by TNRCC in reviewing applications for new aquaculture facilities or expansions of existing facilities in the coastal zone. As of July 1, 2000, the timing of the application-sharing described above is subject to a Memorandum of Understanding, which has not yet been completed. The representative group charged with reviewing the permits has not yet convened, and the Memorandum of Understanding will define the make-up of this review group.

Collective Permit

A 1999 amendment to the Water Code requires TNRCC, DOA and the P&WD to collectively permit discharges of suspended solids from aquaculture (specifically shrimp) facilities in the coastal zone. Texas Water Code § 26.0345.

General Permit

Water Code § 26.040 Issuance of General Permits

A copy of the Draft General Permit to Dispose of Wastes is attached and is current through December 20, 1999. The permit is aquaculture-specific, and it allows discharge subject to Texas Surface Water Quality Standards, the regulations imposed by TNRCC and the State of Texas.

5) Texas Department of Health

Authority

The Texas Department of Health (TDH) is authorized to regulate molluscan shellfish, including oysters, clams, mussels and scallops under the Texas Aquatic Life Act, Texas Health and Safety Code § 436.001 et seq. TDH's regulatory authority extends to ensure the shellfish are harvested from approved waters. TDH is responsible for licensing and inspecting seafood processors and distributors, and has adopted the federal regulations governing seafood processors, Title 21 of the Code of Federal Regulations, part 123. The Manufactured Foods Division may become involved when unauthorized antibiotics or other adulterants are used on cultured products.

Permit

Anyone taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area, as defined by TDH, must obtain a permit from TPWD and have those activities supervised by TPWD. TDH's regulatory role is primarily that of an inspector charged with determining the suitability of an area for the taking or holding of molluscan shellfish. Areas are to be classified according to the categories in the National Shellfish Sanitation Program Manual of Operations as an approved, conditionally approved, restricted, conditionally restricted or prohibited area. TDH Code § 436.101. The director must also designate growing areas as closed or open areas.

Sanitary surveys of the areas from which oysters are harvested are to be conducted by TDH, and the meat of the oysters must also be sampled at the earliest time following the designation as a closed area. The oyster program must also be consistent with the National Shellfish Sanitation Program. TDH Code § 436.104. TDH issues shellfish certificates and licenses for the processing of crabmeat. TDH Code § 436.111.

Applications are first filed with TDH, then the director or an authorized agent inspects the property for conformity with TDH rules. TDH Code § 436.113. Certificates expire on August 31 of each year, and licenses on the last day of February each year. TDH Code § 436.113.

Contact

Texas Department of Health
Seafood Safety Division
Phone: (512) 719-0215
Fax: (512) 719-0220

6) Texas Bureau of Land Management

Authority

Texas Natural Resources Code § 51 authorizes surface leasing by the Texas General Land Office (TGLO). All lands and waters are held in trust to the Permanent School Fund, and all revenues generated by mineral, land or seabed leases belong to that fund. Texas, unlike most states, claims territorial waters out to ten (10) miles from shore.

Leasing

Applicants interested in leasing Texas land or waters for aquaculture are encouraged to contact the TGLO very early in the planning process. The application consists of two main parts. The first requires the name, address and financial status of the applicant, a description of the proposed location and a statement of the parameters of the project. The second portion involves a due-diligence examination of the first portion by TGLO to determine the nature of the lessee, creditworthiness of the lessee, and the soundness and feasibility of the overall aquaculture proposal. TGLO then uses the results of that examination to determine the rental fee, which consists of a base fee and a royalty-style rent based on the revenue or income of the project.

Contact

Texas General Land Office
Asset Inspections
1700 North Congress Avenue
Austin, Texas 78701-1495
Phone: (512) 463-5139
Fax: (512) 463-5304