



To: Laura Picariello, Texas Sea Grant
From: Alexa Sinha, National Sea Grant Law Center Summer Research Associate¹
Re: Riparian Rights to Plant/Harvest Oysters along Bolivar Peninsula, TX (NSGLC-23-04-04)²
Date: August 8, 2023

Advisory Summary

Texas Sea Grant reached out to the National Sea Grant Law Center requesting information about the rights of an owner of land along the Bolivar Peninsula to plant, grow, and harvest oysters. The rights that a riparian landowner in Texas has regarding planting, growing, and harvesting oysters depend on the body of water to which their land is adjacent and the type of oyster operation desired. Riparian landowners along other bodies of water, such as a creek, bayou, lake, or cove, have the exclusive right to use the portions of the body of water that are included within the meters and bounds of the original grant to plant or sow oysters. Riparian land owners along bay shores have the right to plant oysters 100 yards into the bay from the high-water mark or from where the land survey ends. However, there is no exclusive right to *natural* oyster beds along bay shores since natural oyster beds are public. Riparian landowners must receive approval from the Texas Parks and Wildlife Department (TPWD) to engage in cultivated oyster mariculture.

Background

Texas common law recognizes there are certain unique property rights that are attached to coastal property.³ These include the right to access the water, the right to wharf out (build a dock), and the right to plant oysters. These rights may be referred to as littoral or riparian rights. These terms are often used interchangeable, but “littoral rights” refers to the rights attached to land that borders an ocean, sea or lake and “riparian rights” to the rights attached to lands that border rivers and streams.⁴

There are three regulated methods of harvesting oysters in Texas: harvesting oysters on public beds, sowing and harvesting oysters on private beds, and oyster aquaculture, referred to as cultivated oyster mariculture.⁵ Chapter 75 of the Texas Parks and Wildlife Code governs

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² This product was prepared by the National Sea Grant Law Center under award number NA18OAR4170079 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

³ Ira P. Hildebrand, *The Rights of Riparian Owners at Common Law in Texas*, 6 TEX. L. REV. 19, 20 (1927).

⁴ TRACY BATEMAN ET AL., TEXAS JURISPRUDENCE §228 (3RD ED. 2023).

⁵ NOTE: The Texas Parks and Wildlife Code does not provide a definition for “sowing”. This memo assumes sowing includes cultivation activities and harvesting.



cultivated oyster mariculture. Chapter 76 of the Texas Parks and Wildlife Code governs the oyster industry in general, including permitting, licensure, and regulations.⁶ Subchapter A includes the relevant legislative provisions governing public and private oyster beds and riparian rights. Further regulations for taking oysters from *public* oyster beds, including information regarding areas and seasons, can be found in Chapter 58 of the Texas Administrative Code.⁷

Riparian Rights along Creeks, Bayous, Lakes, or Coves

Texas law grants landowners along creeks, bayous, lakes, and coves exclusive rights to plant and sow oysters. Texas Parks and Wildlife Code §76.004(a) states that “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.” (emphasis added). If the creek, bayou, lake, or cove is not included in the original grant of land, then the riparian owner has the *exclusive* right to plant or sow oysters to the middle of the creek, bayou, lake, or cove or up to 100 yards from the shore, whichever distance is shorter.⁸

Oyster beds or reefs planted by riparian owners are not subject to location by the TPWD.⁹ The department, however, may require the owners of such riparian rights, when offering oysters for sale, to make an affidavit stating that the oysters were produced on their property.¹⁰ Failure to have the affidavit when required by the TPWD or to show it to a game warden is *prima facie* evidence that the oysters were produced from public beds.¹¹

Riparian Rights along Bay Shores

The riparian rights granted to landowners along bay shores are slightly different. It should be noted that there was no definition of “bay” in the relevant chapters related to oysters. This memo has assumed “bay” to mean “an inlet of the sea or other body of water usually smaller than a gulf.”¹² Riparian rights to plant oysters would therefore attach to land adjacent to Galveston and East Bays along the Bolivar Peninsula, but not property abutting the Gulf of Mexico. There was no mention in Texas oyster law regarding riparian rights for gulf front property owners.

Section 76.044(c) states that “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.”

⁶ Tex. Parks & Wildlife Code Ann. §76.

⁷ 31 Tex. Admin. Code §58.21(2023).

⁸ Tex. Parks & Wildlife Code §76.004(b).

⁹ Tex. Parks & Wildlife Code § 76.003.

¹⁰ Tex. Parks & Wildlife Code §76.005(a).

¹¹ *Id.* at §76.005(b).

¹² *Bay*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/bay?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (July 10, 2023, 1:25pm).



Riparian landowners may not claim exclusive rights to a natural oyster bed since all natural oyster beds are public.¹³ “Natural oyster beds” is defined as “an area with a substrate that is predominantly composed of oyster shell or live oysters.”¹⁴ Riparian landowners along bay shores, therefore, have the right to plant and harvest oysters only in adjacent areas that are not natural oyster beds. Given the recent adoption of a new and expanded definition of “natural oyster bed” by the Texas Legislature in March 2023, it would be advisable for riparian owners interested in exercising their riparian rights to check with the TWPDP to ensure the area desired to be used is not a natural oyster bed.

Like riparian owners of creeks, bayous, lakes and coves, oyster beds or reefs planted by riparian owners along bays are not subject to location by TPWD. When riparian owners along bay shores offer oysters for sale, the TPWD may require them to make an affidavit stating that the oysters were produced on his property.¹⁵

Oyster Farming (COM)

Cultivated oyster mariculture is the process of growing cultivated oysters, which are “oysters grown at any point in the life cycle of the oyster or on an artificial structure suspended in the water or resting on the bottom.”¹⁶ While a structure used to grow oysters as part of a cultivated oyster mariculture (COM) operation is not a natural oyster bed or private oyster bed subject to the location requirements outlined in Chapter 76,¹⁷ no person may engage in COM activities without a permit issued by TWPDP.¹⁸ TWPDP approval is needed to establish a COM site regardless of adjacent property ownership.¹⁹

Conclusion

The riparian owner’s ability to exercise their riparian rights of his coastal land along the Bolivar Peninsula depends on the type of waterway that bounds the land. If the land on the Bolivar Peninsula is adjacent to a bay shore (e.g., Galveston or East Bay), then the owner has the riparian right to sow oysters 100 yards into the bay from the high-water mark or from where the land survey ends. However, there is no exclusive right to natural oyster beds in the bay. If the riparian landowner would like to establish a Cultivated Oyster Mariculture (COM), a TPWD permit is required regardless of whether he has adjacent property ownership (riparian rights).

¹³ *Id.* at §76.002.

¹⁴ Note: Tex. Parks & Wildlife Code Ann. §76.001(2) was amended in May of 2023 to provide a new definition for “natural oyster bed.” The legislation becomes effective on September 1, 2023. (S.B. 1032, 88th Leg. Sess. (Tex. 2023)). Texas law had previously defined a natural oyster bed as an “area where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.”

¹⁵ Tex. Parks & Wildlife Code Ann. §76.005(a).

¹⁶ *Id.* at §75.0101(2) - (3).

¹⁷ *Id.* § 75.0102(a).

¹⁸ *Id.* § 75.0104(a).

¹⁹ *Oyster Mariculture in Texas – FAQs*, TEX. PARKS & WILDLIFE, https://tpwd.texas.gov/fishboat/fish/commercial/com_cf/faqs.phtml (July 10, 2023, 1:25pm).