



St. Bernard Parish Government

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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

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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.

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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



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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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ATTACHMENT 1

Oyster Lease Acquisition and Compensation Program:

***Sept 1, 2020 Invitation to participate in CPRA study to develop
recommendations for Program improvements.***