

Coastal Protection and Restoration Authority
Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX A
OLACP STATUTE

RS 56:432.1**§432.1. Oyster Lease Acquisition and Compensation Program**

A. The legislature hereby acknowledges potential conflicts between the Department of Wildlife and Fisheries oyster leasing program and the Louisiana coastal restoration program provided for in R.S. 49:214.1 et seq. Therefore, the Coastal Protection and Restoration Authority shall develop a program, subject to the requirements and conditions of this Section, for the acquisition of and compensation for oyster leases or portions of oyster leases upon which occurs or will occur dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection.

B. The state of Louisiana, through the Coastal Protection and Restoration Authority, may acquire any oyster lease, in whole or in part, due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection.

(1) Acquisition shall be implemented by a notice of acquisition issued to the leaseholder. Such notice shall specify the acreage acquired and the effective date of the acquisition. A plat or map depicting the acreage acquired shall be attached to the notice. The notice and acquisition shall be subject to the following:

(a) The Coastal Protection and Restoration Authority shall issue any such notice in writing to the leaseholder at his address on file with the Department of Wildlife and Fisheries on the date of issuance, by hand delivery or certified mail, return receipt requested. If the Coastal Protection and Restoration Authority attempts such issuance at least once and is unable to deliver the notice to the leaseholder, the Coastal Protection and Restoration Authority shall reissue the notice to the lessee at his address on file with the Department of Wildlife and Fisheries on the date of the re-issuance, by regular mail, and shall publish in the official journal for each parish in which the acquired acreage is located a summary of the notice including identification of the affected acreage, the effective date of the acquisition, and a contact person at the Coastal Protection and Restoration Authority for all inquiries regarding the acquisition. The notice of acquisition may be recorded in the public records of any parish in which the acquired acreage is located.

(b) The acquisition shall be effective on the date specified in the notice of acquisition regardless of whether the lessee actually receives the notice of acquisition. Upon the effective date of the acquisition, possession of the affected acreage shall revert to the state, free and clear of any lease or other obligation or encumbrance.

(c) Lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable for the acquired acreage for the calendar year after the date on which the notice of acquisition was issued.

(d) Upon acquisition of a portion of leased acreage, the lease shall continue in full force and effect as to the remaining acreage under the lease.

(2) The Coastal Protection and Restoration Authority shall determine the compensation for any acquisition pursuant to this Section in accordance with rules or regulations adopted by that department after consideration of recommendations by the Louisiana Oyster Task Force, subject to the following:

(a) The Coastal Protection and Restoration Authority shall issue its determination of compensation to the leaseholder together with the notice of acquisition and by the same procedure provided for issuance of such notice.

(b) The Coastal Protection and Restoration Authority shall consider any reasonably confirmable data or information provided by the leaseholder or any other person in making its determination of compensation, provided that the data or information is submitted in compliance with rules or regulations promulgated by that department prior to the date of initial issuance of the determination of compensation. Such rules or regulations shall provide the leaseholder at least sixty days in which to submit such data or information before the initial issuance of the determination of compensation.

(3) The Coastal Protection and Restoration Authority shall issue payment to the leaseholder in the full amount of its determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, together with the notice of acquisition, and by the same procedure provided for issuance of such notice. Acceptance of such payment shall not preclude any claim for additional compensation, as provided in this Section. If the Coastal Protection and Restoration Authority is unable to contact the leaseholder by the procedure provided in Subparagraph (1)(a) of this Subsection, that

department shall transfer funds in the amount of the determined compensation except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, to a trust account, instead of attaching such payment to the reissued notice. Upon request of the leaseholder listed with the Department of Wildlife and Fisheries on the date notice of acquisition is initially issued, any such compensation may be withdrawn from the trust account for the benefit of the leaseholder. Any funds placed in a trust account that remain unclaimed after a period of five years shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151 et seq. Any amount due on a recorded lien or encumbrance shall be paid directly to the holder thereof, with a copy of all documentation of such payment issued to the leaseholder. If the Coastal Protection and Restoration Authority is unable to contact the holder of the lien or encumbrance, that department shall transfer funds in the amount of the lien or encumbrance to a trust account, from which it may be withdrawn for the benefit of the lien or encumbrance holder.

(4) To the extent that the Coastal Protection and Restoration Authority acquires any lease or portion thereof under this Section in relation to any project or action for integrated coastal protection performed by any department, agency, board, commission, or political subdivision of the state other than the Coastal Protection and Restoration Authority, such department, agency, board, commission, or political subdivision shall compensate the Coastal Protection and Restoration Authority for all costs incurred by the department which are associated with the acquisition. However, the executive director of the Coastal Protection and Restoration Authority may waive this requirement.

C. A leaseholder whose lease is acquired in whole or in part may seek an administrative hearing through the Coastal Protection and Restoration Authority as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection is proper or whether the compensation issued by the Coastal Protection and Restoration Authority satisfies the rules or regulations of that department. A leaseholder whose lease is not acquired but which was impacted by dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection has occurred, may also seek an administrative hearing through the Coastal Protection and Restoration Authority to determine if acquisition of such acreage would be proper. Adjudication under this Section shall be conducted in accordance with the following:

(1) Adjudication under this Section must be requested in writing and received by the Coastal Protection and Restoration Authority within sixty days after issuance of the notice of acquisition, determination of compensation, or payment as provided in Subsection B of this Section. However, adjudication of the amount of the compensation must be requested in writing and received by the Coastal Protection and Restoration Authority within two years after completion of the project for which the lease or portion of the lease was acquired, if the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required in this Section. Adjudication of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection has occurred must be requested in writing and received by the Coastal Protection and Restoration Authority within two years after completion of the project.

(2) Adjudication under this Section shall be conducted in accordance with Chapter 13-B of Title 49 of the Louisiana Revised Statutes of 1950, and pursuant to the rules and regulations promulgated by the Department of Natural Resources after consideration of recommendations by the Louisiana Oyster Task Force. The administrative law judge shall consider any reasonably confirmable data or information provided to that department by the leaseholder or any other person on or before the date of the administrative review.

(3) The final decision of the administrative law judge shall be issued to the leaseholder by certified mail at his address on file with the Department of Wildlife and Fisheries on the date of issuance or at such other address as the leaseholder may specify in his request for administrative review.

(4) A request for an adjudication shall have no effect upon the validity of the acquisition of the lease, but only the compensation payable to the lessee. However, the acquisition may be found invalid if an adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration.

D. A leaseholder may seek in accordance with the following, judicial review of the final decision of the administrative law judge based solely on the administrative record and, except as otherwise provided in

this Section, in accordance with the provisions of Chapter 13-B of Title 49 of the Louisiana Revised Statutes of 1950.

(1) Any petition for judicial review pursuant to this Subsection must be filed with the Nineteenth Judicial District Court within sixty days after issuance of the final decision of the administrative law judge. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. The petition shall be served upon the executive director of the Coastal Protection and Restoration Authority and all parties of record.

(2) A request for judicial review shall have no effect upon the validity of the acquisition of the lease, but only the compensation payable to the lessee. However, the acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration.

E. No funds from, or dedicated to, the Louisiana Wildlife Conservation Fund established by Article VII, Section 10-A of the Constitution of Louisiana shall be obligated or expended in furtherance of or for any purpose of this Section. However, funds paid to the Department of Wildlife and Fisheries expressly for the purposes of this Section may be expended accordingly.

Acts 1997, No. 1314, §1; Acts 2000, 1st Ex. Sess., No. 107, §1; Acts 2006, No. 425, §1, eff. June 15, 2006; Acts 2009, No. 523, §4, eff. July 10, 2009; Acts 2012, No. 604, §4, eff. June 7, 2012.

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APPENDIX B
OLACP REGULATIONS

Public Law Number 101-646, 104 Stat. 4779-4783. (1990). Upon the initiation of the development of plans and specifications for the construction of a project, a project shall be removed from the construction ranking list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2609 (December 2015).

§107. Cost-Sharing
[Formerly LAC 43:I.807]

A. Feasibility. The state shall bear 100 percent of the feasibility costs of all coastal restoration projects.

B. Design and Construction. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the design and/or construction of a coastal restoration project, the local sponsor share of the design and/or construction costs may consist of any form and/or amount of cost-sharing. The state share of the design and/or construction costs shall consist of any form and/or amount of cost-sharing sufficient to meet the remaining design and/or construction costs of the project for which the local sponsor is unable to cost-share.

C. Operation, Maintenance, and Monitoring

1. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state share of said costs shall consist of any form of cost-sharing not to exceed 75 percent of the said costs of the project for which the local sponsor is unable to cost-share and the local sponsor share of said costs shall consist of any form of cost-sharing not less than 25 percent of said costs from a non-trust-fund source.

2. In all cases in which the local sponsor is unable to identify and secure any appropriate non-trust-fund source(s) to cost-share the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state shall bear 100 percent of these costs for which the local sponsor is unable cost-share.

D. The state shall accept any lawful cost-sharing, as defined in §103 and shall adjust the project's cost-effectiveness ranking accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2609 (December 2015).

Chapter 3. Oyster Lease Acquisition and Compensation Program

§301. Purpose and Authority
[Formerly LAC 43:I.851]

A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the department when necessary for purposes of coastal protection, conservation, or restoration. The department may acquire oyster leases, in whole or in part, for such purposes on behalf of the state to the extent that the leases are or may be directly affected by the dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, or restoration project.

B. These regulations are adopted pursuant to Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1 and the general authority of the department under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., R.S. 56:421 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2610 (December 2015).

§303. Construction and Usage
[Formerly LAC 43:I.853]

A. The following shall be observed regarding the construction and usage of these regulations.

1. Unless otherwise specifically stated, the singular form of any noun includes the plural and the masculine form of any noun includes the feminine.

2. Unless otherwise specifically stated, all references to *Section* are to Sections of this Subchapter.

3. Any reference to *days* in this Subchapter shall refer to calendar days.

4. The day of the event from which a designated time period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which case the period runs until the end of the next day that is not a legal holiday. Nonetheless, the effective date of acquisition shall be on the date set by the department pursuant to these regulations and R.S. 56:432.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., R.S. 56:421 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2610 (December 2015).

§305. Definitions
[Formerly LAC 43:I.855]

A. The following shall apply for purposes of these regulations.

Affected Acreage—the portion of an affected lease located within a direct impact area of a project.

Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a direct impact area of a project.

Coastal Protection, Conservation, or Restoration—any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

Department—the Department of Natural Resources, its secretary, or his designee.

Direct Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a project is planned to occur or has occurred.

DWF—the Department of Wildlife and Fisheries, its secretary, or his designee.

Effective Date of Acquisition—the date set by the department in accordance with these regulations and R.S. 56:432.1 upon which the affected lease or affected acreage shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance.

Leaseholder—the last lessee of record, or his designee, of an oyster lease let by DWF pursuant to R.S. 56:425, et seq., as identified in records provided and maintained by DWF.

Marketable Oysters—includes both seed and market-size oysters as defined by DWF.

Oyster Resource Survey—any survey or sampling to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

Potential Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, and restoration project is projected, possible, or estimated to occur.

Potentially Affected Acreage—the portion of a lease located within the potential impact area of a project.

Potentially Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a potential impact area of a project.

Project—any project, plan, act, or activity recognized by the department as relating to coastal protection, conservation, or restoration.

Secretary—the Secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., R.S. 56:421 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2610 (December 2015).

§307. Notification to Leaseholder of an Oyster Resource Survey; Procedures and Protocols for an Oyster Resource Survey
[Formerly LAC 43:I.857]

A. When appropriate, the secretary shall determine and delineate the potential impact area of a project and in making such decision may consult with the government agency or any public or private entity responsible for the project.

B. When the secretary determines that an existing oyster lease identified in records provided and maintained by DWF may, in whole or in part, be located within the direct impact area of a project, the secretary may conduct an oyster resource survey.

C. The secretary shall notify the leaseholder in writing at least 15 days prior to the oyster resource survey of the potentially affected acreage or potentially affected lease. The notification shall, at a minimum, include the following:

1. a brief description of the coastal protection, conservation, or restoration project, and a plat or map depicting the project and potentially affected lease or potentially affected acreage;
2. a copy of these regulations, R.S. 56:424, and R.S. 56:432.1;
3. the date and time of the oyster resource survey;
4. the name of and contact information for the person conducting the oyster resource survey;
5. a statement that the leaseholder or his designee may accompany the person conducting the oyster resource survey;
6. a statement that the state may acquire the potentially affected lease or potentially affected acreage to be surveyed or sampled, and if so, that the leaseholder will

be compensated for any acquired lease or portion thereof in accordance with R.S. 56:432.1 and this Subchapter;

7. the name of and contact information for a person at the department to direct all inquiries regarding the project and the potentially affected lease or potentially affected acreage;

8. a statement that the leaseholder may provide to the department, through the contact person listed in the notice, any reasonably confirmable data or other information relevant to a determination of the compensation for any potentially affected lease or potentially affected acreage, within 60 days after the actual date of the oyster resource survey conducted pursuant to this Subchapter. Failure to provide such data or information within the specified time period may preclude consideration of such data by the secretary, the department, the person conducting the oyster resource survey, or the appraiser appointed thereby;

9. a statement that if the person conducting the oyster resource survey is unable to conduct the survey on the date provided in the notice, that such person will provide notice to the leaseholder of the new survey date and time by appropriate and reasonable means;

10. a statement that the oyster resource survey is to be conducted in the manner set forth under §307.E of this Subchapter; and

11. a statement that the department, the state of Louisiana, political subdivisions of the state, the United States, or any agency, agent, contractor, or employee of any of these entities is not subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any leaseholder in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided by R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.

D. Any written notification from the secretary or the department to the leaseholder of a potentially affected lease or potentially affected acreage in accordance with this section shall be deemed legally sufficient if sent by certified United States mail, postage pre-paid, return receipt requested, or hand delivered, to the last address furnished to DWF by the leaseholder on the date of issuance of notice.

E. Oyster Resource Survey Procedures and Protocol

1. The intent of the oyster resource survey is to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

2. Assessment Procedure

a. Should the secretary elect to obtain an oyster resource survey of a potentially affected lease or potentially

affected acreage, he may select the person(s) to conduct the oyster resource survey considering all relevant criteria, including but not limited to prior experience, prior performance, demonstrated expert knowledge in the field of oyster biology, and the ability to perform concurrent task orders while maintaining high quality work. The person(s) so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have the following minimum qualifications:

i. a college degree in biological science, or prior acceptance by a Louisiana federal or state court as an expert witness in the field of oyster biology or oyster ecology; and

ii. five years of professional experience conducting oyster lease surveys and standing oyster crop analyses.

b. Samples should be taken at a minimum within the area of a potentially affected lease delineated by the secretary as the potential impact area of the project for which the oyster resource survey is being conducted.

c. A written assessment of the results of the oyster resource survey shall be prepared.

d. Oyster resource survey methods and procedures used should be stated and identified in the written assessment.

e. Information and data from the oyster resource survey should be compiled, analyzed, and presented in tables, charts, and in a written format along with scale maps indicating the location of the oyster leases in relation to the proposed project, location of sample sites, number and size of both live and dead oysters, oyster size frequency distribution, mortality rates per group, and photographs of oyster samples.

f. An original copy of the written assessment shall be provided to and retained by the department, which may use it in accordance with the appraisal and valuation procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., R.S. 56:424, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2090 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2611 (December 2015).

§309. Appraisal [Formerly LAC 43:I.859]

A. The secretary shall determine or delineate the direct impact area of a project, and in making such decision, may consult with any public or private entity responsible for the project.

B. Should the secretary determine that an existing oyster lease identified in records provided and maintained by DWF is, in whole or in part, located within the direct impact area

of a project, the secretary shall obtain an appraisal of the affected lease or affected acreage.

C. When the secretary elects to obtain an appraisal of an affected lease or affected acreage, he shall select the appraiser considering all relevant criteria, including but not limited to the following:

1. prior performance; education; experience in valuation of oyster leases; experience in valuation of unique properties and unusual estates; experience in valuation of various land classes; demonstrated expert knowledge in the field of real property appraisal; and, the ability to perform concurrent tasks orders while maintaining high quality work;

2. the appraiser so selected shall be contracted with by the department pursuant to R.S. 39:1481 et seq., or other applicable public contract law, and shall have a current certification as a Louisiana certified general real estate appraiser; professional designation in the field of appraisal; and, five or more years professional experience conducting real property appraisals.

D. The appraiser shall estimate the fair market value of the affected lease or affected acreage to be acquired according to accepted appraisal methods, which may include analysis of comparable sales of other leases. The appraiser may also take into consideration any reasonably confirmable data or information supplied by any person or obtained through the appraisal process, and any data or information obtained through the oyster resource survey conducted in accordance with §307.

E. A written appraisal shall be prepared by the appraiser, estimating the fair market value of the affected lease or affected acreage, and explaining the valuation methodology. An original of the appraisal and a copy of all documents used to develop the appraisal shall be provided to the department, which may use it pursuant to the procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2612 (December 2015).

§311. Determination of Compensation **[Formerly LAC 43:I.861]**

A. The secretary shall determine the compensation for any affected acreage to be acquired as follows.

1. If the department provides a time period of one year or more between issuance of a notice of acquisition pursuant to §313 and the effective date of acquisition, then compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §309.

2. If the department provides a time period of less than one year between issuance of a notice of acquisition pursuant to §313 and the effective date of acquisition, the compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §309 plus the value of such non-removable marketable oysters on the affected acreage, if any, as determined by the department, based upon reasonably confirmable data. The determination of value shall take into account the number of sacks of marketable oysters per acre, suitable acreage, natural mortality, current market price, and harvest cost.

3. Data for estimation of the value of non-removable marketable oysters shall be determined from the written assessment derived from the oyster resource survey conducted in accordance with §307. The department may also take into consideration any reasonably confirmable data or information supplied timely by any person in accordance with §307.

4. The appraiser and the department shall consider any reasonably confirmable data or other information supplied to the department by the leaseholder following the oyster resource survey conducted in accordance with §307. The department or the appraiser may disregard any information or data not submitted timely pursuant to §307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2612 (December 2015).

§313. Notification to Leaseholder of Acquisition and Compensation **[Formerly LAC 43:I.863]**

A. Should the secretary determine that an existing oyster lease issued by DWF is located within the direct impact area of a project and the project is necessary and proper for coastal protection, conservation, or restoration, the secretary may acquire the affected acreage on behalf of the state in accordance with this Section.

B. Acquisition shall be implemented by issuance of a notice of acquisition. Notice of acquisition may be mailed or delivered to the leaseholder no sooner than 60 days after the completion of the oyster resource survey conducted in accordance with §307. The notice shall be issued in writing to the leaseholder by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address furnished to DWF by the leaseholder on the date of issuance of notice. A copy of such notice shall be recorded in the conveyance records of any parish in which the affected acreage to be acquired or the affected lease is located.

C. Such notice of acquisition shall, at a minimum, include:

1. a description specifying affected acreage, or portion thereof, being acquired;

2. the effective date of acquisition;
3. a brief description of the coastal protection, conservation, or restoration project for which the acreage is being acquired;
4. a plat or map depicting the project and the affected lease or affected acreage to be acquired;
5. a copy of these regulations and R.S. 56:432.1;
6. a statement that the department will acquire the acreage described in the notice of acquisition, and that such acquisition shall automatically occur on the date specified in the notice;
7. a statement that the leaseholder retains full use and possession of the affected acreage to be acquired until the effective date of acquisition, and may, at his sole risk and expense, harvest any oysters or take any other action permitted under the affected lease until the effective date of acquisition;
8. a statement that the acquisition will be effective regardless of whether the leaseholder actually received the notice of acquisition;
9. a statement that the affected lease shall continue in full force and effect as to all remaining acreage under the lease other than the acquired acreage (in cases where only part of the affected lease is being acquired);
10. a statement that lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable as to the acquired oyster lease acreage for the calendar year after the date on which the notice of acquisition is issued; but that payment must still be paid as to any remaining acreage under the lease if the lease is acquired only in part;
11. a statement that the leaseholder will either be allowed a period of one year or more from the date of issuance of notice of acquisition herein in which to remove any and all marketable oysters from the affected lease, at his sole risk and expense, and that no compensation shall be allowed for oysters so removed or removable, or if the department states an effective date for the acquisition that is less than one year after the date of issuance, a statement that the compensation for the acreage to be acquired includes compensation for the non-removable marketable oysters as part of the attached acquisition payment;
12. a determination of compensation, stating the dollar amount that the department has determined in accordance with these regulations and R.S. 56:432.1 to be paid for the acquired acreage and the appraised value of the acquired acreage. If compensation is being paid for non-removable marketable oysters, a statement of the value thereof is also to be included;
13. a check, attached only to a notice of acquisition sent to the leaseholder's last address as furnished to DWF by the leaseholder on the date of issuance of notice, in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, in the name of the leaseholder

of record in accordance with the records of DWF on the date of issuance of notice of acquisition herein;

14. a statement that acceptance or negotiation of the attached check (or draft) does not preclude a claim for additional compensation as provided in these regulations and R.S. 56:432.1;

15. if any amount due on a recorded lien or encumbrance has been withheld from the check for compensation, a statement indicating the name of the holder of the recorded lien or encumbrance, the amount withheld, and that payment of said amount has been made by the department to that holder;

16. a statement that the leaseholder may seek an administrative hearing in writing through the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment, pursuant to these regulations and R.S. 56:432.1, as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper or whether the compensation issued by the department satisfied the regulations under this Subchapter, and that administrative or judicial review may be permissible, but that the procedures stated by law and these regulations must be followed or such right of review may be lost or impaired; and

17. a statement that a request for administrative or judicial review shall have no effect upon the validity of the acquisition of the acquired acreage, but only the compensation payable to the leaseholder, unless review is sought timely and the leaseholder proves that the project or action for which the acreage was acquired does not further coastal protection, conservation, or restoration.

D. Before issuing any notice of acquisition, the department shall make a reasonable attempt to determine whether any amount is due on a recorded lien or encumbrance in relation to any oyster lease covering the acreage to be acquired. The holder of the lien or encumbrance and the leaseholder may negotiate to allocate the compensation to be paid under the notice of acquisition by written agreement among them. Any such written agreement must fully release and indemnify the department from any claim in relation to the acreage to be acquired or the compensation for such acreage.

1. If no such written agreement is provided on or before the date when the department issues the notice of acquisition, the department shall withhold the full amount of all liens or encumbrances covering any of the acreage to be acquired, up to the full amount of the compensation determined by the department. If the department timely receives such a written agreement, the department shall withhold the amount agreed by the lienholder or encumbrance holder. A statement of the name of the holder and the amount withheld in relation to each lien or encumbrance shall be issued to the leaseholder as part of the notice of acquisition.

2. Should the amount of compensation to be paid for the acquired acreage be insufficient to pay the entirety of the lien or encumbrance, any lien or encumbrance shall be paid in order of legal preference and all holders of any remaining or unpaid lien or encumbrance shall be notified of the reason for non-payment or partial payment and issued a copy of the notice of acquisition.

3. The department shall forward payment in the full amount of any withholding to the holder of the lien or encumbrance by certified United States mail, return receipt requested, postage pre-paid, or by pre-paid receipted courier or delivery service, or hand delivery, to the last address on file with the secretary of state, if any, or to any address provided to the department or DWF by the lien or encumbrance holder. A copy of the notice of acquisition and determination of compensation, showing the lien or encumbrance and the withholding in relation thereto, shall be attached to the payment.

4. If the department is unable to make delivery of the payment by these means, the department shall transfer funds in the full amount of the withholding to a trust account from which it may be drawn for the benefit of the holder of the lien or encumbrance by joint agreement of the holder and the department, upon request of the lienholder of record on the date the notice of acquisition is initially issued.

5. If funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151 et seq., at the sole discretion of the secretary.

E. If the department attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §313.C, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the department shall re-issue the notice and the determination of compensation by certified United States mail, return receipt requested, to the leaseholder at his address on file with DWF on the date of the re-issuance. In such event, the department shall also publish a summary of such notice identifying the affected lease and acreage to be acquired, stating the effective date of the acquisition and providing a contact person at the department for all inquiries regarding the acquisition, in the official journal for all parishes in which any part of the acreage to be acquired is located. In addition, the following procedures shall apply.

1. If a Notice of Acquisition is re-issued under this Subsection, no check shall be attached to the re-issued notice. Instead, payment in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, shall be transferred into a trust account from which it may be drawn for the benefit of the leaseholder by joint agreement of the leaseholder and the department, upon request of the leaseholder listed with DWF on the date the notice of acquisition is initially issued. If said funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the

funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act as set forth in R.S. 9:151 et seq., at the sole discretion of the secretary.

2. A re-issued notice shall include a statement that compensation for the acquisition has been deposited into a trust account, and that a contact person at the department designated in the re-issued notice can assist the leaseholder in withdrawing said funds from the trust account. The re-issued notice shall also include a statement that any funds in the trust account remaining unclaimed after five years shall be declared abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151 et seq.

F. Upon the effective date of acquisition of affected acreage as stated in the notice of acquisition, possession of the affected acreage acquired pursuant to the notice of acquisition, issued in accordance with this section shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance, and regardless of whether the leaseholder actually receives the notice of acquisition.

G. No lease shall be granted for any water bottom for which any lease was previously acquired by the state for coastal protection, conservation, or restoration, unless the secretary of DWF determines that leasing would otherwise be appropriate under the provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950 and the secretary of DNR affirms that the water bottom is not necessary for coastal protection, conservation, or restoration, as provided by and in accordance with the provisions of R.S. 56:425(E). Unless this determination has been made prior to issuance of the lease, a lease of water bottom for which a lease was previously acquired shall be null and void for such water bottom and shall be of no force or effect. No person shall have any claim against either secretary, either department, the state of Louisiana, its political subdivisions, the United States, or any agency, agent, contractor, or employee thereof or any other person in relation to the nullity of such lease. The determination of whether the water bottom sought to be leased is not necessary for coastal protection, conservation, or restoration shall be at the sole discretion of the secretary of DNR, upon consideration of existing, planned, projected, or reasonably foreseeable projects or other actions needed for coastal protection, conservation, or restoration.

H. Nothing in these regulations shall be construed to require the secretary to engage in or perform any project or other action for coastal protection, conservation, or restoration or any oyster resource survey, appraisal, or valuation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., R.S. 56:425, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2092 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2612 (December 2015).

§315. Administrative Review
[Formerly LAC 43:I.865]

A. A leaseholder of an oyster lease acquired, in whole or in part, in accordance with these regulations and R.S. 56:432.1 may seek an administrative hearing through the department.

1. Any such adjudication shall be limited to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper, or whether the compensation issued by the department satisfies the rules and regulations under this Subchapter.

2. Any leaseholder whose lease is not acquired, but upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred, may also seek an administrative hearing through the department under this section to determine if acquisition of such oyster lease acreage would be proper.

B. A leaseholder's request for an administrative hearing under this section shall be requested in writing and sent to the department at the following address: Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

1. A written request for adjudication under this Section must be received by the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment to which the request pertains. However, a request for adjudication may be submitted to the department within two years after completion of the project for which acreage was acquired, if and only if, the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required by R.S. 56:432.1 or §313, or the request for adjudication seeks review of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred.

a. A request for adjudication received after the aforementioned deadlines, as applicable, is not timely and shall be denied.

b. A request for adjudication is deemed timely "received" when the request is mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they are timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service or a bona-fide commercial mail service such

as Federal Express or United States Parcel Service, made at the time of mailing which indicates the date thereof.

2. A request for an administrative hearing shall, at a minimum, include the following:

a. identification of the notice of acquisition to which the request pertains, or if no notice has been issued, identification of the affected lease and affected acreage to which the request pertains;

b. a statement of the relief requested, identifying the specific issue or point as to which adjudication is sought;

c. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

d. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request for administrative review. Neither the department nor the Division of Administrative Law have any obligation to deliver any communications or other notices regarding the request to any person or address other than the address listed in the request or any amendment thereto. If no person is listed, the department and the Division of Administrative Law shall deliver all communications or notices to the last address on file for the leaseholder with DWF, and shall have no obligation to deliver communications or notices to any other person or address.

3. The department shall promptly submit a request for adjudication to the Division of Administrative Law.

C. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the Division of Administrative Law Act (DALA), R.S. 49:991 et seq., unless such procedures are inconsistent or in conflict with the provisions of this Subchapter or R.S. 56:432.1.

D. The leaseholder may provide to the Division of Administrative Law, the department, and any other parties, including any holder of any lien or encumbrance or any other leaseholder claiming an interest in the acreage at issue, on or before the date of the adjudication, any reasonably confirmable data or other information that the leaseholder believes should be considered by the Division of Administrative Law in conducting the administrative review of the determination of the department. The Division of Administrative Law shall consider any reasonably confirmable data or information timely provided to the department by the leaseholder or any other person pursuant to §313 and R.S. 56:432.1. The Division of Administrative Law may disregard any information or data that is not submitted timely pursuant to this Subchapter.

E. The final decision of the Division of Administrative Law shall be issued to the leaseholder, in writing by certified mail, at his address on file with DWF on the date of issuance thereof, or at such other address as may be specified in the request for adjudication; and the Louisiana Department of Natural Resources, Office of Coastal Restoration and

Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

F. A request for adjudication shall have no effect upon the validity of the acquisition of the acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the oyster lease acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

G. If the Division of Administrative Law declares in a final decision that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department, subject to Constitution Article 12, Section 10, shall issue a check or draft to the leaseholder for such additional amount, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication, within 60 days after issuance of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2094 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2614 (December 2015).

§317. Judicial Review **[Formerly LAC 43:I.867]**

A. A leaseholder may seek judicial review of the final decision of the Division of Administrative Law under §315 in accordance with R.S. 56:432.1(D), based solely on the administrative record and, except as otherwise provided in these rules or by R.S. 56:432.1, governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq. and the Division of Administrative Law Act (DALA), R.S. 49:991 et seq.

B. Proceedings for judicial review may be instituted in accordance with R.S. 56:432.1(D) by filing a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge within 60 days after issuance of the final decision of the Division of Administrative Law. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. Copies of the petition shall be served upon the secretary and on all parties of record.

C. A request for judicial review shall have no effect upon the validity of the acquisition of any oyster lease acreage

acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

D. If the court declares in its judgment that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department may appeal the judgment in accord with R.S. 49:965 of the Administrative Procedure Act (APA). If the judgment is affirmed on appeal or no appeal is taken and subject to Constitution Article 12, Section 10, the department shall issue a check or draft to the leaseholder for such additional compensation as set forth in the original judgment or as may be modified or amended on appeal by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication no more than 60 days after the judgment becomes final and definitive under the provisions of Articles 2166 and 2167 of the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2616 (December 2015).

§319. Reimbursement of Costs of Acquisition **[Formerly LAC 43:I.869]**

A. The department may acquire any acreage under this Subchapter in relation to a project or action for coastal protection, conservation, or restoration performed or to be performed by or for the United States, any department, agency, board, commission, or political subdivision of the state, or any other public or private entity responsible for a project.

B. If the department acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the department, such entity shall compensate the department for all costs incurred by the department, which are associated with the acquisition.

C. The costs for which reimbursement is due under this Subchapter includes but is not limited to costs of oyster resource surveys, appraisal, administrative, or other uses of department personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The secretary may choose, at his sole discretion, to waive any part or all of the compensation that would

NATURAL RESOURCES

otherwise be required under this Section. No person or entity shall have any right to such waiver, and the secretary shall have no obligation to make such a waiver. Waiver of any part of the compensation that would otherwise be required shall not affect any obligation to pay the remainder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1 et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006), repromulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2616 (December 2015).

Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX C

**SUMMARY OF OLACP ACQUISITIONS
AND EXPENDITURES**

PROJECT	DATE	TOTAL NUMBER OF LEASES	TOTAL LEASE ACRES INSIDE	ACRES INSIDE DIRECT IMPACT	SURVEY COST	APPRAISAL COST	PROJECT TOTAL	COST of ACQUISITIONS	COST per ACRE AVG	ACTUAL PROJECT COST	ACTUAL COST per ACRE
		IN 1,500'	1,500' BUFFER	150' BUFFER							
BA-0038 Pelican Island	Aug-11	15	825	135.07	\$140,777.90	\$40,395.50	\$181,173.40	\$222,622.70	\$1,648.00	\$403,796.10	\$2,989.00
BA-0040 Shofield Island	Jul-11	41	876.76	690.83	\$296,057.52	\$54,484.98	\$350,542.50	\$543,472.56	\$786.00	\$894,015.06	\$1,294.00
BA-0068 Grand Liard Dredge Pipe Report	Sep-12	48	1078.55	263.75	\$238,553.13	\$57,304.69	\$295,857.82	\$222,137.17	\$842.00	\$517,994.99	\$1,963.00
BA-0076 Chenier Ronquille	Jun-15	8	263.75	162.18	\$37,961.99	\$17,998.75	\$55,960.74	\$26,397.00	\$162.00	\$82,357.74	\$507.00
BA-0110 Shell Island East	Nov-12	17	874.32	369.77	\$254,526.32	\$37,752.79	\$292,279.11	\$515,898.06	\$1,395.00	\$808,177.17	\$2,185.00
BA-0111 Shell Island West	Mar-12	49	2095.4	937.18	\$110,761.31	\$61,423.81	\$172,185.12	\$481,828.36	\$514.00	\$654,013.48	\$697.00
BA-0143 Caminada Headway Beach & Dune Protection	Oct-13	3	44.04	11.96	\$22,758.53	\$18,283.75	\$41,042.28	\$2,085.00	\$174.00	\$43,127.28	\$3,605.00
BA-0171 Caminada Headlands (BA-0193 included)	Sep-19	3	51	28.07	\$22,652.90	\$14,431.13	\$37,084.03	\$5,777.00	\$205.00	\$42,861.03	\$1,526.00
BA-0202 Queen Bess	Jun-19	3	277	2.63	\$25,507.83	\$12,438.63	\$37,946.46	\$592.00	\$225.00	\$38,538.46	\$14,653.00
BA-0203 Spanish Pass	Jul-05	4	160	2.85	\$75,000.00 *	\$15,000.00 *	\$90,000.00	\$1,000.00	\$350.00	\$91,000.00	\$31,929.00
Baptiste Collet Dredging (Corps)	Apr-15	4	82	53.86	\$112,696.84	\$25,800.00	\$138,496.84	\$4,105.00	\$76.00	\$142,601.84	\$2,647.00
BS-0031 Bay Denesse Delta Management	Jun-18	12	885	265.34	\$22,389.93	\$24,345.88	\$46,735.81	\$19,901.00	\$75.00	\$66,636.81	\$251.00
MR-19 Shoreline Protection Emergency Restoration SPER Bay Jimmy	Jan-12	15	971.94	308.46	\$103,794.75	\$21,547.83	\$125,342.58	\$87,145.70	\$269.40	\$212,488.28	
PO-0030 Lake Borgne	Jul-07	10	886	51.12	\$26,066.44	\$16,150.85	\$42,217.29	\$17,751.90	\$347.00	\$59,969.19	\$1,173.00
PO-0036 Orleans Landbridge Shoreline Protection	May-10	2	731	46.95	\$42,249.73	\$39,373.00	\$81,622.73	\$11,900.92	\$253.00	93523.65	\$1,991.00
PO-0072 Biloxi Marsh Living Shoreline	Aug-11	9	417.13	46.90	\$45,413.24	\$20,109.52	\$65,522.76	\$24,376.86	\$519.00	\$89,899.62	\$1,897.07
PO-0093 Bayou Dupre	Jul-05	2	412	20.90	\$25,000.00 *	\$10,000.00	\$35,000.00	\$7,117.60	\$340.00	\$41,575.00	\$1,989.00
PO-0094 Bayou Bienvenue	Oct-14	4	267.73	21.78	\$42,026.00	\$10,500.00 *	\$42,026.00	\$6,155.33	\$282.00	\$48,181.33	\$3,164.30
PO-0095 Shell Beach	Jul-11	2	297	11.5	\$17,242.30	\$10,500.00	\$27,742.30	\$3,777.33	\$328.00	\$31,519.63	\$2,740.00
PO-0174 Biloxi Marsh Living Shoreline	Jul-05			24.84	\$30,000.00 *	\$12,000.00 *	\$42,000.00	\$20,327.33	\$818.00	\$61,900.00	\$2,491.00
TE-0044 North Lake Mechant Landbridge Restoration	Jun-07	13	825	687	\$37,780.61	\$20,325.00	\$58,105.61	\$18,107.66	\$26.00	\$76,213.27	\$110.00
TE-0045 Terre-Bay Shore Demonstration	Jun-07	9	751	59	\$31,727.00	\$12,359.00	\$44,086.00	\$17,950.00	\$304.00	\$62,036.00	\$1,051.00
TE-0064 Morganza to the Gulf - H2 & H3 (TE-0064)	Jun-08	17	500	20.46	\$159,700.94	\$39,895.00	\$199,595.94	\$8,172.96	\$399.00	\$207,768.90	\$10,154.00
TE-0072 Lost Lake MC	Jul-05			1	\$20,000.00 *	7,500.00 *	\$27,500.00	\$123.00	\$123.00	\$27,623.00	\$27,623.00
TE-0140 Golden Meadow Marsh Creation	Mar-18	5	1848	95.84	\$37,222.25	\$23,320.38	\$60,542.63	\$127,159.50	\$1,326.00	\$187,702.13	\$1,958.00

Total Acres	Project Cost	Acquisition Cost	Totals	Avg. Acq. Cost/Acre
4319.24	\$2,590,607.95	\$2,395,881.94	\$4,985,519.96	\$554.00

Total Cost of
Project **\$4,986,489.89**

* Figures are based upon estimation.

<u>Project</u>	<u>Lease</u>	<u>Acres of Lease Acquired</u>	<u>Cost</u>	<u>Price per Acre</u>
BA-0040 June 2011	35229	237.73	\$154,525	\$650
Shoefield Island	35449	0.03	\$100	\$100
Appraisal 31-07	35517	10.14	\$3,000	\$295
	35701	1.41	\$705	\$500
	2666598	3.11	\$1,555	\$500
	2706198	9.76	\$600	\$61
	2857201	12.67	\$10,135	\$799
	3119109	4.9	\$3,920	\$799
	3371509	61.3	\$4,650	\$75
	3428110	5.53	\$3,000	\$542
		346.58	\$182,190	\$432
BA-0035 Bay Chaland Grand Bayou Pass	33412	0.74	\$100	\$135
	33434	40.37	\$5,046	125
	35511	6.53	\$816	125
	2665398	1.51	\$151	100
	2669998	1.47	\$294	200
	2774300	6.36	\$795	125
	2783800	15.44	\$1,930	125
	2803600	24.73	\$3,091	125
	2803700	5.06	\$632	124
	2849801	4.91	\$614	125
	2861701	1.25	\$125	100
	2864501	62.73	\$7,841	125
	2871407	12.83	\$1,604	125
	2886707	6.73	\$841	124
	2887507	1.56	\$195	125
	2964103	9.09	\$1,136	125
	3144607	4.49	\$561	125
	3144707	9.97	\$1,196	120
	3185407	10.37	\$1,296	125
	3188007	6.88	\$860	125
	3202307	10.39	\$1,039	100
	3267707	4.47	\$559	125
	3271807	2.72	\$340	124
	3271907	1.74	\$209	120
	3278407	2.97	\$371	124
		255.31	\$31,644	\$125
BA-0068 Sept. 2012	2736499	6.67	\$1,525	\$228
Dredge Portion	2753009	3.72	\$1,210	\$325
Empire Waterway	2830301	27.78	\$11,112	\$400
Appraisal 32-05	2838401	11.17	\$3,630	\$324

	2851501	18.61	\$6,048	\$324
	2865707	8.30	\$2,698	\$325
	2871907	37.05	\$10,189	\$275
	2889307	12.04	\$4,816	\$400
	2896607	7.06	\$2,295	\$325
	3179209	1.55	\$620	\$400
	3231407	0.53	\$146	\$275
	3246807	2.76	\$966	\$350
	3254707	6.42	\$2,800	\$436
	3261307	5.40	\$1,890	\$350
	3432010	21.06	\$8,424	\$400
	3437010	0.51	\$166	\$325
	3437210	0.14	\$100	\$714
	3449410	13.15	\$4,274	\$325
	3497311	3.74	\$1,496	\$400
		187.66	\$64,405	\$398
BA-0068	2964303	10.69	\$2,940	\$275
Grand Liard Marsh Creation Sept. 2012	3249407	0.2	\$100	\$500
Appraisal 32-05	3484311	60.07	\$17,753	\$295
	3484411	5.13	\$1,405	\$273
		76.09	\$22,198	\$389
BA-0076	2693613	45.11	\$9,090	\$201
Chenier Ronquille June 2015	2878907	0.84	\$250	\$297
Appraisal 35-01	3016609	7.25	\$1,731	\$238
	3126909	47.28	\$4,940	\$104
	3127209	61.70	\$10,386	\$168
		162.18	\$26,397	\$274
BA-0143	2773600	5.68	\$1,056	\$185
Caminada Headlands Oct. 2013	3167608	6.28	\$1,029	\$163
Appraisal 34-01		235.84	\$2,085.00	\$174
PO-0072				
Biloxi Marsh Living Shoreline Aug. 2011	2810201	1.37	\$685	\$499
	2846901	45.53	\$22,765	\$500
		46.9	\$23,450.00	\$500
PO-0094	34922	9.84	\$2,868.02	\$291
Bayou Bienvenue Oct. 2014	2630898	9.11	\$2,507.31	\$275
	2690298	2.83	\$780.00	\$275
				\$280
BA-0110 Shell Island East				

35573	0.62	\$620.00	\$1,000
2793500	0.97	\$970.00	\$1,000
2848901	6.12	\$1,683.00	\$275
2931709	6.88	\$2,800.00	\$406
3163508	4.83	\$1,932.00	\$400
3229607	2.59	\$2,590.00	\$1,000
3248307	2.77	\$2,770.00	\$1,000
3263507	7.61	\$3,044.00	\$400
3431310	9.81	\$3,924.00	\$400
3477711	327.57	\$108,852.00	\$332
		369.77	\$129,185.00
			621300%

BA-0111 Shell Island West

2665313	8	\$2,000.00	\$250
2665813	11.79	\$3,600.00	\$305
2753209	1.62	\$608.00	\$375
2783500	29.45	\$11,780.00	\$400
2787400	8.07	\$2,625.00	\$325
2790100	1.54	\$500.00	\$324
2800000	0.29	\$115.00	\$396
2800100	22.77	\$9,845.33	\$432
2854901	54.58	\$119,486.93	\$2,189
2899107	13.71	\$4,800.00	\$350
2928103	2.52	\$1,553.49	\$616
2931709	0.4	\$0.00	\$0
2964109	0.64	\$325.00	\$507
2986909	10.35	\$3,880.00	\$374
3004809	3.46	\$1,300.00	\$375
3010609	16.11	\$7,308.41	\$453
3081109	12.91	\$4,225.00	\$327
3143609	10	\$4,881.37	\$488
3152209	20.5	\$6,663.00	\$325
3162609	8.24	\$3,375.00	\$409
3163508	301.65	\$105,580.00	\$350
3164607	1.32	\$430.00	\$325
3165009	2.71	\$950.00	\$350
3200909	37.32	\$13,062.00	\$350
3202109	46.77	\$15,348.50	\$328
3202307	3.33	\$1,000.00	\$300
3208008	2.93	\$1,245.00	\$424
3244307	0.33	\$115.00	\$348
3246507	29.64	\$50,044.41	\$1,688
3263507	7.04	\$2,956.00	\$419
3265307	4.16	\$1,560.00	\$375
3370709	0.9	\$295.00	\$327
3371409	4.8	\$1,560.00	\$325
3371709	10.32	\$3,870.00	\$375
3375709	0.43	\$150.00	\$348

3417410	7.7	\$2,800.00	\$363
3417510	7.36	\$2,575.00	\$349
3417610	4.71	\$2,315.84	\$491
3431110	20.82	\$7,285.00	\$349
3431310	95.11	\$35,655.00	\$374
3431610	11.63	\$7,223.13	\$621
3431710	46.55	\$13,965.00	\$300
3443710	9.95	\$3,235.00	\$325
3444210	6.94	\$3,228.32	\$465
3444510	22.05	\$8,820.00	\$400
3444710	1.83	\$595.00	\$325
3450610	7.37	\$2,395.00	\$324
3477711	3.15	\$4,673.97	\$1,483
3586099	1.38	\$325.00	\$235
		<hr/>	
	937.15	\$482,128.70	\$454

SPER

2790200	22.31	\$7,809.00	\$350
2839607	1.46		\$0
3133707	120.73	\$29,308.00	\$242
3182707	1.45	\$363.00	\$250
3253107	1.22		\$0
3318608	129.94	\$32,485.00	\$250
3463010	37.53	\$13,136.00	\$350
		<hr/>	
	314.64	\$83,101.00	\$400.13

TE-0044

3489311	99.69	\$15,010.98	\$150
2719314	5.42	\$813.00	\$150
2822816	2.2	\$307.50	\$139
2972304	2.2	\$335.94	\$152
2932903	5	\$1,123.13	\$224
		<hr/>	
	114.51	\$17,590.55	\$163

BS-0031 Bay Denesse Delta Management

2811716	1.63	\$122.00	\$74
2832116	3.73	\$280.00	75
2890107	107.83	\$8,087.00	74
3094107	0.46	\$35.00	76
3102107	62.83	\$4,712.00	74
3102807	2.17	\$163.00	75
3102907	5.76	\$432.00	75
3374309	47.3	\$3,548.01	75
3430010	20.8	\$1,560.00	75
3434510	10.2	\$765.00	75
3442810	2.44	\$183.00	75
3608615	0.19	\$14.00	73
		<hr/>	
	265.34	\$19,901.01	74.6

BA-0202 Queen Bess	2765918	0.67	\$151.00	225
	3457410	1	\$225.00	225
	3557712	0.96	\$216.00	225
		2.63	\$592.00	225
BA-0171 (BA-0193)Caminada	2773615	7.78	\$1,437.00	185
	2959817	15.57	\$3,270.00	210
	3167608	4.72	\$1,070.00	226
		28.07	\$5,777.00	205
TE-0140 Golden Meadow Marsh Creation	2913605	1.87	\$2,365.75	1184
	2927105	48.93	\$49,322.01	1008
	3043304	8.8	\$8,800.00	1000
	3397109	32.3	\$60,733.53	6901
	3401009	3.94	\$5,938.42	1507
		95.84	\$127,159.71	2320
Baptisite Collette Maintenance Dredging	2722514	2.68	\$201.00	75
	3373609	15.24	\$450.00	29
	2745514	15.24	\$1,200.00	78
	2722614	30.05	\$2,254.00	75
		63.21	\$4,105.00	64.25

Coastal Protection and Restoration Authority
Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX D

CPRA/DWF MOU REGARDING OYSTER LEASING

MEMORANDUM OF UNDERSTANDING
BETWEEN COASTAL PROTECTION AND RESTORATION AUTHORITY
AND LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES
FOR MUTUAL COOPERATION REGARDING
OYSTER LEASING REGARDING BUFFER ZONES, INTEGRATED COASTAL
PROTECTION, AND CAPABILITY OF SUPPORTING OYSTER POPULATIONS

Section 1
PURPOSE

The Coastal Protection and Restoration Authority ("CPRA") is responsible for implementing and overseeing Integrated Coastal Protection in the coastal area of the State of Louisiana. (La. R.S. 49:214.6.1, 214.6.2, 214.6.3.) Integrated Coastal Protection means "plans, projects, policies, and programs intended to provide hurricane protection or coastal conservation or restoration, and shall include but not be limited to coastal restoration; coastal protection; infrastructure; storm damage reduction; flood control; water resources development; erosion control measures; marsh management; diversions; saltwater intrusion prevention; wetlands and central wetlands conservation, enhancement, and restoration; barrier island and shoreline stabilization and preservation; coastal passes stabilization and restoration; mitigation; storm surge reduction; or beneficial use projects." (La. R.S. 49:214.2.)

The Louisiana Department of Wildlife and Fisheries ("DWF") is responsible for the control and supervision of all wildlife of the State of Louisiana, including fish and all other aquatic life, and for the control and supervision of programs relating to the management, protection, conservation, and replenishment of wildlife, fish, and aquatic life in the State. (La. R.S. 36:602.) DWF, through its Secretary, is also responsible for leasing state-owned water bottoms and natural reefs in the water bottoms of the State for the purpose of oyster cultivation. (La. R.S. 56:425(A).)

CPRA is also responsible for reviewing each application to DWF for new oyster leases or renewals or expansions of oyster leases, in order to determine whether the affected water bottom is located in an area where a buffer zone may be necessary along the shoreline to protect sensitive and eroding coastal lands ("Buffer Zone"), and if so, to delineate the necessary Buffer Zone. (La. R.S. 56:425(F).) Beyond such Buffer Zones, DWF, through its Secretary, has discretion whether to grant any new oyster lease or expansion, and may take Integrated Coastal Protection into account in exercising that discretion. (La. R.S. 56:425(A, C).) DWF, through its Secretary, must deny lease renewals for water bottoms that DWF determines are not capable of supporting oyster populations, and may exercise his discretion to deny new lease applications for this reason. (La. R.S. 56:425(A), 428(A).)

CPRA acknowledges the importance and ecological, cultural, and financial value to the State provided by the oyster resource and the commercial and recreational uses of that resource. DWF, likewise, acknowledges the importance of Integrated Coastal Protection to preserving and sustaining a viable and sustainable coastal ecosystem, and ultimately the oyster resource and commercial and recreational uses of that resource.

CPRA acknowledges DWF's responsibility for and expertise regarding oyster leasing. DWF, likewise, acknowledges CPRA's responsibility for and expertise regarding Integrated Coastal Protection and protection of sensitive and eroding coastal lands.

CPRA and DWF seek to work together to fulfill their respective duties efficiently and effectively. In furtherance of this purpose, CPRA and DWF agree as follows.

Section II GENERAL PROVISIONS

1. This Memorandum of Understanding (the "Agreement") shall be in effect from November 9, 2019 through November 7, 2034.
2. This Agreement may be terminated before its term only by mutual written consent of the Executive Director of CPRA and the Secretary of DWF.
3. This Agreement may be amended only in writing, which shall be effected by attaching a jointly signed and dated letter by the Executive Director of CPRA and the Secretary of DWF detailing the amendment.
4. This Agreement pertains only to oyster lease applications and renewals in the coastal area as defined in R.S. 49:214.2.
5. Notices required hereby shall be given to the Executive Director of CPRA or the Secretary of DWF, respectively, or to their designated points of contact for receipt of such notices.
6. CPRA's designated point of contact ("POC") for purposes of administering this Agreement is its Chief of the Planning and Research Division, currently Brian Lezina. DWF's designated POC for purposes of administering this Agreement is its Oyster Lease Program Manager, currently Marc Maniscalco. Either agency may change its POC by written notice to the other agency.
7. All time limits stated in this Agreement may be extended by mutual agreement of the agency POCs.
8. Unless otherwise agreed by the agency POCs, spatial boundaries required by this Agreement to be provided shall be provided electronically in GIS format.
9. CPRA and DWF shall each receive and consider the other agency's position and reasoning as to any matter affecting matters addressed in this Agreement; accommodate the other agency's requests regarding such matters where reasonably possible consistent with its own duties; and seek quick and efficient resolution of any disputes.

**Section III
REVIEW AND LIMITATION OF
OYSTER LEASE APPLICATIONS AND RENEWALS**

- 1.** DWF shall notify CPRA of oyster lease applications and upcoming renewals, as follows:
 - a.** DWF shall submit to the CPRA POC the number (or other designation) and spatial boundaries of all applications for new oyster leases (which includes expansions), within 30 days of receiving an application that DWF considers complete.
 - b.** DWF shall submit to the CPRA POC the lease number and spatial boundaries of all leases that are eligible for renewal, by April 1 of the calendar year before they are eligible for renewal.
- 2.** CPRA shall review lease applications and renewals, determine Buffer Zones and areas essential for Integrated Coastal Protection, and may request DWF to investigate for capability of supporting oyster populations, as follows:
 - a.** Upon receiving the information required by Section III(1)(a) or III(1)(b), CPRA shall review it and determine whether the affected water bottom includes any area where a Buffer Zone is necessary to protect sensitive and eroding lands. If so, CPRA shall delineate the area of the affected water bottom that is within any such Buffer Zone. CPRA shall submit to the DWF POC the spatial boundaries of any such area within 45 days of receiving the information required by Section III(1)(a), as to lease applications, or by September 1 before an existing lease is eligible for renewal, as to renewals.
 - b.** Upon receiving the information required by Section III(1)(a) or III(1)(b), CPRA shall review it and determine whether the affected water bottom includes any area that is essential for Integrated Coastal Protection. If so, CPRA shall delineate the area of the affected water bottom that is essential for Integrated Coastal Protection. CPRA shall submit to the DWF POC the spatial boundaries of any such area within 45 days of receiving the information required by Section III(1)(a), as to lease applications, or by September 1 before an existing lease is eligible for renewal, as to renewals.
 - c.** CPRA may submit to DWF a request for DWF to investigate any portion of the water bottom affected by a lease application or existing lease, as to whether it is capable of supporting oyster populations. CPRA shall include with any such request an explanation of CPRA's reasons for believing that the affected water bottom is incapable of supporting oyster populations, and any documentation and analysis supporting that belief. CPRA shall submit to the DWF POC the request, explanation, supporting documentation and analysis, and spatial boundaries of any such area. CPRA shall submit any such request within 45 days of receiving the

information required by Section III(1)(a), as to lease applications, or by July 1 before an existing lease is eligible for renewal, as to renewals.

3. DWF shall act upon CPRA determinations and requests, as follows:

- a. Except as provided in Section III(8), DWF shall deny a lease application or renewal, if CPRA determines that a Buffer Zone is necessary to protect sensitive and eroding lands within the spatial boundaries of the application or renewal. Alternatively, DWF may allow an applicant to amend a lease application to remove the area of the Buffer Zone, and process the application as amended; or allow a lessee to amend an existing lease at renewal to remove the area of the Buffer Zone.**
- b. Except as provided in Section III(8), DWF shall deny a lease application or renewal, if CPRA determines that an area essential for Integrated Coastal Protection is within the spatial boundaries of the application or renewal. Alternatively, DWF may allow an applicant to amend a lease application to remove the area essential for Integrated Coastal Protection, and process the application as amended; or allow a lessee to amend an existing lease at renewal to remove the area essential for Integrated Coastal Protection.**
- c. Upon receiving a CPRA request pursuant to Section III(2)(c), DWF shall perform such investigation as it deems appropriate and determine whether the water bottom is capable of supporting oyster populations at the time of the request or in the reasonably foreseeable future. If not, except as provided in Section III(8), DWF shall deny a lease application or renewal as to the area incapable of supporting oyster populations. Alternatively, DWF may allow an applicant or lessee to amend a lease application to remove the area incapable of supporting oyster populations, and process the application or renewal as amended; or allow a lessee to amend an existing lease at renewal to remove the area that DWF determines is incapable of supporting oyster populations.**

4. CPRA has determined that in most circumstances, a 50-foot Buffer Zone from the currently existing shoreline is necessary and sufficient to protect sensitive and eroding lands. CPRA reserves the right to designate a different Buffer Zone if necessary according to the circumstances of a particular lease application, but anticipates that this will be uncommon. If CPRA does not delineate a specific Buffer Zone within 45 days of receiving the information required by Section III(1)(a), CPRA shall be deemed to have identified a 50-foot Buffer Zone from the currently existing shoreline with respect to those lease applications.

5. CPRA has determined that in most circumstances, no Buffer Zone is necessary as to renewals of existing leases. CPRA reserves the right to designate a Buffer Zone if necessary according to the circumstances of a particular renewal, but anticipates that this will be uncommon. If CPRA does not delineate a specific Buffer Zone by September 1


before an existing lease is eligible for renewal, CPRA shall be deemed to have determined that no Buffer Zone is necessary with respect to that renewal.

6. The agencies agree that an area is essential for Integrated Coastal Protection for purposes of this Agreement if it will be located in the Direct Impact Area of a project for Integrated Coastal Protection that is reasonably certain to be constructed in the foreseeable future.
 - a. For purposes of this Agreement, CPRA shall determine whether a project is reasonably certain to be constructed in the foreseeable future according to:
 - i. Whether funding for construction of the project has been approved, authorized, or appropriated by the relevant funding source; or
 - ii. Whether an application for a coastal use, in-lieu, programmatic, nationwide, Section 404, Section 10, or Section 408 permit, a categorical exclusion, or a consistency determination has been filed for the project; or
 - iii. Any other circumstances indicating that construction of the project is likely to begin within 5 years.
 - b. For purposes of this Agreement, CPRA has determined that in most circumstances the Direct Impact Area under Section III(6)(a)(ii) is 150 feet outside the area sought to be permitted in the permit, categorical exclusion, or consistency determination application for dredging, direct placement of dredged or other materials, or other work or activities necessary for construction or maintenance of the project. CPRA reserves the right to designate a different Direct Impact Area if necessary according to the circumstances of a particular project, but anticipates that this will be uncommon.
 - c. For purposes of this Agreement, CPRA has determined that in most circumstances the Direct Impact Area under Sections III(6)(a)(i) and (iii) is 150 feet outside the area of dredging, direct placement of dredged or other materials, or other work or activities necessary for construction or maintenance of the project, as shown by the best existing plans, analyses, and studies for the project (in CPRA's determination) at the time of the determination. CPRA reserves the right to designate a different Direct Impact Area if necessary according to the circumstances of a particular project, but anticipates that this will be uncommon.
 - d. Notwithstanding Sections III(6)(b) and (c), in the case of a sediment diversion project (a project specifically designed and intended primarily to divert sediment), for purposes of this Agreement, CPRA has determined that the Direct Impact Area of the diversion outfall (but no other aspect of the project) is 80% of:
 - i. The area in which sedimentation is authorized in any permit, categorical exclusion, or consistency determination for the project; or

- ii. If there is no permit, categorical exclusion, or consistency determination for the project at the time of CPRA's determination, the area where CPRA projects sedimentation for which a permit, categorical exclusion, or consistency determination for the project is necessary;

applying the 20% reduction to the outer extent of that area (the portion farthest from the outfall).

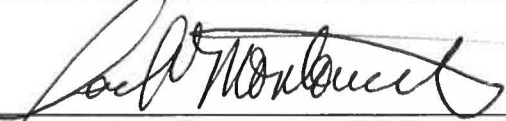
- 7. DWF shall not allow lessees to expand their leases ("take-ups"), except by application for a new lease or as expressly authorized by Section 2 of Act 595 of the 2016 Regular Session regarding Phase Two of the oyster lease moratorium-lifting ("Incorporation of Adjacent Water Bottoms").
- 8. If DWF disagrees with a determination by CPRA pursuant to this Agreement, or if any other dispute arises regarding matters addressed in this Agreement, the agency POCs shall first attempt to resolve the dispute. If they are unable to do so within 10 days, they shall elevate the dispute to the Deputy Executive Director of CPRA and the Assistant Secretary for Fisheries of DWF. If they are unable to resolve the dispute within 10 days, they shall elevate the dispute to the Executive Director of CPRA and the Secretary of DWF. If they are unable to resolve the dispute within 10 days, they shall elevate the dispute to the Governor's Executive Assistant for Coastal Activities. The Executive Assistant shall then resolve the dispute and make the final decision.
- 9. The agencies agree that all terms and agreements herein are specific to the matters addressed herein and the legal and factual contexts in which these matters must be addressed. Accordingly, nothing herein may be cited or used by any person, including the agencies, in any other context or for any other purpose. Nothing herein is intended to create, nor creates, any right, entitlement, duty, or standard of conduct of any person, including the agencies, except as expressly stated herein.



Lawrence B. Haase, Executive Director
Coastal Protection and Restoration Authority

11/8/19

Date



Jack Montoucet, Secretary
Louisiana Department of Wildlife and Fisheries

11-25-19

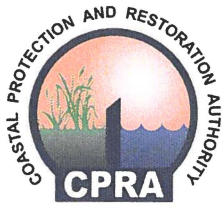
Date

Coastal Protection and Restoration Authority

**Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement**

APPENDIX E

**CHAIRMAN KLINE STUDY DIRECTIVE LETTER
TO CPRA**



State of Louisiana

JOHN BEL EDWARDS
GOVERNOR

July 13, 2020
via email

Mr. Bren Haase
Executive Director
Coastal Protection and Restoration Authority
PO Box 44027
Baton Rouge, LA 70804-4027

**RE: Oyster Lease Acquisition and Compensation Program;
Study and provision of recommendations for improvement.**

Dear Bren:

The Louisiana Legislature enacted the Oyster Lease Acquisition and Compensation Program (OLACP) in 2006 to assist in reconciling potential conflicts between the State's oyster leasing and coastal restoration programs. The OLACP statute authorized compensation to lessees when state oyster leases are acquired for dredging, direct placement of materials, or other activities necessary for construction or maintenance of integrated coastal protection projects. The Department of Natural Resources promulgated the OLACP regulations in 2006 to implement this statute. The Coastal Protection and Restoration Authority (CPRA) is now responsible for administering this Program.

The OLACP has been in effect for nearly 14 years. Generally, the Program has worked well, with only four appeals of OLACP compensation payments through several dozen projects. Nevertheless, while the first appeal was voluntarily dismissed, three remain ongoing. Meanwhile, some oyster industry, non-governmental, and other groups have raised questions or concerns regarding the Program. After 14 years, I believe it is time to evaluate CPRA's and stakeholders' experiences regarding the OLACP, seek comments and ideas from the stakeholders for improving the Program, and make recommendations to the CPRA Board for such improvement.

To this end, as CPRA Board Chairman, I hereby direct CPRA to perform a study to evaluate and recommend potential improvements to the OLACP. This study shall be informed by input from the oyster industry and other coastal stakeholders regarding the OLACP and "lessons learned" by the State during previous implementation of the Program. This study must feature public meetings where stakeholders can present and discuss their views and recommendations to CPRA in an interactive and inclusive way, along with CPRA's own experience and perspective regarding the OLACP. In addition, CPRA should solicit written comments and recommendations regarding these matters.

I also direct CPRA to submit a written report to the CPRA Board by January 11, 2021, stating CPRA's findings pursuant to this study, evaluating the comments and ideas submitted and discussed, and making specific recommendations to the Board for improving the OLACP. This report should be provided to all participants and made available to the public on CPRA's website

on the same day. I further direct CPRA to present its findings and recommendations to the CPRA Board at its January 2021 meeting, at which stakeholders may also present their views to the Board regarding CPRA's report.

CPRA's study should include, but is not limited to, consideration of the following issues in relation to the OLACP:

- (1) Payment to oyster lessees pursuant to the OLACP, not as compensation to the lessees, but to further the public interest in providing for the continued existence of the oyster industry and to preserve and enhance the oyster resource;
- (2) Payments for leases that are not capable of supporting commercially viable oyster populations due to environmental causes;
- (3) Reduction of biological survey, appraisal, and other administrative costs of the Program, including abbreviating or eliminating surveys or appraisals for leases to the extent that they are not capable of supporting commercially viable oyster populations due to environmental causes;
- (4) Payments for oysters present on a lease in addition to the market value of the lease itself, including whether such payment should be affected by economic or other factors, whether the one-year notice period triggering additional payment should be reduced, and means to provide longer notice periods in order to avoid triggering such payments;
- (5) Identifying information and effective means to obtain it from lessees needed for valuation of leases or oysters to be compensated in addition to the leases, including information needed for more accurate determination of the economics of their harvesting such oysters;
- (6) Implementing contract-based settlements for easily valued leases to reduce biological survey, appraisal, and other administrative costs;
- (7) Reporting by CPRA regarding planned and possible integrated coastal protection projects and the reasonably anticipated location, extent, and timing of possible impacts to the oyster resource or cultivation;
- (8) SCR No. 56 (2020 Reg. Sess.) and the Louisiana Oyster Management and Rehabilitation Strategic Plan under development by Department of Wildlife and Fisheries, as it relates to the OLACP;

- (9) The Louisiana Legislative Auditor report dated February 25, 2015 regarding Louisiana Oyster Lease Practices, as it relates to the OLACP;
- (10) Termination of oyster leases that are not capable of supporting commercially viable oyster populations due to environmental causes or for absence of oyster cultivation efforts or oyster production for a significant period of time;
- (11) Reporting by lessees of oyster cultivation efforts and oyster production , sufficient to document such efforts or production;
- (12) Voluntary right of entry in lieu of acquisition, including contract-based waiver of OLACP compensation, in exchange for maintaining a lease needed for integrated coastal protection; and
- (13) Any other matter that relates to or affects the OLACP, and merits evaluation at this time.

In performing this study, CPRA should expressly solicit and consider the views, concerns, and recommendations of:

- (1) Oyster Task Force;
- (2) Other organizations and groups with an interest in the oyster industry in Louisiana, including but not limited to Louisiana Oystermen Association, Louisiana Oyster Dealers and Growers Association, Louisiana Farm Bureau Federation; Louisiana Oyster Aquaculture Association, and parish and regional oyster associations, oyster leaseholder associations, oyster task forces, and commercial fishermen's associations whose members include oyster fishermen;
- (3) Department of Wildlife and Fisheries;
- (4) Department of Natural Resources;
- (5) State Land Office;
- (6) Attorney General;
- (7) Legislative Auditor;
- (8) Members and staff of the House Natural Resources and Environment Committee and the Senate Natural Resource Committee;

Mr. Bren Haase
Coastal Protection and Restoration Authority
July 6, 2020
Page 4

- (9) Levee districts and levee and drainage districts in the Coastal Area of the State;
- (10) Parishes in the Coastal Area of the State;
- (11) Louisiana Sea Grant Program;
- (12) Academic researchers regarding oyster industry, oyster resource, coastal matters, or other matters affected by OLACP;
- (13) Louisiana Landowners Association;
- (14) Organizations and groups with interests in integrated coastal protection projects, including but not limited to the Nature Conservancy, Audubon Society, National Wildlife Federation, Coalition to Restore Coastal Louisiana, Pontchartrain Conservancy, and Ducks Unlimited; and
- (15) Any other person who seeks to provide input or recommendations.

Such a comprehensive request for the views of all stakeholders, combined with open and meaningful discussion of these views with CPRA, should provide a wide range of suggestions for CPRA to evaluate in developing recommendations to improve the OLACP for the benefit of integrated coastal protection, the oyster resource, the oyster industry, and other coastal stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. R. Kline, Jr.', with a stylized, flowing script.

Kyle R. "Chip" Kline, Jr., Chairman
Louisiana Coastal Protection and Restoration Authority

Coastal Protection and Restoration Authority

**Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement**

APPENDIX F

**EXECUTIVE DIRECTOR HAASE
STUDY INVITATION LETTER TO STAKEHOLDERS,
AND ADDRESSEE LIST**



State of Louisiana

JOHN BEL EDWARDS
GOVERNOR

September 1, 2020
via email

**RE: Oyster Lease Acquisition and Compensation Program:
Invitation to participate in CPRA study to develop recommendations
for Program improvements.**

Dear Coastal Stakeholders:

The Coastal Protection and Restoration Authority (CPRA) seeks the views and recommendations of all coastal stakeholders regarding potential improvements to the Oyster Lease Acquisition and Compensation Program (OLACP).

OLACP authorizes compensation to oyster lessees, in accordance with the OLACP regulations, when state oyster leases are acquired for dredging, direct placement of materials, or other activities necessary for construction or maintenance of integrated coastal protection projects. The Louisiana Legislature enacted OLACP in 2006 to assist in reconciling potential conflicts between the State's oyster leasing and coastal restoration programs. CPRA administers OLACP.

CPRA Board Chairman Chip Kline recently noted that OLACP has been in operation for nearly 15 years, and directed CPRA to perform a study to evaluate and recommend potential improvements to the Program to the CPRA Board. As part of this study, Chairman Kline instructed CPRA to seek input from the oyster industry and other coastal stakeholders.

CPRA therefore requests all coastal stakeholders to provide their views and recommendations regarding OLACP and improvements that might be made to the Program. Views and recommendations may be submitted at any time through October 7, 2020. In addition, CPRA will hold two rounds of public meetings to receive stakeholders' views and recommendations.

For the first round, CPRA will host two public meetings via WebEx and telephone:

September 21, 2020 from 5:30-7:30 p.m.

Link: <https://cp.ra.webex.com/cpra/j.php?MTID=ma2330a3c8664a464d0801134f040ef4e>

Password: OLACPweb01

Join by phone: (408) 418-9388

Access code: 146 253 7351

September 23, 2020 from 9:00-11 :00 a.m.

Link: <https://cp.ra.webex.com/cpra/j.php?MTID=m5b7578a72dc7fdefd72a7d04b858f4d8>

Password: OLACPweb02

Join by phone: (408) 418-9388

Access code: 146 847 8792

Executive Division

Post Office Box 44027 • Baton Rouge, Louisiana 70804-4027 • 150 Terrace Avenue • Baton Rouge, Louisiana 70802
(225) 342-7308 • Fax (225) 342-4674 • <http://www.coastal.la.gov>
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September 1, 2020

Page 2

During both of these meetings, CPRA will explain the existing OLACP law and regulations; explain issues with the Program of which CPRA is aware that have arisen over the last 15 years; identify issues, difficulties, and solutions raised submitted before the meeting or raised by participants during the meeting; and request stakeholders' views and recommendations as to solutions or improvements regarding the Program.

The goal of this first round of public meetings is to obtain a range of concerns and ideas for CPRA to evaluate in developing recommendations to improve OLACP. To make this process as effective as possible, CPRA asks that views and recommendations be submitted in writing via email to coastal@la.gov, via telephone voicemail message to (225) 342-4968, or during the meetings only, via chat on WebEx. Attached by way of example is a list of issues of which CPRA is already aware. This list is illustrative only, and participants are invited to raise any other issues relating to OLACP. CPRA asks participants who submit views or recommendations to propose solutions to the issues they address.

CPRA will assemble and consider the views and recommendations submitted by October 7, 2020. CPRA will then prepare a draft set of recommendations for improving the Program by November 6, 2020. CPRA will provide these draft recommendations to all participants via email and make them available to the public on CPRA's website at <https://coastal.la.gov/calendar/> on the same day.

CPRA will then host the second round of public meetings via WebEx and telephone:

November 17, 2020 from 5:30-7:30 p.m.

Link: <https://cpra.webex.com/cpra/j.php?MTID=m8bf66e1228c689bf72aca535b34153c8>

Password: OLACPWeb03

Join by phone: (408) 418-9388

Access code: 146 874 7924

November 18, 2020 from 9:00-11:00 a.m.

Link: <https://cpra.webex.com/cpra/j.php?MTID=m6744f3a233bbcf8e89ec49a417072b97>

Password: OLACPWeb04

Join by phone: (408) 418-9388

Access code: 146 169 2467

During both of these meetings, CPRA will explain its draft recommendations; and request participants' views as to the draft recommendations. Views regarding the draft recommendations may be submitted at any time through December 4, 2020.

Again, CPRA asks that views regarding the draft recommendations be submitted via email to coastal@la.gov, via telephone voicemail message to (225) 342-4968, or during the meetings only, via chat on WebEx.

The Parishes of St. Bernard, Plaquemines, and Lafourche plan to host viewing sessions for all four of these public meetings in order to assist those without adequate internet access. CPRA

September 1, 2020

Page 3

will post additional information regarding these sessions as it becomes available on its website at <https://coastal.la.gov/calendar/>, or you may contact the Parishes' coastal programs directly.

CPRA will assemble and consider the views and additional recommendations submitted by December 4, 2020. CPRA will then prepare a written report and submit it to the CPRA Board by January 11, 2021, stating CPRA's findings pursuant to this study, evaluating the views and recommendations submitted, and making specific recommendations to the Board for improving OLACP. CPRA will provide the report to all participants via email and make it available to the public on CPRA's website at <https://coastal.la.gov/calendar/> on the same day.

Please extend this invitation to all interested members of your organization. We have timed the meetings to accommodate a variety of work schedules, and it is unnecessary to attend both meetings in each phase.

Thank you in advance for your assistance in helping CPRA to develop a comprehensive set of improvements to OLACP for the benefit of integrated coastal protection, the oyster resource, the oyster industry, and other coastal stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bren Haase', with a stylized flourish extending to the right.

Bren Haase
Executive Director

**Oyster Lease Acquisition and Compensation Program:
CPRA study group to develop recommendations for improvements**

Illustrative list of issues for discussion

1. Payment to oyster lessees pursuant to OLACP, not as compensation to the lessees, but to further the public interest in providing for the continued existence of the oyster industry and to preserve and enhance the oyster resource.
2. Payments for leases that are not capable of supporting commercially viable oyster populations due to environmental causes.
3. Reduction of biological survey, appraisal, and other administrative costs of the Program, including abbreviating or eliminating surveys or appraisals for leases to the extent that they are not capable of supporting commercially viable oyster populations due to environmental causes.
4. Termination of oyster leases that are not capable of supporting commercially viable oyster populations due to environmental causes or for absence of oyster cultivation efforts or oyster production for a significant period of time.
5. Reporting by lessees of oyster cultivation efforts and oyster production, sufficient to document such efforts or production.
6. Payments for oysters present on a lease in addition to the market value of the lease itself, including whether such payment should be affected by economic or other factors, whether the one-year notice period triggering additional payment should be reduced, and means to provide longer notice periods in order to avoid triggering such payments.
7. Identifying information and effective means to obtain it from lessees needed for valuation of leases or oysters to be compensated in addition to the leases, including information needed for more accurate determination of the economics of their harvesting such oysters.
8. Voluntary right of entry in lieu of acquisition, including contract-based waiver of OLACP compensation, in exchange for maintaining a lease needed for integrated coastal protection.
9. Implementing contract-based settlements for easily valued leases to reduce biological survey, appraisal, and other administrative costs.
10. Reporting by CPRA regarding planned and possible integrated coastal protection projects and the reasonably anticipated location, extent, and timing of possible impacts to the oyster resource or cultivation.

11. SCR No. 56 (2020 Reg. Sess.) and the Louisiana Oyster Management and Rehabilitation Strategic Plan under development by Department of Wildlife and Fisheries, as it relates to OLACP.
12. The Louisiana Legislative Auditor report dated February 25, 2015 regarding Louisiana Oyster Lease Practices, as it relates to OLACP.
13. Any other matter that relates to or affects OLACP.

Coastal Protection and Restoration Authority
Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX G

CPRA WEBINAR PRESENTATION -
PHASE 1, SOLICITATION OF VIEWS

Oyster Lease Acquisition and Compensation Program

Study to Develop Recommendations for Program Improvements



Solicitation of Stakeholder Views
September 21 and 23, 2020



Oyster Leases and Coastal Projects

Legislative mandates:

- CPRA to perform integrated coastal protection projects
- DWF to issue oyster leases on State water bottoms

Issue: CPRA projects directly impacting State oyster leases

- State oyster leases include waiver of “*all claims whatsoever*” arising from coastal projects, *but* –
- The Legislature enacted the Oyster Lease Acquisition and Compensation Program

[La. R.S 56:432.1 \(2006, Act 425\)](#) (law)

[LAC 43:VII.301-319 \(2006\)](#) (regulations)

Oyster Lease Acquisition and Compensation Program

Authorizes CPRA to “acquire” State oyster leases for coastal projects

- Not a true “acquisition” – lease is terminated

Authorizes compensation when CPRA acquires a lease

Limited to areas directly impacted by:

- Dredging
- Direct placement of dredged or other materials
- Other work or activities for construction or maintenance of a coastal project

Excludes indirect impacts – such as salinity

Acquisition

Only the portion needed for the project is acquired

Acquisition is accomplished by CPRA issuing a Notice of Acquisition to the lessee, containing:

- Effective date
- Map and description of acreage acquired
- Statements and other information listed in regulations
- Payment

Payment amount is determined according to the regulations

Compensation Determination

Two components to compensation:

1. Lease component – For all leases, lessees are paid the market value of the lease
2. Oyster component – Where effective date is <1 year after Notice issued, lessees are also paid for “marketable oysters” on the lease

CPRA determines compensation using:

1. Biological Oyster Resource Survey
2. Appraisal
3. Information regarding oyster value and harvest costs – if applicable

Compensation Determination

1. Biologist performs Biological Oyster Resource Survey:

- Determination of direct impact area
- Determination of water bottom type (reef, shell, mud)
- Sampling for oysters (diving, dredge)
- Determination of marketable oyster population on the water bottoms

Lessees are notified 15 days in advance by certified mail

Lessee can provide data or other relevant information

Compensation Determination

2. Appraiser performs appraisal:

- Oyster Resource Survey characterizes the lease
- Appraiser obtains other information such as typical salinity
- Appraiser compares the lease to other leases sold by lessees
- Appraiser determines market value of the lease from the actual sales prices for similar leases

Lessee can provide data or other relevant information

Compensation Determination

3. CPRA obtains additional information:

- Oyster value
- Oyster harvest cost
- Harvest efficiency

Used only for the oyster component of compensation – if applicable

Compensation Determination

Lease Component:

- Payment is appraised value, provided by appraiser

Oyster Component:

- Only when lessee is given less than one year's notice
- Only when marketable oysters are present
- Payment is value of marketable oysters less harvest cost

Compensation Determination

Oyster Component Computation:

NET SACK PRICE x NO. SACKS OF MARKETABLE OYSTERS

NET SACK PRICE =

OYSTER MARKET VALUE PER SACK – OYSTER HARVEST COST PER SACK

NO. SACKS OF MARKETABLE OYSTERS =

(NO. OYSTERS ON WATER BOTTOM – NO. OYSTERS EXPECTED TO DIE)
x HARVEST EFFICIENCY RATIO

Outside Agency Participation

CPRA may also acquire oyster leases under OLACP for coastal projects implemented by any other public or private entity

That entity must reimburse CPRA for all costs

Participation is optional, not a requirement

- That entity may approach the lessee separately to make arrangements to implement the project
- Due to the certainty and clarity of the OLACP process, public and private entities often use it

15 years of Implementation

CPRA has acquired over 4000 acres of leases using OLACP, for dozens of projects

Only 4 challenges:

- 1 dismissed voluntarily
- 2 dismissed due to lease waivers, currently on appeal
- 1 on hold pending the decision in the two on appeal

However, it has been nearly 15 years

Examples of Issues for Discussion

1. Payment not as compensation to the lessees, but to further the public interest in the continued existence of the oyster industry and to preserve and enhance the oyster resource
2. Payment for leases that are not capable of supporting commercially viable oyster populations, due to environmental causes
3. Reduction of survey, appraisal, and other administrative costs potentially through contract-based settlements for easily valued leases
4. Termination of leases not capable of supporting commercially viable oysters

Examples of Issues for Discussion

5. Payment for oyster component in addition to the lease component: despite payment for marketable oysters, the lessee can still harvest them until acquisition effective date
6. Lessees have requested the ability to retain a lease, take the risk that the project will not permanently harm the oysters, and simply waive any OLACP payment
7. Lessees have requested more information from CPRA regarding planned and possible projects and associated impacts
8. [Louisiana Legislative Auditor Report](#) dated February 25, 2015 regarding Louisiana oyster lease practices

Study Timeline

INITIAL PUBLIC COMMENT PERIOD

9/1 – 10/7

- 9/1 CPRA announces study and participation opportunities
- 9/21 Solicitation of Views Webinar
- 9/23 Solicitation of Views Webinar
- 10/7 Stakeholder comments due to CPRA

DRAFT RECOMMENDATIONS DEVELOPMENT

10/8 – 11/5

- CPRA reviews comments, recommendations, and proposed solutions
- CPRA evaluates program implementation
- CPRA prepares draft recommendations for improving the program

PUBLIC FEEDBACK ON DRAFT RECOMMENDATIONS

11/6 – 12/4

- 11/6 CPRA releases draft recommendations
- 11/17 Webinar to present draft recommendation & solicit stakeholder feedback
- 11/18 Webinar to present draft recommendation & solicit stakeholder feedback
- 12/4 Comments due to CPRA from stakeholders

FINAL RECOMMENDATIONS DEVELOPMENT

12/5 – 1/20

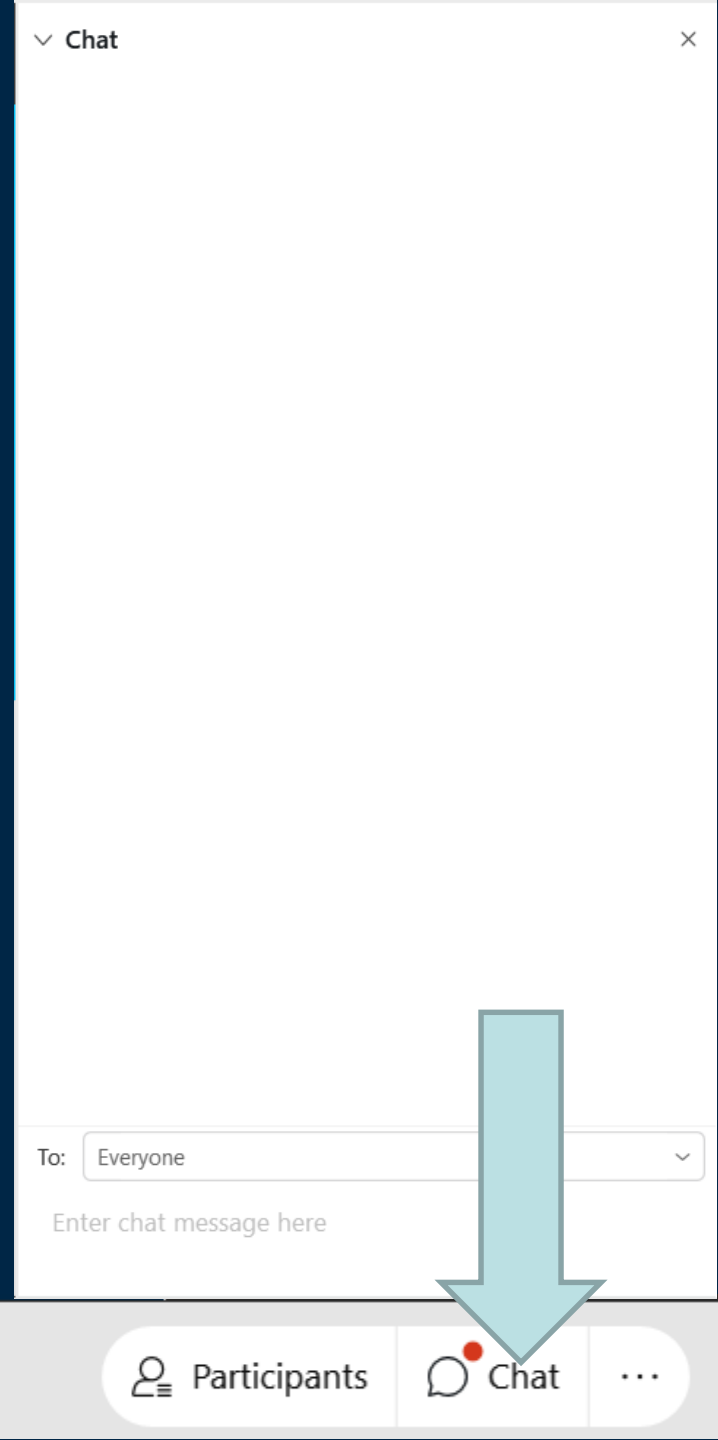
- 1/11/21 CPRA releases final recommendations and submits to CPRA Board
- 1/20/21 CPRA presents recommendations to CPRA Board at Board Meeting

Submission of Views and Recommendations

Propose your views, recommendations, and solutions via:

- Email to coastal@la.gov
- Voicemail message to (225) 342-4968
- Chat during 9/21 & 9/23 Webinars

Deadline for submission is
October 7, 2020



Coastal Protection and Restoration Authority
Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX H
STAKEHOLDER WEBINAR COMMENTS -
PHASE 1, SOLICITATION OF VIEWS

OLACP Public Comments 09/21/2020

from john to everyone: 5:56 PM

we appreciate the webinar and transparency.

from Amanda Voisin - Lafourche Parish Government to everyone: 5:57 PM

My comment is regarding the potential discrepancies in the initial assessment of the affected oyster leases and when the actual survey/appraisal is done. When going through this process for a past project, we received an estimate of the cost to acquire the leases for a borrow source area based on a desktop analysis done by CPRA. CPRA/Parish did an MOU based on the estimate. When the actual survey/appraisal was done, the actual cost to acquire was much higher than the estimate, which led to project delays to get that sorted out. I would recommend that if that type of initial analysis be done, no agreements, etc. be completed until the final survey/appraisal cost is done.

from Jerry Graves to everyone: 5:58 PM

Who is ultimately responsible for administering the program: LDWF or CPRA?

from Jerry Graves to everyone: 6:00 PM

Is the presence of cultch material and/or spat taken into consideration during the survey and assessment?

from Amanda Voisin - Lafourche Parish Government to everyone: 6:00 PM

Also, thanks to CPRA for these webinars. It's been very informative and a good refresher on the OLACP process.

from Capt. George Ricks to everyone: 6:01 PM

Some oyster lease holders have invested heavily in cultivative cultch. I think some compensation should be provided for this investment. Also, the determination of percentage of oyster mortality due to a project, particularly diversion projects, seems it could be left to speculation. I also think appraisal of leases should be done by a totally independent 3rd party.

from Jerry Graves to everyone: 6:03 PM

Thanks, all.

from sroy@matrixnewworld.com to everyone: 6:04 PM

Is there an initiative between CPRA, LDWF, and Leaseholders to provide environmental data/modeling to the leaseholders to better assist in determining the change in salinity/sedimentation and other factors that play a role in whether a lease has no current potential but may in the future given the projects that are currently proposed or envisioned within the next, say 10 years?

from sroy@matrixnewworld.com to everyone: 6:07 PM

Thank you!

from Cynthia Duet to everyone: 6:08 PM

Can you expand upon the thought behind the listed initiative number 1, "...payment to further public interest and continued existence of the industry"?

from Jerry Graves to everyone: 6:08 PM

Could you direct us to the referenced waiver for coastal projects that lessees sign? I have not seen this document before.

from Jerry Graves to everyone: 6:11 PM

Thanks

from sroy@matrixnewworld.com to everyone: 6:26 PM

If an oyster lease has been permanently closed to the harvest of oysters by LDHH, are the oysters considered marketable? Is the cost of relay taken into account within the appraisal? Is the lease devalued because of this permanent closure?

from sroy@matrixnewworld.com to everyone: 6:27 PM

I apologize that was a lot of questions in one, but general idea is how the appraisal is conducted on a permanently (not seasonally) closed lease.

from sroy@matrixnewworld.com to everyone: 6:33 PM

Thank you, again.

from sroy@matrixnewworld.com to everyone: 6:52 PM

Are the final compensations paid through OLACP available to the public on a per CPRA project basis?

from sroy@matrixnewworld.com to everyone: 6:56 PM

I appreciate the education and the time spent answering questions/comments.

from Amanda Phillips to everyone: 9:23 AM

What is the average price per acre of acquired oyster leases?

from Jerry Graves to everyone: 9:25 AM

The statute clearly states that leases impacted by dredging projects are eligible for OLACP. However, the statute also references "other work and activities" relative to coastal projects. Does this mean that any lease adversely impacted by any CPRA activity is also eligible for the program?

from ANDREW WILSON to everyone: 9:25 AM

One of the biggest issues with oyster lease acquisition remains the amount of compensation due, if any. Since oyster leases only have commercial value based upon the amount of oysters they produce, has CPRA given any thought to approaching LDWF to require oyster harvesters to record production by lease number as was done historically? This would eliminate efforts to seek compensation for worthless leases if not the entire concept of "speculative leases," a practice which the oyster industry does not deny.

from Niko Tesvich to everyone: 9:25 AM

Why is salinity considered an indirect impact?

from Amanda Phillips to everyone: 9:25 AM

How is the productivity measured?

from Niko Tesvich to everyone: 9:27 AM

You have a bad echo on your audio right now. It's affecting the clarity of what you're saying.

from Cynthia Duet to everyone: 9:28 AM

cannot hear you, Larry

from Beaux Jones (privately): 9:29 AM

Mute all. I think Briggs' mic was giving feedback

from Beaux Jones (privately): 9:29 AM

that worked

from Victoria to everyone: 9:29 AM

I apologize if this was stated already- is this webinar being recorded? If so, will it be posted to CPRA's website? If not being recorded, will these comments and answers be posted somewhere?

from Jerry Graves to everyone: 9:32 AM

One of the slides mentions the biological oyster lease survey as a tool used to establish "direct impact" areas. Is there a mechanism for lessees to dispute the State's direct impact designation and establish that their lease(s) will be directly impacted by a given activity, and therefore should be eligible for OLACP.

from ANDREW WILSON to everyone: 9:33 AM

Oftentimes there are efforts by public-private partnerships or purely private persons or organizations to implement coastal restoration projects but those efforts are stymied because an oyster lease lies in or near the footprint of the project and the leaseholder is demanding unreasonable amounts for the

project to proceed. Is CPRA giving any consideration to expanding its acquisition program to include such public/private or private projects?

from ANDREW WILSON to everyone: 9:36 AM

Since the Avenal and Bayou Canard court decisions clearly indicate that the oyster lease terms and conditions bar claims for damages to oyster leases against the State/CPRA related to coastal restoration projects, is there a Constitutional bar to payment of damages or compensation on a programmatic level rather than on a case by case basis for the State's own water bottoms?

from Don Briggs to everyone: 9:38 AM

As an original member of this program, I am pleased of the good work of CPR Thank you

from Niko Tesvich to everyone: 9:39 AM

Can you provide the specific statute that relates to indirect impacts?

from Niko Tesvich to everyone: 9:41 AM

Also, what is the time frame between the offer and the actual acquisition of the lease? What about between acquisition and the time fishing on the lease must cease? In other words, can you use the lease up until the time CPRA projects impact the lease?

from Lee Ledet to everyone: 9:45 AM

Acquiring leases on an individual basis seems extremely inefficient. There is a broader issue that needs to be addressed. Coastal erosion and saltwater intrusion has created oyster habitat where it once did not exist. The CPRA is attempting to restore the coast, inter alia. To do this, the CPRA will undoubtedly have to disrupt current oyster habitat. The oyster leases will continue to hamper the CPRA's core function. Has state considered a broader solutions? Like preemptively "acquiring" all non-productive leases or perhaps acquiring all leases that lie in historically non-oyster producing areas?

from Amanda Phillips to everyone: 9:45 AM

If the lease is acquired, shouldn't fishing terminate at the acquisition?

from ANDREW WILSON to everyone: 9:47 AM

What formal efforts and concrete steps are being undertaken by CPRA and/or LDWF to eliminate the perpetuation of worthless leases that are not producing oysters ?

from Amanda Phillips to everyone: 9:47 AM

Has the State considered not issuing or not renewing leases in areas scheduled for restoration instead of having to acquire leases?

from ANDREW WILSON to everyone: 10:00 AM

In response to my Question #2, Brian suggested that CPRA is involved in acquiring leases associated with private coastal restoration projects yet I am aware of at least one particular project in which Ducks Unlimited had to shell out (pun intended) \$60,000 for a worthless lease for a project to go forward. As a result, it has become difficult for these private efforts to secure funding for future projects as the would-be sponsors view such payments as a form of "extortion" resulting in an unnecessary increase in the cost of such projects. What specific efforts is CPRA undertaking to help fund oyster lease acquisition in connection with private coastal restoration projects?

from ANDREW WILSON to everyone: 10:03 AM
I think you skipped Amanda's latest question.

from corey miller to everyone: 10:07 AM
Your presentations have shown that 4000 acres have been acquired through the program to date. How many individual leasees/ businesses does that account for?

from Ryan Lambert to everyone: 10:07 AM
It is very hard to justify to a donor why we have to give 10% of a project to an oyster lease holder when there are no oysters on the project. This needs to be addressed as there are many companies wanting to contribute to get new projects done.

from Cynthia Duet to everyone: 10:09 AM
Building on Corey's question, are there total costs for the 4000 acres acquired to date, including internal costs--surveys and legal fees? Thanks-

from Kenneth King to everyone: 10:20 AM
It was previously mentioned that payments for oyster resource are not paid if the project goes to construction outside of one year, what is the approximate percentage of projects that end up going to construction within one year and resource is actually paid? Does CPRA have any figures that show project savings by waiting the one year? And do you think this may show a need to initiate the oyster portion sooner in the overall process?

from Amanda Phillips to everyone: 10:25 AM
Has CPRA constructed any living shorelines that produce marketable oysters?

from Cynthia Duet to everyone: 10:29 AM
Does OLACP require that payments to oyster fishers be used for improvements to their leases (cultch, etc.)?

Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program:
Draft Recommendations for Improvement

APPENDIX I

STAKEHOLDER EMAIL COMMENTS -
PHASE 1, SOLICITATION OF VIEWS



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Robert Williamson

Kristi Trail
Executive Director

October 7, 2020

Mr. Bren Haase
Executive Director
Coastal Protection and Restoration Authority
P.O. Box 44027
Baton Rouge, LA 70804-4027

RE: Oyster Lease Acquisition and Compensation Program (OLACP)
comments and recommendations for consideration (see attached CPRA
letter dated September 1, 2020)

Mr. Haase:

Please review these comments regarding OLACP. We appreciate the opportunity to submit these comments and the transparency of this process. Please advise if we can provide further information or discussion to assist in this task.

Purpose

Both Pontchartrain Conservancy (PC) and Coastal Protection and Restoration Authority (CPRA) have a mission to serve the general public. We support the CPRA's science-based, and fiscally-disciplined coastal programs including the state's Coastal Master Plan (CMP) process, which aspires to improve resilience in coastal communities and the ecosystems which they utilize. CPRA's recent completion of the Living Shoreline (oyster reef) project in Eloi Bay is one example of its wise investment (\$9m), to spur further funding to expand the project with \$60m RESTORE funding. These comments and recommendations provide analysis for CPRA leadership to address identified issues and make recommendations to reinvent the OLACP.

Our comments consider the benefits that will be provided to the oyster resource and the \$50m/yr. oyster industry by the Louisiana Oyster Management and Rehabilitation Strategic Plan. This Louisiana Department of Wildlife and Fisheries (LDWF) plan would invest \$132 million into supporting oyster propagation in Louisiana. We also support the CARES Act to help fishers during COVID. We also support the Louisiana Trustee Implementation Group (LA TIG) \$9.2m proposal to build a network of brood

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oyster reefs in coastal Louisiana. We and other Non-Governmental Organizations (NGOs) (e.g., The Nature Conservancy & Coalition to Restore Coastal Louisiana) have also invested our own funds and capacity to support oyster resources with construction of twelve oyster reefs in recent years. Also noteworthy is PC's ongoing support of oyster production in Louisiana through programs such as Hydrocoast, and an annual oyster suitability analysis. Finally, we should acknowledge the essential role of the brave men and women of LDWF who are on the perilous front line with law enforcement to protect the honest from the dishonest. Indeed, OLACP is one of many programs that can and do support the oyster industry and, as such, should be considered as part of a portfolio of support. A new and improved oyster lease program supports and facilitates large-scale marsh creation projects for which the oyster industry has strongly advocated.

At the request of the Chairman of CPRA Board, CPRA recently issued a call for comments on the OLACP, asking for recommendations to improve the program (attached). The impetus seems to be two-fold: (1) a desire to reduce costs to CPRA and other project sponsors and reduce staff time associated with the program as it is currently implemented, and (2) to identify and address challenges that have come to light throughout the lifespan of this now 15-year old program. Our objective is to further align OLACP with the broader public interests, while maximizing the opportunity to sustain or expand oyster propagation in coastal Louisiana in harmony with the CMP and LDWF planning. Although OLACP is only addressing leases directly affected by dredging or direct placement of dredge material (cut or fill footprints), OLACP could have broader implications or precedents that must be considered.

OLACP background

Found in Title 56 of the Louisiana Revised Statutes (RS 56:432.1), the OLACP is defined, and the CPRA is identified as the program's implementor. The language also acknowledges the conflicts between the LDWF oyster leasing program and the CPRA's coastal restoration program (R.S. 49:214.1 et seq.), and provides for the development of OLACP for the "acquisition of and compensation for oyster leases or portions of oyster leases upon which occurs or will occur dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for integrated coastal protection" and the specifics of how the acquisition shall occur.

Interestingly, during multiple presentations leading up to the present comment period, CPRA attorneys noted that OLACP "authorizes CPRA to 'acquire' State oyster leases for coastal projects" but that the acquiring was "not a true acquisition", that the lease was instead "terminated" through the program's actions. By these somewhat confusing definitions—particularly since the name of the program includes the word acquisition—it appears that at present no money changes hands for acquisition, since nothing is technically acquired. If that is the case, monies transferred through the program are solely for compensation to the lease holders based on the value of the lease.

The final judicial opinions issued for the Avenal case in 2004 (Albert J. AVENAL, Jr., et al. v. The STATE of Louisiana and The Department of Natural Resources) and the more recent Bayou Canard case in 2018 (BAYOU CANARD, INC. v. STATE of Louisiana through the Coastal Protection and Restoration Authority) make clear that lessees of state-owned water bottoms are not entitled to payments when the CPRA implements integrated coastal projects in the footprint of all or parts of leased acreage.

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- In *Avenal*, the La. Supreme Court ruled that the oyster-bed lease clause that shielded the state from liability (the clause that was the plaintiffs' downfall in federal court) was valid in 192 of the 204 leases at issue. The holders of the 12 leases in which the clause was not valid could sue for damages to their business, the court said, but not on the basis that there had been a taking of their property. "The state owns the waters," wrote the justices. "The state owns the oysters. Thus, the state could not take its own property."
- In *Bayou Canard*, the Louisiana First Circuit reversed a lower court ruling in favor of the plaintiff and specifically stated, "The language of the lease eliminates any right whatsoever of Bayou Canard to make any claims against CPRA as a result of the Shell Island West Restoration Project. That clear and explicit, broad language extends to all claims against CPRA by an oyster lessee resulting from a coastal restoration project, which includes the claims brought by Bayou Canard herein. See *Avenal v. State*, 2003-3521 (La. 10/19/04), 886 So.2d 1085, wherein the court found that nearly identical contract language validly released the State from liability to oyster leaseholders as a result of a coastal diversion project."

The legal history is important as a backdrop to any recommendations made at this point to the OLACP. Some legal experts have questioned under what authority OLACP continues to exist and how payments under the program do not constitute prohibited donations—the state giving away a thing of value—as defined in Article VII, § 14 of the Louisiana Constitution. If an oyster lease is a "limited interest in the water bottom" that "is subservient to the State's past, present or future coastal restoration projects," and lessees are prevented from even challenging the OLACP's application, then it raises the question of why the state would dedicate taxpayer money to acquire oyster leases when it is under no legal or contractual obligation to do so.

The issue of prohibited donation is one that the state has yet to fully address. Considering the challenging legal issues, we suggest different approaches to benefit the industry and the resource without direct payments by CPRA to leaseholders.

COMMENTS AND RECOMMENDATIONS

General recommendation:

We recommend that OLACP not be a lease acquisition program, but rather an oyster program which is funded by CPRA based on direct dredge related damages which reduce lease value based on verified, real oyster lease valuations of the past five years. This program would utilize these funds based on oyster project recommendations by LDWF for CPRA projects which support the propagation of oysters on public seed grounds. Leases whose value has been set and have had funds allocated for such projects are considered devoid of oysters in perpetuity and, therefore, no longer eligible for any future fund allocations, fishery disaster funds, and are no longer under consideration for a CUP permit. Therefore, leaseholders may retain their lease, but entirely at their own peril and risk. Leaseholders are encouraged to cancel their lease, but they are not required to do so. The state may consider the option to "exterminate" such leases if legally feasible to avoid any possible future conflicts.

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The total value is based on marketable oysters present on a lease in addition to the market value of the lease. The formulation of the lease value for leases with evidence of productivity within five years could remain the same as the current program, but with different time limits (5 years) and burdens of evidence (leaseholder). If there is no evidence provided of commercial densities within the last five years, the lease is assumed to be non-productive and a “lease value” is given to the lease for a 20-year project life, i.e. at \$3/acre/yr. the value would be \$60/acre.

1. “Payment to oyster lessees pursuant to OLACP, not as compensation to the lessees but to further the public interest in providing for the continued existence of the oyster industry and to preserve and enhance the oyster resource.”

Preservation and enhancement of the public oyster resource is an area where we believe the oyster industry, coastal stakeholders and the state are aligned. However, we recommend that there would be no direct payment to an oyster leaseholder, because to do so could be a prohibited donation under the Louisiana State constitution. However, the value of actual damages should be re-invested into the oyster industry through the CPRA oyster program. The logic of this is that the new program values the public oyster resources and accounts for damages to the public resources by keeping the public resources “whole” for damages through programmatic activities on public seed grounds. This framework avoids a “prohibited donation” of payment to an individual leaseholder, but it does require that the CPRA projects under this program are truly “new” projects that incrementally add resources to support oyster propagation. A project that was already intended to be done would not be eligible under this program. The formulation of the lease value for leases with evidence of productivity within five years could remain the same as the current program, but with different time limits (5 years) and burdens of evidence (leaseholder).

2. “Payments for leases that are not capable of supporting commercially viable oyster populations due to environmental causes.”

Under the program that we propose, the only damages or effects eligible are those directly related to dredge cut or fill footprints. However, the lease value or status of productivity of such a lease may be affected by many environmental factors other than dredge cut or fill. Changing conditions in the coastal landscape over the past decade have altered the productivity of some areas of state-leased water bottoms for oysters. For a myriad of reasons, some formerly harvestable leases have become non-viable for oyster harvest. In the 2015 Louisiana State Auditor’s report, the auditors reported that oyster lease holders are not required to produce or even cultivate oysters on leased water bottoms. Their recommendation to require leaseholders to cultivate and produce oysters was to fulfill the goal of reducing the potential for speculative leasing and would help to ensure that state-owned water bottoms are leased for the sole purpose of producing oysters.

We propose that if there is evidence of a standing crop of live oysters present on a lease, a biological survey, at CPRA expense, can document the value; but only if the lease holder provides credible data that commercial density of oysters was present within the last five years (three to five years is the approximate time required for oysters to grow to commercial size). If there is no standing crop of oysters, evidence of productivity may be used for the prior four years, but must be provided by the lease holder. The total value is based on marketable oysters present on a lease in addition to the

market value of the lease. If there is no evidence provided of commercial densities within the last five years, the lease is assumed to be non-productive and the “lease value” given to the lease for a 20-year project life, i.e. at \$3/acre/yr. the value would be \$60/acre.

3. ***“Reduction of biological survey, appraisal, and other administrative costs of the Program, including abbreviating or eliminating surveys or appraisals for leases to the extent that they are not capable of supporting commercially viable oyster populations due to environmental causes.”***

It is likely that the overall program cost would be reduced, because biological surveys would only be conducted when the lease holder proves credible data of commercial oyster densities within the last five years. Without evidence of oyster productivity within five years, a minimal “lease value” is given to the lease, which should further reduce costs. Finally, for impacted leases proven to be productive within the last five years, funds will go to worthwhile oyster projects and not be payment to a leaseholder with personal discretion not to spend those funds to support oyster propagation.

4. ***“Termination of oyster leases that are not capable of supporting commercially viable oyster populations due to environmental causes or for absence of oyster cultivation efforts or oyster production for a significant period of time.”***

The legislatively approved Coastal Master Plan includes the explicit delineation of areas for placement of dredge fill. This in itself is legal and public notice to any and all oyster lease holders that the state intends to construct a project that would impact oyster leases which are within the areas of fill placement for marsh creation project sites. Oyster leaseholders should anticipate forthcoming projects by possibly moving resources to other leases or collecting documentation to prove the commercial viability of their oyster lease. CPRA should encourage the preemptive processing of these leases within CMP/CPRA project footprints. The intent is that when a project goes into final permitting, E&D, and construction that impediments are minimized and costs are resolved in the best interest of the state in advance.

5. ***“Reporting by lessees of oyster cultivation efforts and oyster production, sufficient to document such efforts or production.”***

For value to be assigned to leases, the leaseholder must provide evidence of productivity within the last five years. LDWF should define guidance for what is acceptable as data or evidence of commercial harvest or densities. Blanket reporting on private leases is not required. Commercial leaseholders may elect to collect data to participate in a future program.

6. ***“Payments for oysters present on a lease in addition to the market value of the lease, including whether such payment should be affected by economic or other factors, whether the one-year notice period triggering additional payment should be reduced, and means to provide longer notice periods in order to avoid triggering such payments.”***

The legislatively approved Coastal Master Plan includes the explicit delineation of areas for placement of dredge fill. This in itself is legal and public notice to any and all oyster lease holders

that the state intends to construct a project that would impact oyster leases which are within the areas of fill placement for marsh creation project sites. For projects which are not in the CMP, CPRA is encouraged to give advance notice to the degree foreseeable, but they are not required to give advance notice. Oyster leases on public water bottoms are simply leases, not land ownership. The state is landowner and custodian of public resources that are managed for the general public, and therefore, the state has great discretion to do what is in the interest of the general public.

- 7. “Identifying information and effective means to obtain it from lessees needed for valuation of leases or oysters to be compensated in addition to the leases, including information needed for more accurate determination of the economics of their harvesting such oysters.”**

No comment

- 8. “Voluntary right of entry in lieu of acquisition, including contract-based waiver of OLACP compensation, in exchange for maintaining a lease needed for integrated coastal protection.”**

No comment

- 9. “Implementing contract-based settlements for easily valued leases to reduce biological survey, appraisal, and other administrative costs.”**

No comment

- 10. “Reporting by CPRA regarding planned and possible integrated coastal protection projects and the reasonably anticipated location, extent, and timing of possible impacts to the oyster resource or cultivation.”**

The legislatively approved Coastal Master Plan includes the explicit delineation of areas for placement of dredge fill, and of areas effected by diversions. This in itself is legal and public notice to any and all oyster lease holders that the state intends to construct a project that would impact oyster leases which are within the areas of fill placement for marsh creation project sites or areas shown to be affected by diversions.

- 11. “SCR No. 56 (2020 Regular Session) and the Louisiana Oyster Management Strategic Plan under development by Department of Wildlife and Fisheries, as it relates to OLACP.”**

SCR 56 of the 2020 Regular Session is most directly aimed at the development and implementation of the Louisiana Oyster Management and Rehabilitation Strategic Plan and does not include a specific reference to the OLACP. The SCR asks that CPRA and LDWF work together to collectively craft ideas for the plan and seek funding.

[NEW CANAL LIGHTHOUSE]

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In closing, we recognize that the oyster resource is very important to the coastal ecosystem of Louisiana and that the Louisiana oyster industry is a top producer of oysters for the nation. The inherent challenges between coastal restoration and protection, and oyster production in Louisiana's coastal area are well-known and long-documented. These issues and the solutions cannot be uncoupled and must be addressed in tandem. We believe the opportunity exists for the CPRA to greatly benefit the oyster resource and the industry by working with LDWF toward a shared goal. Whether the state ultimately decides that OLACP is a part of the solution or not, our hope is that CPRA will craft and share its plan to move forward to address some of the existing conflicts and to work to restore the oyster resource within the boundaries of its own authority and through coordination with LDWF.

Sincerely,



Kristi Trail, P.E.

/attachment

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Guy McInnis
Parish President

October 6, 2020

Louisiana Coastal Protection and Restoration Authority
150 Terrace Avenue
Baton Rouge, Louisiana 70802

Re: Oyster Lease Acquisition and Compensation Program

To Whom It May Concern:

St. Bernard Parish is home to some of the most productive oyster leases in Louisiana. Commercial oyster harvesting is an important component of our local economy and has major implications in terms of employment, property tax revenue, and sales tax revenue in St. Bernard Parish. Consequently, St. Bernard Parish Government (SBPG) has a direct interest in the sustainability of the commercial oyster harvesting industry. Please accept the below comments and questions from SBPG regarding the ongoing Oyster Lease Acquisition and Compensation Program (OLACP) Study Group effort.

1. The Louisiana Legislative Auditor completed a performance audit of the OLACP and submitted its report in February 2015. However, the Coastal Protection and Restoration Authority (CPRA) did not begin seriously discussing potential amendments to the program until its July 2020 board meeting. **SBPG would like to request additional information regarding the impetus for the board meeting agenda item and subsequent launch of the OLACP Study Group effort.**
2. In response to the CPRA board meeting presentation regarding OLACP, SBPG expressed concerns to the United States Army Corps of Engineers (USACE) regarding the suitability of the program for mitigating the impacts of the proposed largescale sediment diversions:

The USACE "requires compensatory mitigation to offset unavoidable impacts to jurisdictional wetlands and other aquatic resources" (USACE, 2020). The process by which

the State of Louisiana acquires oyster leases and compensates harvesters is outlined in the *Oyster Lease Acquisition and Compensation Program* (OLACP) (LA Revised Statute 56:432.1).

Historically, the OLACP has only been invoked to acquire approximately 4,000 acres of oyster leases over a period of fifteen years. In such instances, the cost of each biological assessment ranged from \$25,000 to \$300,000 and the cost of each lease appraisal ranged from \$17,000 to \$70,000. The State of Louisiana has historically compensated leaseholders at a rate of \$50 to \$100 per acre (CPRA Board Presentation, 7/15/20). Fairly compensating thousands of impacted oyster harvesters in the manner described above seems infeasible given the amount of time and resources involved. (McInnis letter to Laborde, August 12, 2020)

SBPG would like to reiterate this overarching concern: the OLACP needs to be more efficient if the program is going to be utilized as a mechanism to compensate leaseholders for adverse impacts resulting from the implementation of State Master Plan projects, including the proposed largescale sediment diversions.

3. SBPG participated in both OLACP Group Study virtual meetings. The CPRA stated in its presentation that according to the statute (LA Rev Stat § 56:432.1), the program may only be utilized to compensate leaseholders for impacts resulting from “[...] dredging, direct placement of dredged or other materials [...]” However, this seems to be a very narrow interpretation of the statute, which also explicitly includes “[...] other work or activities necessary for the construction or maintenance of a project for integrated coastal protection.” Although the CPRA presentation seems to frame the distinction between *direct* and *indirect* impacts as a basis for OLACP eligibility, the statute does not make this distinction. **SBPG suggests that the language in the statute be amended to more explicitly deem eligible those leaseholders who have been adversely impacted by any action taken by the State of Louisiana.**

4. The OLACP (or similar legal mechanism) may be utilized as a mechanism to satisfy the USACE requirement of “compensatory mitigation to offset unavoidable impacts to jurisdictional wetlands and other aquatic resources” as a result of the proposed largescale sediment diversions. In *Avenal v. Louisiana* (2004), the Court recognized that changes in salinity caused damages to leaseholders and that salinity levels limiting the full capacity of oyster beds “damaged” leaseholders’ rights and the “leasehold interest.” The Louisiana Legislative Auditor expressed similar concerns in its OLACP performance audit report (2015):

[...] freshwater diversion projects that introduce freshwater into marshes and wetlands to stop coastal erosion may affect water salinity covering oyster leases, leading to decreased production or loss of oysters in these areas.

Introducing freshwater may also increase the concentration of harmful bacteria in some areas, preventing any oyster harvesting in these areas.

The recent *Gulf of Mexico Freshwater Flooding in Louisiana, Mississippi, and Alabama* federal fishery disaster (declared in October 2019) adversely impacted water quality and caused over \$500 million in economic damage to fisheries throughout the northern Gulf Coast region. Congress subsequently approved \$88,301,898 in recovery funds as a result of the event, although none of the funds had been administered to impacted stakeholder groups as of this writing. **SBPG suggests that CPRA take this opportunity to either amend the OLACP or develop some other legal mechanism to efficiently and fairly compensate oyster leaseholders for adverse impacts resulting from the influx of freshwater regardless of whether such adverse impacts are natural, anthropogenic, or some combination thereof.**

SBPG looks forward to reviewing CPRA's draft set of OLACP recommendations and continuing to participate in the ongoing Study Group effort.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy McInnis', with a stylized, flowing script.

Guy McInnis
Parish President

October 7, 2020

Via E-Mail: coastal@la.gov

Mr. Bren Haase
Executive Director
Coastal Restoration & Protection Authority (CPRA)
P.O. Box 44027
Baton Rouge, LA 70804-4027

**Re: Oyster Lease Acquisition and Compensation Program:
Comments related to CPRA study to develop recommendations for Program
improvements.**

Dear Mr. Haase:

This is in response to your email/correspondence of September 1, 2020 soliciting comments related to the ongoing CPRA study to develop recommendations for improvements to the Oyster Lease Acquisition and Compensation Program (OLACP).

To summarize, it appears that recent developments in the jurisprudence as well as certain statutory and regulatory changes, all related to oyster leasing, combined with the current regulatory process of lifting the moratorium on new oyster leases, may have triggered a “perfect storm” of legal issues including some of constitutional import. This comment suggests significant changes should take place within the OLACP and CPRA’s administration of same, as well as the State’s overall oyster leasing program as administered by the Louisiana Department of Wildlife and Fisheries (“LDWF”) to address the current situation.

1. Developments in the law may have rendered both the OLACP and the LDWF leasing system unconstitutional.

As you are probably aware, the Louisiana Supreme Court has ruled previously that the State has no liability for claims for oyster lease damages resulting from coastal restoration projects, per the terms of the State’s oyster lease form.¹ In addition, a Louisiana Court of Appeal has ruled that the oyster lease statutes do not guarantee oyster lessees a vested right to an optimal

¹ *Avenal v. State*, 2003-3521 (La. 10/19/04), 886 So.2d 1085

Mr. Bren Haase
November 5, 2020
Page 2

salinity regime for oyster cultivation.² As a result, oyster leaseholders' rights are limited insofar as the State is concerned.

More recently, with regard to OLACP, the First Circuit Court of Appeal has gone a step further and ruled that the language of the State's oyster lease form eliminates any right whatsoever for an oyster leaseholder to make any claims against CPRA as a result of damages resulting from a coastal restoration project.³ Consequently, it is unclear how "compensation" could be paid under the eponymous program and not constitute a donation of state property in violation of Article VII, Sec.14 of the Louisiana Constitution. Characterizing the compensation as a "...payment to further public interest and continued existence of the industry" does not alter the fact that it is indeed compensation, pure and simple.

Another issue raised by the First Circuit in its *Bayou Canard* decision was that components of the current OLACP compensation formulas constituted a "rule" that is unenforceable because it was not properly promulgated and adopted.⁴ Although arguably *dicta* since the decision was primarily based upon the Court's ruling that there can be no such claims against the State, the rule-making requirement may still be raised in subsequent litigation or in policy discussions.

Perhaps a solution to these OLACP issues may be found by analogy to the federal Uniform Relocation Assistance and Real Property Acquisition Act⁵ which applies to similar situations involving federal action/projects on land. That statutory scheme allows for payment to displaced persons for reasonable expenses and moving, actual direct losses of tangible personal property, reasonable expenses in searching for a replacement business or farm (think oyster farm) and reasonable expenses necessary to reestablish a displaced farm. This would probably require a revamping of the existing OLACP to return to the original oyster lease mitigation statutory scheme which OLACP replaced and related regulatory rule-making.

Another related issue which has arisen relates to the constitutionality of the entire LDWF oyster lease statutory scheme as it presently stands. Previously, in *Jurisich v. Hopson Marine Service Co.*,⁶ a challenge was raised to the State's oyster leasing scheme suggesting that the then annual rental fee of \$2.00 per acre (now \$3.00) was so low that it might as well be nothing at all and hence a constitutionally prohibited "disguised donation" as well as an unconstitutional disguised sale of navigable water bottoms which is prohibited by Article IX, Sec. 3 of the Louisiana Constitution.

The Fourth Circuit Court of Appeal countered indicating that where rental payments are nominal, other obligations imposed by the lease may supply the requisite consideration to bar an

² *Slavich v. State*, 2007-1149 (La. App. 1 Cir. 08/21/08); 994 So.2d 85, 95

³ *Bayou Canard, Inc. v. State*, 2017-1076 (La. App. 1 Cir. 05/14/18); 250 So. 3d 981, 989

⁴ *Bayou Canard*, 250 So. 3d at 988

⁵ 42 USC 4601 et seq.

⁶ 619 So.2d 1111 (La. App. 4 Cir. 1993)

unconstitutional conveyance.⁷ The Court made reference to certain cultivation and record-keeping requirements as examples of such obligations which rendered the leasing scheme at that time valid and constitutional.

But subsequently, the oyster industry lobbied successfully for the elimination of such requirements.⁸ Meanwhile, shortly before that the Louisiana Supreme Court ruled that unless LDWF can establish that an oyster bed initially leased is incapable of supporting oyster populations, the Secretary has a mandatory duty to renew that oyster lease.⁹ These developments gave oyster leaseholders what is essentially unfettered control over the State's water bottoms.

Consequently, oyster leaseholders presently enjoy what is essentially a lease in perpetuity over the State's water bottoms, which could be construed as the equivalent of ownership, thereby possibly triggering constitutional concerns. These could be quelled if LDWF instituted meaningful record-keeping requirements for recording production per lease instead of by meaningless regions or "zones." This would also allow for accurate valuation of leases based upon actual production per lease, and would allow LDWF to isolate unproductive ("speculative") leases which are often used to make claims against third parties.¹⁰ In addition, the State/CPRA may want to consider a programmatic shift requiring the leaseholder to bear the burden of proof on lease valuation using actual lease production figures. Finally, the reinstitution of a cultivation requirement would encourage leaseholders to abandon unproductive leases. These changes should effectively address the extant constitutional issues.

2. Mitigation measures may obviate cash compensation.

There are several considerations which might mitigate impacts on oyster leaseholders and oyster fishermen resulting from coastal restoration projects.

First, if oyster leaseholders had more precise and updated modeling information regarding the likely adverse effects from coastal restoration projects, including but not limited to, freshwater and sediment diversion projects and dredging projects, they could make compensation unnecessary by relocating their operations to locations outside of likely impacts. In particular, data related to changes in salinity, sediment load and fecal coliform concentrations should be made available online ahead of time where possible and on an ongoing basis once a project is installed or becomes operational.

⁷ *Hopson*, 619 So.2d at 1115, citing, *Arnold v. Board of Levee Com'rs of Orleans Levee Dist.*, 366 So. 2d 1321 (La. 1978)

⁸ Act 431 (Reg. Sess. 2001)

⁹ *Jurisich v. Jenkins*, 99-0076 (La. 10/19/99); 749 So.2d 597, 601

¹⁰ Keithly, Jr., W.R. and R.F. Kazmierczak, Jr. (2007) *Economic Analysis of Oyster Lease Dynamics in Louisiana*. Final report to the Louisiana Department of Natural Resources, Baton Rouge, Louisiana.

Mr. Bren Haase
November 5, 2020
Page 4

Second, the State and its agencies, including CPRA, must consider relocation areas to allow leaseholders to physically shift their operations away from adverse project effects. Consideration should be given not only to converting Public Seed Grounds to private lease areas, but to creating new oyster production areas by planting cultch in areas projected to have favorable salinity conditions as a result of riverine effects from coastal restoration projects.

Lastly, some consideration should be given to the State's promotion of Alternative Oyster Culture ("AOC") as an interim means of earning income while the effects of the implemented projects are studied and also as a stand-alone source of income for "bar oysters" or those oysters suitable for "half-shell" sales. These methods would include various technologies to promote the growth of off-bottom oyster culture so as to evade predators as well as the utilization of sterile, triploid (three pairs of chromosomes) oysters to reduce the time to maturity/market, as well as the growth of individual oysters *ab initio* rather than clustered/colonized oysters which must be separated or broken apart for marketing purposes. The State should combine the efforts of all potentially interested state agencies, i.e., economic, biological and administrative, to implement a program which will involve the establishment of laboratory processes for the generation of larval oysters, the growth of commercial levels of spat/seed oysters, and the implementation of procedures to allow for that spat to be utilized on both wild reefs and in AOC applications.

3. Whatever oyster lease acquisition program is chosen must allow for acquisition of oyster leases to allow for private coastal restoration projects to go forward.

CPRA appears to be involved in acquiring leases associated with private coastal restoration projects which are privately funded. It has become difficult for these private efforts to secure funding for future projects as the would-be sponsors view such payments as a form of "extortion" to acquire over-valued oyster leases resulting in an unnecessary increase in the cost of such projects. There is no indication of any specific efforts CPRA is undertaking to help fund oyster lease acquisition in connection with private coastal restoration projects. CPRA needs to assist private efforts to reduce the acquisition cost for oyster leases or else face the likelihood of losing the opportunity for private funding sources.

Very truly yours,

Andrew C. Wilson

ACW/twc

Coastal Protection and Restoration Authority
Attn: Bren Haase, Executive Director
P.O. Box 44027
Baton Rouge, LA 70804-4027

On behalf of the Louisiana Oyster Task Force ("LOTf"), I write to you regarding the correspondence dated September 1, 2020 regarding "Oyster Lease Acquisition and Compensation Program: Invitation to participate in CPRA study to develop recommendations for Program improvements" ("OLACP Letter"). The OLACP Letter seeks "views and recommendations of all coastal stakeholders regarding potential improvements to the Oyster Lease Acquisition and Compensation Program" ("OLACP Program"). Further, the OLACP Letter schedules four virtual public meetings on September 21 and 23 and November 17 and 18. LOTf seeks to invite a representative of CPRA to a future LOTf meeting to meet and confer about the OLACP Program before seeking public views and recommendations.

As you are aware, the LOTf was created by statute (La R.S. 56:421) "to study and monitor the molluscan industry and to make recommendations for the maximization of benefit from that industry for the state of Louisiana and its citizens." La. R.S. 56:421(A). One of the specific responsibilities of the LOTf is to:

Make recommendations with respect to issues pertaining to the oyster industry and oyster production to the various state agencies charged with responsibility for differing elements of the oyster industry in this state, including the Department of Wildlife and Fisheries, the Department of Natural Resources, and the Coastal Protection and Restoration Authority Board, the Coastal Protection and Restoration Authority, the Louisiana Department of Health, the governor's executive assistant for coastal activities, and the legislature. La. R.S. 56:421(E) (4).

Additionally, Section 7 of SCR No. 56 (2020 Reg. Sess.) requires that CPRA coordinate "with oyster resource and industry stakeholders, including the Oyster Task Force" in the development of the Louisiana Oyster Management and Rehabilitation Strategic Plan. Despite this requirement, CPRA has not coordinated with the Louisiana Oyster Task Force.

In light of CPRA's and LOTf's responsibilities, LOTf believes that CPRA should meet with the LOTf first to narrow the scope of the recommendations and changes to OLACP Program. Thereafter, the public meetings can be rescheduled.

Finally, LOTf objects to holding these public meetings virtually. Many stakeholders in the oyster industry do not have the ability participate virtually and voice their concerns without an in-person meeting. As a result, LOTf recommends that the public comment meetings be rescheduled until a later date when in-person meetings are possible.

We look forward to discussing these issues with you at a future LOTf meeting.

FORCE

LOUISIANA OYSTER TASK



Mitchell B. Jurisich, Jr.

Chairman

cc: Chip Kline, Chairman Louisiana Coastal Protection and Restoration Board
Chip.Kline@la.gov