

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

APPENDIX C

**SUMMARY OF OLACP ACQUISITIONS
AND EXPENDITURES**

SUMMARY OF ASSESSMENT AND APPRAISAL COSTS UNDER THE OYSTER LEASE ACQUISITION AND COMPENSATION PROGRAM THROUGH 9/30/2020

PROJECT	DATE	NUMBER OF LEASES IN 1,500' BUFFER	LEASE ACRES IN 1,500' BUFFER	LEASE ACRES IN DIRECT IMPACT AREA (150')	ASSESSMENT COST	APPRAISAL COST	COMBINED ASSMT. & APP. COST	ACQUISITION COST	ACQ. COST per ACRE	TOTAL COST	TOTAL COST per ACRE
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	\$33,715.70	\$718.00	\$99,238.46	\$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	\$19,900.00	\$801.00	\$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 acreage	Project Cost	Acquisition Cost	Totals	Avg/acre
4,319.24	\$2,590,607.95	\$2,404,793.45	\$4,994,858.80	\$556.00

* Figures are based upon estimation

Total Cost: **\$4,995,401.40**

SUMMARY OF COMPENSATION PAID UNDER THE OYSTER LEASE ACQUISITION AND COMPENSATION PROGRAM THROUGH 12/31/2020

BA-0038 Pelican Island (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 35575	Mitchell B. Jurisich, Sr.	1.08	2.00	0.07	0.00
L - 35595	Mitchell B. Jurisich, Sr.	0.32	1.00	0.32	0.00
L - 35597	Mitchell B. Jurisich, Sr.	0.49	1.00	0.49	0.00
L - 35599	Mitchell B. Jurisich, Sr.	0.57	1.00	0.35	0.00
L - 3161309	Prince Charming, Inc.	241.03	242.00	19.75	0.00
L - 3187806	Maja B. Farac	5.68	6.00	2.05	0.00
L - 3187906	Maja B. Farac	5.54	6.00	2.56	0.00
L - 3229607	Mitchell B. Jurisich, Sr.	469.80	470.00	82.33	7866.17
L - 3247907	Pelican Island Oysters, Inc.	152.15	153.00	2.66	0.00
L - 3283407	G.I. Joe, Inc.	422.73	423.00	6.05	0.00
L - 3445810	Little Mitch, Inc.	129.10	130.00	18.44	0.00
Project:		1428.49	1435.00	135.07	7866.17
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43-1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$100.00		\$100.00
\$500.00		\$500.00
\$500.00		\$500.00
\$175.00		\$175.00
\$15,800.00		\$15,800.00
\$1,025.00		\$1,025.00
\$1,300.00		\$1,300.00
\$65,865.00	\$115,632.70	\$181,497.70
\$2,130.00		\$2,130.00
\$4,840.00		\$4,840.00
\$14,755.00		\$14,755.00
\$106,990.00	\$115,632.70	\$222,622.70

Total Amount of Compensation:	\$222,622.70
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BA-0040 Scofield Island (Dredge Route) (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 35619	Dannell B. Jurisich	9.31	10.00	0.50	0.00
L - 2702498	Cocodrie Oyster Company, LLC	31.46	32.00	0.97	0.00
L - 2702898	Gulf Star Oysters, Inc.	24.27	25.00	0.25	0.00
L - 2793500	Gulf Wave Oysters, Inc.	9.52	10.00	0.13	0.00
L - 2849101	G. I. Joe, Inc.	17.47	18.00	0.09	0.00
L - 2851601	Grasshopper Oysters, Inc.	72.85	97.00	0.80	0.00
L - 2861201	Grasshopper Oysters, Inc.	10.86	11.00	0.09	0.00
L - 3161709	Prince Charming, Inc.	121.11	122.00	1.76	0.00
L - 3184906	Kuzma Petrovich	20.55	21.00	0.03	0.00
L - 3188109	Sinajka Farac	11.65	12.00	11.65	0.00
L - 3220506	Gulf Star Oysters, Inc.	118.79	119.00	0.65	272.05
L - 3229607	Mitchell B. Jurisich, Sr.	469.80	470.00	0.33	0.00
L - 3247407	Mitchell B. Jurisich, Jr.	162.94	163.00	9.42	0.00
L - 3248207	Prince Charming, Inc.	81.47	82.00	1.63	0.00
L - 3248307	Prince Charming, Inc.	43.67	44.00	3.79	15.74
L - 3291607	Ivo Bilich	132.00	132.00	130.06	1528.50
L - 3299008	Cocodrie Oyster Company, LLC	25.91	26.00	8.79	0.00
L - 3299308	Bonnie Buras	7.01	7.00	0.03	0.00
L - 3399209	Ivo Bilich	142.18	143.00	58.19	0.00
L - 3422010	Eglica Madjor	47.22	48.00	47.22	0.00
L - 3574998	Pavo Rilovich	20.02	21.00	10.03	0.00

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$400.00		\$400.00
\$776.00		\$776.00
\$200.00		\$200.00
\$104.00		\$104.00
\$100.00		\$100.00
\$640.00		\$640.00
\$100.00		\$100.00
\$1,408.00		\$1,408.00
\$100.00		\$100.00
\$6,000.00		\$6,000.00
\$520.00	\$3,999.14	\$4,519.14
\$264.00		\$264.00
\$7,536.00		\$7,536.00
\$1,104.00		\$1,104.00
\$3,222.00	\$231.38	\$3,453.38
\$65,030.00	\$22,468.95	\$87,498.95
\$7,032.00		\$7,032.00
\$100.00		\$100.00
\$18,615.00		\$18,615.00
\$24,000.00		\$24,000.00
\$5,015.00		\$5,015.00

L - 3578599	Dannell B. Jurisich	2.06	3.00	0.16	0.00
L - 3585899	Mitchell B. Jurisich, Jr.	12.19	13.00	0.08	0.00
L - 3586699	Mitchell B. Jurisich, Jr.	2.45	3.00	0.81	0.00
L - 3587099	Mitchell B. Jurisich, Jr.	8.44	9.00	0.07	0.00
Project:		1605.20	1641.00	287.53	1816.29
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43-I, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

\$100.00		\$100.00
\$100.00		\$100.00
\$405.00		\$405.00
\$100.00		\$100.00
\$123,719.00	\$22,700.33	\$146,419.33

Total Amount of Compensation:	\$146,419.33
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BA-0040 Scofield Island (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 34972	Andrew TaliANCH & Joseph TaliANCH	7.58	8.00	7.58	0.00
L - 35229	M. J. Farac, III	848.98	849.00	237.73	8427.37
L - 35449	Connie Buras Kirkley, Bonnie Buras & Rennie Scott Buras	11.10	12.00	0.03	0.00
L - 35517	Rennie S. Buras, II	11.13	12.00	10.14	44.66
L - 35701	Dinko Popich	11.81	12.00	1.41	0.00
L - 266598	Braco Madjor & Ivo Bilich Partnership	61.39	62.00	3.11	0.00
L - 2706198	Connie Buras Kirkley, Bonnie Buras & Rennie Scott Buras	9.76	10.00	9.76	0.00
L - 2857201	Muddy Waters	73.32	74.00	12.67	292.18
L - 2857801	Harold J. Treadway, Jr.	25.95	26.00	11.93	3727.89
L - 2889707	Leopold TaliANCH	26.13	27.00	18.90	0.00
L - 3119109	Andrew TaliANCH & Joseph TaliANCH	9.81	10.00	4.90	134.65
L - 3321408	Dinko Popich	22.57	23.00	0.64	0.00
L - 3362108	P & A Oysters, LLC	12.40	13.00	12.40	0.00
L - 3371509	Connie Buras Kirkley, Bonnie Buras & Rennie Scott Buras	61.30	62.00	61.30	0.00
L - 3428110	Dinko Popich	5.53	6.00	5.53	0.00
L - 3431210	G. I. Joe, Inc.	5.27	6.00	5.27	0.00
Project:		1196.45	1212.00	403.30	12626.75
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43-I, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$2,800.00		\$2,800.00
\$154,525.00	\$123,882.34	\$278,407.34
\$100.00		\$100.00
\$8,115.00	\$656.50	\$8,771.50
\$705.00		\$705.00
\$1,555.00		\$1,555.00
\$600.00		\$600.00
\$10,135.00	\$4,295.05	\$14,430.05
\$9,545.00	\$54,799.98	\$64,344.98
\$7,560.00		\$7,560.00
\$3,920.00	\$1,979.36	\$5,899.36
\$320.00		\$320.00
\$910.00		\$910.00
\$4,650.00		\$4,650.00
\$3,000.00		\$3,000.00
\$3,000.00		\$3,000.00
\$211,440.00	\$185,613.23	\$397,053.23

Total Amount of Compensation:	\$397,053.23
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BA-0068 Grand Liard (Dredge Route) (2012)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2736499	Judy TaliANCH	6.67	7.00	6.67	58.46
L - 2753009	Peter V. Jancich	35.17	36.00	3.72	10.72
L - 2830301	Sylvia Yuratich McNabb	38.70	39.00	27.78	1489.65
L - 2838401	Andrew TaliANCH & Joseph TaliANCH	12.87	13.00	11.17	43.69
L - 2851501	C. & G. Oysters, Inc.	150.40	153.00	18.61	0.00
L - 2865707	Teresa H. Cvitanovich & Shane P. Treadway	40.71	41.00	8.30	0.00
L - 2871907	Oyster Lands Leasing, Inc.	128.81	129.00	37.05	566.95

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$1,525.00	\$859.36	\$2,384.36
\$1,210.00	\$157.58	\$1,367.58
\$11,112.00	\$21,897.86	\$33,009.86
\$3,630.00	\$642.22	\$4,272.22
\$6,048.00		\$6,048.00
\$2,698.00		\$2,698.00
\$10,189.00	\$8,344.17	\$18,533.17

L - 2889307	Bartol John TaliANCH	18.01	19.00	12.04	1206.09
L - 2896607	Kennair Oysters, Inc.	10.90	11.00	7.06	0.00
L - 3179209	Barbra S. Kennair, Donald J. Kennair, Jr. & Ronald Kennair	18.64	19.00	1.55	74.94
L - 3231407	Bilich, Kurtich & Madjor Partnership	96.18	97.00	0.53	8.87
L - 3246807	G.I. Joe, Inc.	14.00	14.00	2.76	122.91
L - 3254707	Bozo TaliANCH	6.42	7.00	6.42	779.12
L - 3261307	Kennair Oysters, Inc.	22.12	23.00	5.40	3.55
L - 3432010	Oyster Lands Leasing, Inc.	47.87	48.00	21.06	5132.01
L - 3437010	Kennair Oysters, Inc.	38.82	39.00	0.51	0.00
L - 3437210	Barbra S. Kennair, Donald J. Kennair, Jr. & Ronald Kennair	10.85	11.00	0.14	0.00
L - 3449410	Ivo Dragobratovich	27.56	28.00	13.15	0.00
L - 3497311	Andrew TaliANCH & Joseph TaliANCH	5.88	6.00	3.74	89.18
Project:		730.58	740.00	187.66	9586.14
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

BA-0068 Grand Liard (Marsh Creation) (2012)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L-2964303	Kuzma Petrovich	44.76	45.00	10.69	91.43
L-3249407	K.B.M. Leases	11.80	12.00	0.20	0.00
L-3484311	Kuzma Petrovich	67.47	68.00	60.07	45.57
L-3484411	Kuzma Petrovich	10.73	11.00	5.13	48.53
Project:		134.76	136.00	76.09	185.53
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

BA-0076 Chenier Ronquille (2015)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2693613	Srecka TaliANCH	45.11	46.00	45.11	0.00
L - 2878907	Guy Adams	14.97	15.00	0.84	0.00
L - 3016609	John Frazier	36.43	37.00	7.25	0.00
L - 3126909	Valerie Garbin	47.28	48.00	47.28	0.00
L - 3127209	Vatroslov Garbin	61.70	62.00	61.70	0.00
Project:		205.49	208.00	162.18	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

\$4,816.00	\$17,729.52	\$22,545.52
\$2,295.00		\$2,295.00
\$630.00	\$1,101.62	\$1,731.62
\$145.00	\$130.39	\$275.39
\$966.00	\$859.36	\$1,825.36
\$2,800.00	\$11,453.06	\$14,253.06
\$1,890.00	\$52.19	\$1,942.19
\$8,424.00	\$75,440.55	\$83,864.55
\$166.00		\$166.00
\$100.00		\$100.00
\$4,274.00		\$4,274.00
\$1,496.00	\$1,310.95	\$2,806.95
\$64,414.00	\$138,667.88	\$197,211.88

Total Amount of Compensation:	\$197,211.88
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Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$2,940.00	\$1,344.02	\$4,284.02
\$100.00		\$100.00
\$17,753.00	\$669.88	\$18,422.88
\$1,405.00	\$713.39	\$2,118.39
\$22,198.00	\$2,727.29	\$24,925.29

Total Amount of Compensation:	\$24,925.29
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Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$9,090.00		\$9,090.00
\$250.00		\$250.00
\$1,731.00		\$1,731.00
\$4,940.00		\$4,940.00
\$10,386.00		\$10,386.00
\$26,397.00	\$0.00	\$26,397.00

Total Amount of Compensation:	\$26,397.00
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BA-0110 Shell East Project Redesign (2012)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L-35573	Gulf Wave Oyters, Inc.	4.68	5.00	0.62	0.00
L-2793500	Gulf Wave Oyters, Inc.	9.41	10.00	0.97	0.00
L-2848901	Grasshopper Oysters, Inc.	13.49	31.00	6.12	0.00
L-2931709	Althea Lynn Jurisich	7.48	8.00	6.88	0.00
L-3163508	Pelican Island Oyster, Inc.	776.55	777.00	4.83	0.00
L-3229607	Mitchell B. Jurisich, Jr.	393.87	389.00	2.59	13.29
L-3248307	Prince Charming, Inc.	39.88	44.00	2.77	0.00
L-3263507	Mitchell B. Jurisich, Jr. and Frank J. Jurisich	14.65	15.00	7.61	0.00
L-3431310	Shell Island, Inc.	366.05	367.00	9.81	0.00
L-3477711	Bayou Canard, Inc.	732.37	733.00	327.57	26294.15
Project:		2358.43	2379.00	369.77	26307.44

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:I, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$620.00		\$620.00
\$970.00		\$970.00
\$1,683.00		\$1,683.00
\$2,800.00		\$2,800.00
\$1,932.00		\$1,932.00
\$2,590.00	\$189.06	\$2,779.06
\$2,770.00		\$2,770.00
\$3,044.00		\$3,044.00
\$3,924.00		\$3,924.00
\$108,852.00	\$386,524.00	\$495,376.00
\$129,185.00	\$386,713.06	\$515,898.06

Total Amount of Compensation:	\$515,898.06
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BA-0111 Shell Island West (2013)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2665313	Sime Tomasovic	8.53	9.00	8.00	0.00
L - 2665813	Gary Sercovich	11.79	12.00	11.79	0.00
L - 2753209	Ivan John Taliancich	7.08	8.00	1.62	0.00
L - 2783500	Gulf Star Oysters, Inc.	53.24	54.00	29.45	0.00
L - 2787400	Shell Island, Inc.	17.14	18.00	8.07	0.00
L - 2790100	Pero Cibilic	17.18	18.00	1.54	0.00
L - 2800000	Shell Island, Inc.	10.48	11.00	0.29	0.00
L - 2800100	Madjor & Madjor	22.77	23.00	22.77	31.75
L - 2854901	Bayou Canard, Inc.	100.39	100.65	54.58	4650.33
L - 2899107	Grasshopper Oysters, Inc.	25.04	26.00	13.71	0.00
L - 2928103	Karankawa Bay, Inc.	2.52	3.00	2.52	9.69
L - 2931709	Althea Lynn Jurisich	7.48	9.00	0.40	0.00
L - 2964109	Kuzma Petrovich	0.64	1.00	0.64	0.00
L - 2986909	Althea Lynn Jurisich	73.21	74.00	10.35	0.00
L - 3004809	Kuzma Petrovich	18.71	19.00	3.46	0.00
L - 3010609	Jozo J. Slavich	16.11	17.00	16.11	24.21
L - 3081109	Pero Cibilic	12.91	13.00	12.91	0.00
L - 3143609	Piacun Oysters, Inc.	11.17	12.00	10.00	41.97
L - 3152209	Pero Cibilic	23.41	24.00	20.50	0.00
L - 3162609	Mitchell B. Jurisich, Jr.	8.24	9.00	8.24	0.00
L - 3163508	Pelican Island Oysters, Inc.	776.55	777.00	301.65	0.00
L - 3164607	Ivo Bilich	7.82	8.00	1.32	0.00
L - 3165009	Ivo Bilich	4.17	5.00	2.71	0.00

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$2,000.00		\$2,000.00
\$3,600.00		\$3,600.00
\$608.00		\$608.00
\$11,780.00		\$11,780.00
\$2,625.00		\$2,625.00
\$100.00		\$100.00
\$115.00		\$115.00
\$9,200.00	\$645.33	\$9,845.33
\$21,830.00	\$97,656.93	\$119,486.93
\$4,800.00		\$4,800.00
\$1,350.00	\$203.49	\$1,553.49
\$100.00		\$100.00
\$325.00		\$325.00
\$3,880.00		\$3,880.00
\$1,300.00		\$1,300.00
\$6,800.00	\$508.41	\$7,308.41
\$4,225.00		\$4,225.00
\$4,000.00	\$881.37	\$4,881.37
\$6,663.00		\$6,663.00
\$3,375.00		\$3,375.00
\$105,580.00		\$105,580.00
\$430.00		\$430.00
\$950.00		\$950.00

L - 3200909	Harold J. Treadway, Jr.	55.11	56.00	37.32	0.00
L - 3202109	Gulf Oysters, II, Inc.	46.77	47.00	46.77	3.50
L - 3202307	Gulf Oysters, III, Inc.	3.33	4.00	3.33	0.00
L - 3208008	Mitchell B. Jurisich, JR. and Frank J. Jurisich	6.01	7.00	2.93	0.00
L - 3244307	Barbara S. Kennair, Donald J. Kennair, Jr. and Ronald Kennair	86.31	87.00	0.33	0.00
L - 3246507	Bayou Canard, Inc.	29.64	30.00	29.64	1740.21
L - 3263507	Mitchell B. Jurisich, JR. and Frank J. Jurisich	14.65	15.00	7.04	0.00
L - 3265307	Gulf Oysters, III, Inc.	17.75	18.00	4.16	0.00
L - 3370709	Ivo Bilich	14.84	15.00	0.90	0.00
L - 3371409	Connie Buras Kirkley	19.94	20.00	4.80	0.00
L - 3371709	Maria Seput Perry & Vincent T. Seput	36.81	20.00	10.32	0.00
L - 3375709	M.J. Farac, Jr.	5.89	6.00	0.43	0.00
L - 3417410	Eglica Madjor	7.70	8.00	7.70	0.00
L - 3417510	Eglica Madjor	48.38	49.00	7.36	0.00
L - 3417610	Eglica Madjor	4.71	5.00	4.71	15.04
L - 3431110	G.I. Joe, Inc.	25.87	26.00	20.82	0.00
L - 3431310	Shell Island, Inc.	366.05	367.00	95.14	0.00
L - 3431610	Kuzma I. Zibilich, Anna M. Zibilich and Mary A. Zibilich	38.57	39.00	11.63	122.53
L - 3431710	Kuzma I. Zibilich, Anna M. Zibilich and Mary A. Zibilich	66.84	67.00	46.55	0.00
L - 3443710	Maria Seput Perry & Vincent T. Seput	24.90	25.00	9.95	0.00
L - 3444210	Slabic Oysters, LLC	6.94	7.00	6.94	20.42
L - 3444510	Shell Island, Inc.	25.88	28.00	22.05	0.00
L - 3444710	Shell Island, Inc.	14.71	15.00	1.83	0.00
L - 3450610	C. and G. Oysters, Inc.	13.20	14.00	7.37	0.00
L - 3477711	Bayou Canard, Inc.	732.37	733.00	3.15	72.57
L - 3586099	Mitchell B. Jurisich, Jr.	1.38	1.00	1.38	0.00
Project:		2951.13	2959.65	937.18	6732.22
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

BA-0143 Caminada Headlands (2013)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2773600	Estate of Temise Cheramie Collins	16.19	17.00	5.68	0.00
L - 3167608	Harold J. Collins	11.03	12.00	6.28	0.00
Project:		27.22	29.00	11.96	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

\$13,062.00		\$13,062.00
\$15,348.50		\$15,348.50
\$1,000.00		\$1,000.00
\$1,245.00		\$1,245.00
\$115.00		\$115.00
\$50,044.41		\$50,044.41
\$2,956.00		\$2,956.00
\$1,560.00		\$1,560.00
\$295.00		\$295.00
\$1,560.00		\$1,560.00
\$3,870.00		\$3,870.00
\$150.00		\$150.00
\$2,800.00		\$2,800.00
\$2,575.00		\$2,575.00
\$2,000.00	\$315.00	\$2,315.00
\$7,285.00		\$7,285.00
\$35,655.00		\$35,655.00
\$4,650.00	\$2,573.13	\$7,223.13
\$13,965.00		\$13,965.00
\$3,235.00		\$3,235.00
\$2,800.00	\$428.82	\$3,228.82
\$8,820.00		\$8,820.00
\$595.00		\$595.00
\$2,395.00		\$2,395.00
\$3,150.00	\$1,523.97	\$4,673.97
\$325.00		\$325.00
\$377,091.91	\$104,736.45	\$481,828.36

Total Amount of Compensation:	\$481,828.36
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Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$1,056.00		\$1,056.00
\$1,029.00		\$1,029.00
\$2,085.00	\$0.00	\$2,085.00

Total Amount of Compensation:	\$2,085.00
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BA-0171 Caminada Headlands and Back Barrier (Includes BA-0193) (2019)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2773615	Estate of Temise Cheramie Collins	11.05	14.00	7.78	0.00
L - 2959817	Collins Oyster Company, Inc.	24.12	25.00	15.57	0.00
L - 3167608	Harold J. Collins	4.72	12.00	4.72	0.00
Project:		39.89	51.00	28.07	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:l, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$1,437.00		\$1,437.00
\$3,270.00		\$3,270.00
\$1,070.00		\$1,070.00
\$5,777.00	\$0.00	\$5,777.00

Total Amount of Compensation:	\$5,777.00
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BA-0202 Queen Bess Island Restoration (2019)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2765918	Little Frank, Inc.	6.49	7.00	0.67	0.00
L - 3457410	Althea Lynn Jurisich	234.37	235.00	1.00	0.00
L - 3557712	Althea Lynn Jurisich	34.69	35.00	0.96	0.00
Project:		275.55	277.00	2.63	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:l, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$151.00		\$151.00
\$225.00		\$225.00
\$216.00		\$216.00
\$592.00	\$0.00	\$592.00

Total Amount of Compensation:	\$592.00
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BA-0203 Spanish Pass Marsh Creation (2020)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2680113	David P. Cvitanovich	9.90	10.00	0.81	0.00
L - 2871907	Oyster Lands Leasing, Inc.	95.28	96.00	2.24	0.00
L - 2930918	Mitchell B. Jurisich, Jr.	52.30	53.00	0.70	0.00
L - 3663612	Mitchell B. Jurisich, Jr. & Frank J. Jurisich	0.98	1.00	0.03	0.00
Project:		158.46	160.00	3.78	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:l, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$1,000.00		\$1,000.00
\$0.00		\$0.00
\$0.00		\$0.00
\$0.00		\$0.00
\$0.00		\$0.00
\$1,000.00	\$0.00	\$1,000.00

Total Amount of Compensation:	\$1,000.00
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Baptiste Collette Dredging (2014)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2722514	Deeanna L. Jurisic	24.88	25.00	2.68	0.00

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$201.00		\$201.00

L - 2722614	Vatroslav Garbin	34.90	35.00	30.05	0.00
L - 2745514	Estate of Matthew J. Farac, Sr.	15.24	16.00	15.24	0.00
L - 3373609	Estate of Matthew J. Farac, Sr.	5.89	6.00	5.89	0.00
Project:		80.91	82.00	53.86	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

\$2,254.00	\$2,254.00
\$1,200.00	\$1,200.00
\$450.00	\$450.00
\$4,105.00	\$4,105.00

Total Amount of Compensation:	\$4,105.00
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BS-0031 Bay Denesse Delta Management (Ducks Unlimited) (2018)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2811716	Estate of Anthony Sercovich, Sr.	8.68	9.00	1.63	0.00
L - 2832116	Estate of William Sercovich, Sr. & Gary Sercovich	71.62	71.00	3.73	0.00
L - 2890107	Janie F. Scarabin, Sally F. Frankovich & Mallory F. Mays	275.52	268.00	107.83	0.00
L - 3094107	Gasper Luke Perlander	6.97	7.00	0.46	0.00
L - 3102107	Mallory F. Mays, Janie F. Scarabin, Sally F. Frankovich, & Patricia	202.62	203.00	62.83	0.00
L - 3102807	Estate of George Sercovich & Estate of William Sercovich, Sr.	4.95	5.00	2.17	0.00
L - 3102907	Estate of George Sercovich & Estate of William Sercovich, Sr.	5.76	6.00	5.76	0.00
L - 3374309	Kuzma Petrovich & Ivo Bilich	242.79	243.00	47.30	0.00
L - 3430010	Joseph M. Taliancich	25.83	26.00	20.80	0.00
L - 3434510	Gary Sercovich	27.07	28.00	10.20	0.00
L - 3442810	Gravolet Properties, LLC	11.40	12.00	2.44	0.00
L - 3608615	Mary Gjenero Bilich	6.86	7.00	0.19	0.00
Project:		890.07	885.00	265.34	0.00
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$122.00		\$122.00
\$280.00		\$280.00
\$8,087.00		\$8,087.00
\$35.00		\$35.00
\$4,712.00		\$4,712.00
\$163.00		\$163.00
\$432.00		\$432.00
\$3,548.01		\$3,548.01
\$1,560.00		\$1,560.00
\$765.00		\$765.00
\$183.00		\$183.00
\$14.00		\$14.00
\$19,901.01	\$0.00	\$19,901.01

Total Amount of Compensation:	\$19,901.01
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PO-0036 Orleans Landbridge Shoreline (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2760300	Nolan J. Lapeyrouse, Jr. & Charles T. Lapeyrouse	546.34	547.0	38.06	11.15
L - 2762200	Ms. Judi Tesvich	183.61	184.0	8.89	0.00
Project:		729.95	731.00	46.95	11.15
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$9,515.00	\$160.92	\$9,675.92
\$2,225.00	\$0.00	\$2,225.00
\$11,740.00	\$160.92	\$11,900.92

Total Amount of Compensation:	\$11,900.92
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PO-0072 Biloxi Marsh (2012)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2810201	Rodney L. Fox	188.62	189.00	1.37	0.87
L - 2846901	Nikola A. Vekic	228.51	229.00	45.53	62.11
Project:		417.13	418.00	46.90	62.98
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack.					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$29,308.00	\$4,044.70	\$33,352.70
\$363.00		\$363.00
\$29,671.00	\$4,044.70	\$33,715.70

Total Amount of Compensation:	\$33,715.70
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PO-0093 Bayou Dupre (2010)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2777601	Mary T. Slavich	171.22	172.0	2.99	17.29
L - 2884107	Catherine S. Perez	239.24	240.0	17.91	40.03
Project:		410.46	412.00	20.90	57.32
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$900.00	\$254.16	\$1,154.16
\$5,375.00	\$588.44	\$5,963.44
\$6,275.00	\$842.60	\$7,117.60

Total Amount of Compensation:	\$7,117.60
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PO-0094 Bayou Bienvenue (2014)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 34922	Ann S. Tesvich	73.34	74.0	9.84	11.09
L - 2630898	Pean, Inc.	304.15	305.0	9.11	0.11
L - 2690298	Chris J. Robin	484.84	485.0	2.83	0.00
Project:		862.33	864.00	21.78	11.20
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					
³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$2,705.00	\$163.02	\$2,868.02
\$2,505.00	\$2.31	\$2,507.31
\$780.00	\$0.00	\$780.00
\$5,990.00	\$165.33	\$6,155.33

Total Amount of Compensation:	\$6,155.33
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PO-0095 West of Shell Beach (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2835101	Frank S. Slavich, Jr. & Randy Slavich	286.84	287.00	10.16	21.58
L - 3296107	Cornell Alfonso, Donnie L. Campo & Ronnie L. Campo	10.28	10.00	1.34	7.49
Project:		297.12	297.00	11.50	29.07
¹ LDWF adjusted lease acreage rounded up to reflect whole acreage					
² LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries					

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$3,050.00	\$317.23	\$3,367.23
\$300.00	\$110.10	\$410.10
\$3,350.00	\$427.33	\$3,777.33

³ Sack oysters calculated using 180 market-sized oysters per sack					
⁴ Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack					

PO-0174 Biloxi Marsh Living Shoreline (2019)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 3242207	William Pearson	92.53	84.00	16.09	0.00
L - 3516112	Europe II Oysters, Inc.	46.84	47.00	8.75	0.00
Project:		139.37	131.00	24.84	0.00

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Total Amount of Compensation:	\$3,777.33
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Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$12,890.00		\$12,890.00
\$7,010.00		\$7,010.00
\$19,900.00	\$0.00	\$19,900.00

Total Amount of Compensation:	\$19,900.00
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TE-0064 TLCD Morganza to the Gulf (2011)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2775815	Gautier Enterprises, Inc.	3.10	4.00	0.00	0.00
L - 2937813	Loretta Marie, Sandra Bird, Kate Melancon & Gail Rogers	10.86	11.00	8.97	416.80
L - 2941803	Bay Antoine, Inc.	7.36	8.00	0.00	0.00
L - 2984504	American Bay, Inc.	15.69	16.00	11.49	0.00
L - 3342108	Houston Foret	18.39	19.00	0.00	0.00
Project:		55.40	58.00	20.46	416.80

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$0.00	\$0.00	\$0.00
\$897.00	\$6,126.96	\$7,023.96
\$0.00	\$0.00	\$0.00
\$1,149.00	\$0.00	\$1,149.00
\$0.00	\$0.00	\$0.00
\$2,046.00	\$6,126.96	\$8,172.96

Total Amount of Compensation:	\$8,172.96
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TE-0072 Lost Lake (2016)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2677113	Shirley D. Daisy	57.94	58.00	1.64	0.00
Project:		57.94	58.00	1.64	0.00

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:1, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$123.00	\$0.00	\$123.00
\$123.00	\$0.00	\$123.00

Total Amount of Compensation:	\$123.00
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TE-0140 Golden Meadow (Lafourche Parish) (2018)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2913605	J.C. Darda	633.40	634.00	1.87	52.46
L - 2927105	Capt. Frank's Oysters, LLC	116.89	117.00	48.93	45.53
L - 3043304	Robert A. Theriot	916.20	916.00	8.80	0.00
L - 3397109	Kate Theriot	150.50	151.00	32.30	2763.22
L - 3401009	Capt. Frank's Oysters, LLC	29.03	30.00	3.94	194.21
Project:		1846.02	1848.00	95.84	3055.42

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:I, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$1,870.00	\$495.75	\$2,365.75
\$48,930.00	\$392.01	\$49,322.01
\$8,800.00	\$0.00	\$8,800.00
\$32,300.00	\$28,433.53	\$60,733.53
\$3,940.00	\$1,998.42	\$5,938.42
\$95,840.00	\$31,319.71	\$127,159.71

Total Amount of Compensation:	\$127,159.71
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Shoreline Protection Emergency Restoration Project (SPER) (2012)

Lease Number	Lessee Name	Total Lease Acres	LDWF Adjusted Acres ¹	Acres in Direct Impact Area	Marketable Oysters ² (Sacks ³)
L - 2790200	Anton Popich	51.60	52.00	22.31	0.00
L - 3133707	Joyce Farac Kurtich and the Estate of Matthew John Farac, Jr.	717.68	718.00	120.73	275.15
L - 3182707	Kim J. Galjour	9.34	10.00	1.45	0.00
L - 3318608	Oyster Eagle, LLC	400.73	401.00	129.94	0.00
L - 3463010	Albert S. Enos	94.78	95.00	37.53	0.00
Project:		1274.13	1276.00	311.96	275.15

¹LDWF adjusted lease acreage rounded up to reflect whole acreage

²LAC 43:I, Section 855 states that "marketable oysters" include both seed and market-sized oysters as defined by the LA Department of Wildlife and Fisheries

³Sack oysters calculated using 180 market-sized oysters per sack

⁴Marketable oyster valuation derived by using \$26.00 per sack dockside value, with a \$5.00 per sack production cost subtracted, for a total revenue of \$21.00 per sack

Appraisal Value Paid	Marketable Oysters Value Paid ⁴	Total Compensation Paid
\$7,809.00	\$0.00	\$7,809.00
\$29,308.00	\$4,044.70	\$33,352.70
\$363.00	\$0.00	\$363.00
\$32,485.00	\$0.00	\$32,485.00
\$13,136.00	\$0.00	\$13,136.00
\$83,101.00	\$4,044.70	\$87,145.70

Total Amount of Compensation:	\$87,145.70
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Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program:
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:
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

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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:

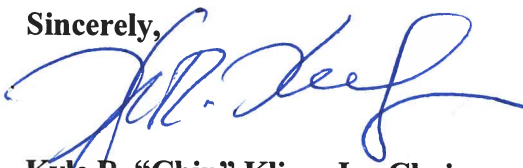
- (1) Oyster Task Force;
- (2) Other organizations and groups with an interest in the oyster industry in Louisiana, including but not limited to Louisiana Oystermen Association, Louisiana Oyster Dealers and Growers Association, Louisiana Farm Bureau Federation; Louisiana Oyster Aquaculture Association, 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 flourish at the end.

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

Coastal Protection and Restoration Authority

**Oyster Lease Acquisition and Compensation Program:
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=nm5b7578a72dc7fdefd72a7d04b858f4d8>

Password: OLACPweb02

Join by phone: (408) 418-9388

Access code: 146 847 8792

Executive Division

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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://cpa.webex.com/cpa/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://cpa.webex.com/cpa/j.php?MTID=m6744f3a233bbcf8e89cc49a417072b97>

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,



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:
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

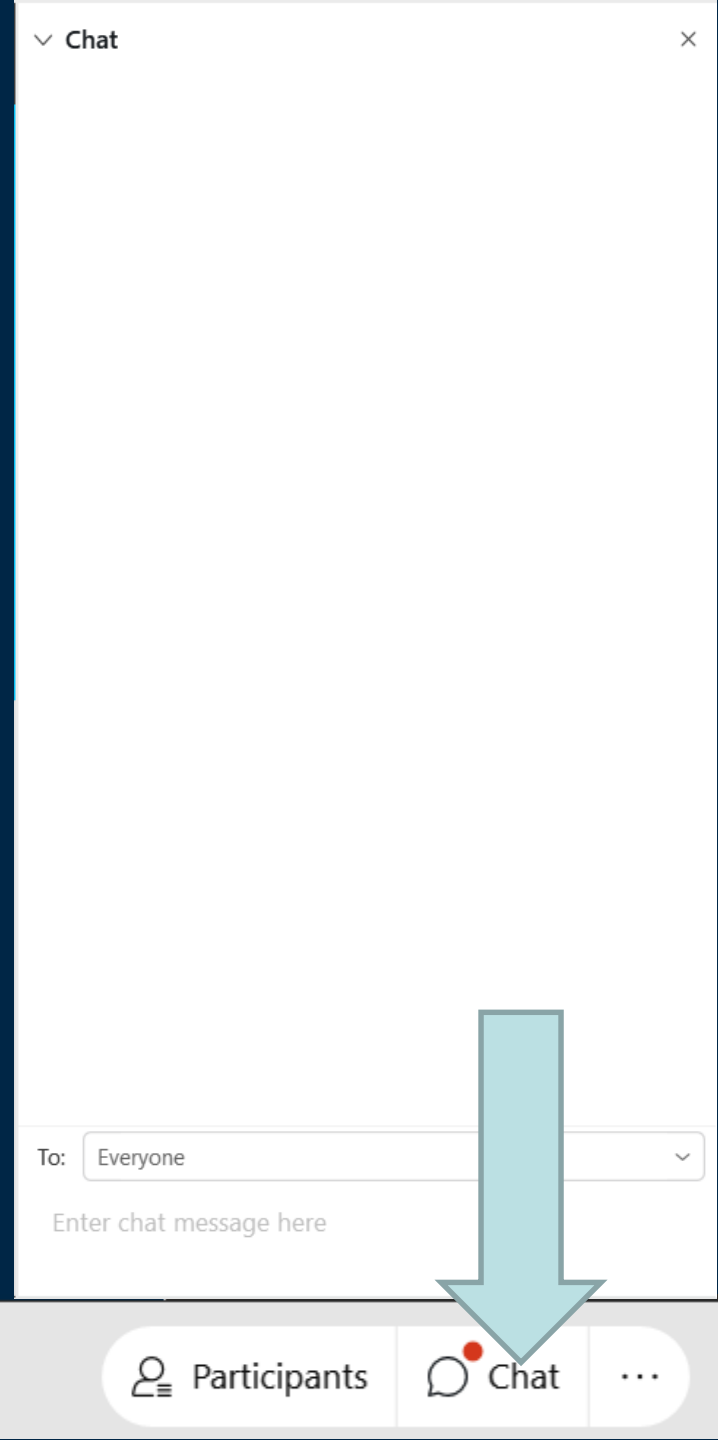
- 1/11/21 CPRA releases final recommendations and submits to CPRA Board
- 1/20/21 CPRA presents recommendations to CPRA Board at Board Meeting

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



Mute



Stop video



Share



Participants



Chat



Coastal Protection and Restoration Authority

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

APPENDIX I

STAKEHOLDER EMAIL COMMENTS -
PHASE 1, SOLICITATION OF VIEWS



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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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Education, Development & Outreach
8001 Lakeshore Dr.
New Orleans, LA 70124

[MAILING ADDRESS]

P.O. Box 6965
Metairie, LA 70009
504.836.2215 | ScienceForOurCoast.org

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3501 N. Causeway Blvd. Suite 220
Metairie, LA 70002

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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Education, Development & Outreach
8001 Lakeshore Dr.
New Orleans, LA 70124

[MAILING ADDRESS]

P.O. Box 6965
Metairie, LA 70009
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Metairie, LA 70002

- 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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8001 Lakeshore Dr.
New Orleans, LA 70124

[MAILING ADDRESS]

P.O. Box 6965
Metairie, LA 70009
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3501 N. Causeway Blvd. Suite 220
Metairie, LA 70002

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.

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Education, Development & Outreach
8001 Lakeshore Dr.
New Orleans, LA 70124

[MAILING ADDRESS]

P.O. Box 6965
Metairie, LA 70009
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[CORPORATE OFFICE]

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3501 N. Causeway Blvd. Suite 220
Metairie, LA 70002

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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Education, Development & Outreach
8001 Lakeshore Dr.
New Orleans, LA 70124

[MAILING ADDRESS]

P.O. Box 6965
Metairie, LA 70009
504.836.2215 | ScienceForOurCoast.org

[CORPORATE OFFICE]

Coastal, Water Quality & GIS
3501 N. Causeway Blvd. Suite 220
Metairie, LA 70002



St. Bernard Parish Government

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4227 Fax (504) 278-4330
www.sbpj.net

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

Oyster Lease Acquisition and Compensation Program:
Recommendations for Improvement

APPENDIX J

DRAFT RECOMMENDATIONS FOR IMPROVEMENT

Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program: Draft Recommendations for Improvement

November 6, 2020

EXECUTIVE SUMMARY

This report presents the Coastal Protection and Restoration Authority (CPRA) draft recommendations for improvements to the Oyster Lease Acquisition and Compensation Program (OLACP) for public review and comment. CPRA will receive and consider these comments, and then issue a Report to the CPRA Board making its formal recommendations.

CPRA has already made the following improvements to OLACP:

1. Memorandum of Understanding with DWF regarding new or renewal leases in buffer zones and planned project areas, and areas incapable of supporting oyster cultivation.
2. Reporting regarding planned and possible coastal projects that may impact oyster leases.
3. Working with DWF to develop the Louisiana Oyster Management Strategic Plan and seek funding for it.

CPRA proposes to recommend the following measures to improve OLACP:

1. Authorize lessees to retain leases upon waiving all OLACP compensation.
2. Authorize fixed “in lieu of” payments for lease acquisitions.
3. Authorize administrative settlements with or without biological assessments or appraisals.
4. Authorize waiver valuations (“informal value estimates”) for small-value acquisitions.
5. Provide zero value for leases incapable of supporting oyster cultivation.
6. Reduce the notice period for the oyster component from one year to six months.
7. Expressly authorize a harvest efficiency determination in the oyster
8. Avoid oyster leases in project planning.

9. Truncate BAs when the biologist concludes leases are incapable of supporting oyster cultivation.
10. Reduce dive samples from 18 to 9.
11. Consider reducing the study area in appropriate situations.

CPRA considered, but does not recommend, the following measures suggested by stakeholders:

1. Decline to apply OLACP because it is an allegedly unconstitutional donation.
2. Convert OLACP to an oyster seed ground improvement program funded by CPRA.
3. Convert OLACP to an oyster lease relocation program.
4. Require payment of OLACP compensation as reimbursement for performing lease improvements, rather than as direct payment.
5. Pay for indirect impacts from diversions as well as direct impacts.
6. Do not pay the oyster component in addition to the lease component.
7. Pay for cultch planted by the lessee, in addition to the lease component.
8. Require proof of productivity in the past.
9. Require lessees to bear the burden of proving value.
10. Fund oyster lease acquisition for private coastal restoration projects.
11. Measures outside CPRA jurisdiction.

Coastal Protection and Restoration Authority

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

November 6, 2020

TABLE OF CONTENTS

BACKGROUND	1
1. OLACP Promulgation.....	1
2. OLACP Procedure	1
A. Biological Assessment.....	2
B. Appraisal – Lease Component of Compensation.....	3
C. Marketable Oyster Valuation – Oyster Component of Compensation (where appropriate).....	4
3. OLACP Concerns	4
4. Purpose of this Report.....	6
STUDY METHODOLOGY.....	7
IMPROVEMENTS ALREADY MADE.....	9
1. Memorandum of Understanding with DWF regarding new or renewal leases in buffer zones and planned project areas, and areas incapable of supporting oyster cultivation.....	9
2. Reporting regarding planned and possible coastal projects that may impact oyster leases....	10
3. Working with DWF to develop the Louisiana Oyster Management Strategic Plan and seek funding for it.	12
MEASURES RECOMMENDED	13
1. Regulatory Changes.....	13
A. Authorize lessees to retain leases upon waiving all OLACP compensation.	13
B. Authorize fixed “in lieu of” payments for lease acquisitions.	13
C. Authorize administrative settlements with or without biological assessments or appraisals.	14
D. Authorize waiver valuations (“informal value estimates”) for small-value acquisitions.	15

E. Provide zero value for leases incapable of supporting oyster cultivation.....	16
F. Reduce the notice period for the oyster component from one year to six months.....	17
G. Expressly authorize a harvest efficiency determination in the oyster	18
2. Process Changes.....	20
A. Avoid oyster leases in project planning.	20
B. Truncate BAs when the biologist concludes leases are incapable of supporting oyster cultivation.....	20
C. Reduce dive samples from 18 to 9.....	22
D. Consider reducing the study area in appropriate situations.	22
MEASURES CONSIDERED BUT REJECTED	23
1. Programmatic Changes.	23
A. Decline to apply OLACP because it is an allegedly unconstitutional donation.	23
B. Convert OLACP to an oyster seed ground improvement program funded by CPRA.....	25
C. Convert OLACP to an oyster lease relocation program.	25
D. Require payment of OLACP compensation as reimbursement for performing lease improvements, rather than as direct payment.	25
E. Pay for indirect impacts from diversions as well as direct impacts.....	26
2. Regulatory Changes.....	26
A. Do not pay the oyster component in addition to the lease component.	26
B. Pay for cultch planted by the lessee, in addition to the lease component.	27
C. Require proof of productivity in the past.....	28
D. Require lessees to bear the burden of proving value.	28
E. Fund oyster lease acquisition for private coastal restoration projects.	28
3. Measures Outside CPRA Jurisdiction.....	29
OLACP STUDY GROUP.....	30

APPENDICES

- Appendix A OLACP Statute
- Appendix B OLACP Regulations
- Appendix C Summary of OLACP Acquisitions and Expenditures
- Appendix D CPRA/DWF MOU regarding oyster leasing
- Appendix E Chairman Kline Study Directive Letter to CPRA
- Appendix F Executive Director Haase Study Invitation Letter to Stakeholders, and Addressee List
- Appendix G CPRA Webinar Presentation – Phase 1, Solicitation of Views
- Appendix H Stakeholder Webinar Comments – Phase 1, Solicitation of Views
- Appendix I Stakeholder Email Comments – Phase 1, Solicitation of Views

BACKGROUND

The purpose of this report is to present draft recommendations for improvements to the Oyster Lease Acquisition and Compensation Program (OLACP) for public comment. The Coastal Protection and Restoration Authority (CPRA) will receive and consider these comments, and then issue a Report to the CPRA Board making its formal recommendations.

1. OLACP Promulgation.

The Department of Wildlife and Fisheries (DWF) issues oyster leases on State water bottoms, granting lessees the exclusive right to use the leased water bottoms for oyster cultivation. La. R.S. 41:1225; 56:425; 56:423. However, the CPRA Board and CPRA are responsible for integrated coastal protection, which often involves work on State water bottoms. La. R.S. 49:214.5.1; 214.6.1. Projects for integrated coastal protection may include areas where State oyster leases are present, and such projects may impair the leases or destroy oysters there.

The Louisiana Legislature enacted OLACP in 2006 to assist in reconciling conflicts between the State's oyster leasing and integrated coastal protection programs. La. R.S. 56:432.1, Acts 2006, No. 425 (Appendix A). The OLACP statute authorizes compensation to lessees when CPRA acquires state oyster leases for integrated coastal protection projects. This compensation is strictly limited to areas of direct impact caused by the projects: areas where dredging, direct placement of materials, or other activities necessary for construction or maintenance of integrated coastal protection projects are performed. No compensation is authorized for indirect impacts, specifically including but not limited to impacts from freshwater or sediment diversions.

OLACP is not a true "acquisition" – the State already owns the leased water bottoms. Leases "acquired" under OLACP therefore are not literally acquired, but instead are terminated, as to the area acquired. The term "acquisition" is used because the statute uses it.

The Legislature did not define compensation under OLACP. Instead, the Legislature directed the Department of Natural Resources (DNR) to promulgate regulations for determining the compensation due. DNR did so in 2006. LAC 43:VII.301-319 (Appendix B). CPRA is now responsible for administering OLACP, and the statute and regulations have been amended to reflect this change, but otherwise remain as enacted and promulgated in 2006.

2. OLACP Procedure.

Under the OLACP regulations, CPRA:

- Obtains a biological assessment (BA) of leases that may be directly impacted by a coastal project;
- Obtains an appraisal of the market value of any leases or portions thereof within the Direct Impact Area (DIA) of the project (referred to as the "lease," whether the entirety or only a part), based on the BA;

- Terminates the lease (referred to as “acquiring the lease”) by issuing a Notice of Acquisition to the lessee stating the effective date of the termination;
- Pays the oyster lessee the market value of the lease (the “lease component” of compensation), as determined by the appraiser; and
- If less than one year is provided before the effective date, pays the lessee the value of marketable oysters on the lease (the “oyster component” of compensation), as determined by CPRA based on the BA and other information.

The OLACP regulations and procedures were designed to ensure quick acquisition of leases, to ensure fair payment for acquiring the leases, and to provide the strongest possible basis at reasonable cost to defend against any claims by lessees for additional compensation. The regulations therefore require the BA and appraisal to be based on reasonably confirmable data.

A. Biological Assessment.

The BA is performed by an experienced biologist, and consists of:

- Determination of the Direct Impact Area (DIA) of the project. This is usually 150’ outside the actual physical footprint of the dredging or construction for the project, but sometimes varies. Only the portion of a lease within the DIA is acquired under OLACP;
- Determination of the water bottom type (reef, shell, or mud) within the study area. This is usually done by poling the entire study area, which is the traditional method to do this for oyster purposes. The study area (also referred to as the Potential Impact Area, or PIA) is usually 1,500’ outside the actual physical footprint of the project dredging or construction, but sometimes varies;
- Sampling for oysters. This is done by diving to retrieve multiple sets of three one-square-meter samples to count the oysters in those samples, in order to determine the number of oysters per square meter. This is done only on areas of reef or shell bottom as determined by the poling, since mud does not support oyster cultivation, but dredge samples are performed for confirmation on firm mud areas. This is the traditional method to do this for oyster purposes; and
- Determination of oyster population on the water bottoms. This is done by multiplying average oyster population on the lease per square meter from the dive samples, by the reef and shell areas determined by the poling within the DIA.

Lessees are notified 15 days in advance by certified mail, and they may provide any data or other relevant information for the biologist, the appraiser, or CPRA to consider. The only requirement is that the data must be reasonably confirmable, as this is required for the BA and appraisal.

In preparing OLACP BAs, CPRA’s biologists generally follow the Oyster Lease Damage Evaluation Board (OLDEB) and DWF seed ground damage evaluation methodologies for poling

and sampling. Neither methodology is required by OLACP, but these are preexisting methodologies for tasks analogous to OLACP, providing a basis for the biologist to use them for OLACP. However, both OLDEB and the DWF seed ground program provide measures of compensation that are vastly different from OLACP in purpose and basis for calculation. Therefore, only their *BA methodologies* can be used for OLACP, not their *measures of compensation*.

B. Appraisal – Lease Component of Compensation.

The appraisal is performed by a Louisiana-licensed appraiser. CPRA has used only appraisers with specific and extensive experience in appraisal of oyster leases.

CPRA has directed its appraiser to follow the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) appraisal methodology. This is not required by OLACP, but the Yellow Book states the standard methodology for appraisals under the federal Fifth Amendment measure of compensation. Louisiana law limits compensation for integrated coastal protection projects to the federal Fifth Amendment measure. La. Const. art 1, § 4(F and G) and art. 6, § 42(A); La. R.S. 49:214.5.6 and 214.6.5. Further, many acquisitions involve federal funds, so credit for OLACP acquisitions will be evaluated by federal agencies that routinely apply the Yellow Book. The Yellow Book methodology is clearly appropriate both to ensure payment of the controlling Fifth Amendment measure and to satisfy federal crediting requirements.

CPRA's appraiser has extensive data on prior sales of oyster leases from one oyster fisherman to another, including the size and quality of those leases, the conditions of the prior sales, and the sales prices. The appraisal consists of:

- Determination of prior sales that are most similar to the leases being acquired. This is done using the BA to characterize the leases being acquired, and the appraiser's documentation of the leases under the prior sales to characterize them for comparison;
- Determination of a per-acre value for the leases to be acquired. This is done by determining the per-acre prices in the prior sales of the most similar leases;
- Determination of the market value of the lease. This is done by multiplying the area to be acquired by its per-acre value. An exception occurs with large lease acquisitions with very different values for significant portions, in which case each such area may be valued separately.

This is the typical procedure for appraisals using the market value methodology.

Often only part of a lease is within a project DIA, in which case CPRA will acquire only that part of the lease. Usually the remaining part of the lease is just as usable as it was before the acquisition, due to its size, location adjacent to other leases held by the same lessee, or other reasons. In some instances, however, it is uneconomical (or less economical) to cultivate on just the remainder, or for other reasons the remainder is worth less than before the acquisition. In these situations, the appraiser adds the difference between the pre-acquisition and post-acquisition market value of the remainder, which is referred to as "severance damage," to the compensation

for the acquisition. This is the typical procedure for government property acquisitions, including under the Yellow Book.

Specifically when the remainder is uneconomical to the lessee, CPRA may *also* offer to the lessee to acquire it, at its appraised market value after the acquisition. CPRA acquires an uneconomic remainder only if the lessee wants this, as a concession to the lessee. If both the lessee and CPRA agree, the remainder is added to the acquisition and its post-acquisition market value is added to the compensation for the acquisition.

The market value, including any severance damages, is the lease component of the OLACP compensation. CPRA pays the full appraised amount.

C. Marketable Oyster Valuation – Oyster Component of Compensation (where appropriate).

For leases where the effective date of the acquisition is less than one year after the Notice of Acquisition is issued, CPRA also pays the value of marketable oysters on the lease.

The number of oysters *on the water bottoms* (the “standing crop”) is determined by the biologist in the BA. CPRA applies a “harvest efficiency ratio” to the number of oysters on the bottoms, to reflect the proportion that oyster fishermen could realistically and economically harvest, and thus market. For over a decade, CPRA used a fixed 70% ratio, which was higher than the scientific literature supported, but which was agreed as a compromise in 2007 with the Oyster Task Force (OTF). This was overturned in court in 2018, not because it was incorrect, but because it was applied as a fixed ratio and therefore could be implemented only by regulation. *Bayou Canard, Inc. v. State through CPRA*, 250 So.3d 981, 988 (La. App. 1 Cir. 5/14/18). CPRA is currently developing a lease-specific computer model to determine harvest efficiency.

CPRA determines the marketable oyster component of OLACP compensation, by:

- Obtaining the sales price for oysters from the biologist, DWF postings, or other sources;
- Subtracting the oyster harvest cost from the biologist or other sources; and
- Multiplying the difference by the relevant number of oysters.

CPRA then pays that amount, but again, only if less than one year’s notice is provided before the acquisition is effective.

3. OLACP Concerns.

OLACP has been in effect for nearly 15 years. CPRA has acquired 4,319 acres of leases using OLACP for 25 projects, at a total cost of \$4,986,490 (see Summary of OLACP Acquisitions and Expenditures, Appendix C). A little over half of this amount (\$2,590,608) was for BAs and appraisals, while a little less than half (\$2,395,882) was for compensation payments. Of the compensation payments, about 60% (\$1,378,381) was for the lease component and 40% (\$1,004,903) was for the oyster component.

Generally, the Program has worked well, with only four appeals of OLACP compensation payments over several dozen projects. The first appeal was voluntarily dismissed; two were dismissed due to waivers in the oyster leases but are now on appeal; and the fourth is stayed pending resolution of the latter two. Only one challenge has been raised to OLACP itself, and this was dismissed by the court. *Bayou Canard*, 250 So.3d at 989-90. In short, OLACP has proven to be a robust and highly defensible mechanism for clearing oyster lease conflicts.

Nevertheless, oyster industry, non-governmental organization, and other coastal stakeholders have raised questions regarding potential changes OLACP, and CPRA itself has noted inefficiencies or other issues that could be improved. Among the chief concerns is cost.

The cost for most BAs falls in the range of \$20,000-45,000, with some costing \$75,000-140,000 and a few as much as \$160,000-\$300,000 (see Appendix C). The overall average is approximately \$80,000. The exact cost varies widely by project. Charges are hourly, and include mobilization, so reduction of time spent on any one component of the BA will not reduce the total cost proportionately, because fixed costs such as mobilization or equipment rental will remain essentially the same. For similar reasons, a smaller project does not necessarily result in a proportionately smaller BA cost.

The cost for most appraisals falls in the range of \$10,000-\$25,000, with a few costing as much as \$37,000-\$61,000. The overall average is approximately \$25,000. As with the BAs, the appraisal cost varies widely by project, but a smaller project does not necessarily result in a proportionately smaller appraisal cost. A significant reason for this is that OLACP appraisals require extensive market research and engagement with oyster lessees on an ongoing basis, which must constantly be updated and maintained. This work is a large portion of the overall appraisal cost, and is essentially the same regardless of the size of the projects or the number of acquisitions.

In some instances, OLACP's transactional costs (the BA and appraisal) may appear to be disproportionate or capable of reduction, such as because:

- The transactional costs dwarf the acquisition costs on a project. For example:
 - The Queen Bess (BA-202) project involved \$37,946 in transactional costs, compared to \$592 in acquisition costs;
 - The Caminada Beach & Dune Protection project (BA-143) involved \$41,042 in transactional costs, compared to \$2,085 in acquisition costs;
 - The Bayou Bienvenue project (PO-94) involved \$52,526 in transactional costs, compared to \$6,155 in acquisition costs; and
 - The Chenier Ronquille project (BA-76) involved \$55,961 in transactional costs, compared to \$26,397 in acquisition costs.
- The lease value is clearly nominal. For example, on the Bay Denesse project (BS-31), aerial imagery of the leases in the DIA showed that they were heavily silted in, and therefore unlikely to be able to support oyster cultivation and so likely to have little value and no marketable oysters.

- No leases were directly impacted by the project, so none were acquired. On the Golden Triangle project (PO-163), a BA was conducted because there were leases in the PIA and this triggers a BA under the current OLACP methodology. The cost was \$13,085. However, there were no leases in the DIA, meaning none were directly impacted by the project, so OLACP did not apply and no leases were appraised or acquired.

In short, the existing implementation of OLACP may appear disproportionate in some circumstances, and there may be means to reduce OLACP transaction and acquisition costs.

Other issues that have been raised include requests for more reporting by CPRA regarding upcoming projects and their impacts on oyster cultivation; whether any OLACP payment is appropriate at all due to waivers in the leases for “any claim whatsoever” arising from integrated coastal protection; whether any payment for the oyster component is appropriate beyond the lease component, whether it should be determined based on harvest efficiency, and if so, how harvest efficiency should be measured or applied; and whether lease acquisition can be waived entirely and a lease retained by its lessee instead.

4. Purpose of this Report.

After nearly 15 years, CPRA Board Chairman Chip Kline concluded that it is time to reevaluate OLACP. On July 13, 2020, he therefore directed CPRA to perform a study to evaluate and recommend potential improvements to OLACP (see OLACP Study Directive, Appendix E). This study must be informed by input from the oyster industry and other coastal stakeholders and “lessons learned” during previous implementation of the Program. The study must feature public meetings where stakeholders can present their views and recommendations, invitation to stakeholders to submit their written comments and recommendations, and consideration of those views as well as CPRA’s own experience and perspective.

Chairman Kline further directed CPRA to submit a written report to the CPRA Board and make it publicly available by January 11, 2021, stating CPRA’s findings pursuant to this study, evaluating the ideas submitted and discussed, and making specific recommendations to the Board for improving OLACP. CPRA must present its findings and recommendations to the CPRA Board at its January 20, 2021 meeting, at which stakeholders may also present their own views to the Board regarding CPRA’s report.

This report presents CPRA’s draft recommendations, based on its Study, regarding improvements to OLACP. These recommendations are only a draft. CPRA requests comment on these recommendations from the oyster industry and other coastal stakeholders, which CPRA will then consider in drafting its formal recommendations.

STUDY METHODOLOGY

On September 1, 2020, CPRA Executive Director Bren Haase issued an invitation to numerous oyster industry and other coastal stakeholders to provide their views and recommendations regarding OLACP and improvements that might be made (see Invitation Letter and Distribution List, Appendix F). This invitation was emailed directly to the stakeholders, published on CPRA's website, distributed through CPRA's email distribution list, and announced at several CPRA Board, Oyster Task Force, and other public meetings and public fora.

Executive Director Haase's invitation also invited stakeholders to participate in two webinars to provide their views and recommendations. Due to COVID 19, in-person meetings were not feasible. On September 21, 2020 in the evening and September 23, 2020 in the morning, CPRA held two solicitation-of-views webinars at which it gave a presentation regarding OLACP, its operation and procedure, and example issues that had already been identified (see CPRA Webinar Presentation – Phase 1, Solicitation of Views, Appendix G). CPRA provided a chat line at each webinar, through which participants could and did submit questions regarding OLACP and its operation. CPRA answered procedural and technical questions during the webinars. CPRA also provided telephone access for those without internet access, and the Parishes of Lafourche and Plaquemines provided public access sessions.

CPRA notified stakeholders both in the invitation and during the webinar that they could submit views and recommendations by email or telephone message by October 7, 2020, or via chat during the webinars. Several comments were submitted via chat during both webinars (see Stakeholder Webinar Comments – Phase 1, Solicitation of Views, Appendix H). Four comments were submitted via email (see Stakeholder Email Comments – Phase 1, Solicitation of Views, Appendix I). No telephone messages were submitted.

Many of the comments were in the nature of statements of concern or general views, rather than actionable recommendations for improvements to OLACP. Nevertheless, all have been considered by CPRA in developing these draft recommendation. All specific recommendations are addressed, and where possible, non-specific views have been converted to particular potential actions based on those views, and likewise addressed.

CPRA also consulted its biologists, appraiser, and CPRA staff regarding their experience and perspective regarding OLACP and previous implementation of the Program.

CPRA's draft recommendations are divided into three sections:

- Improvements Already Made – This section explains measures that have already been or are being implemented by CPRA, as to recommendations suggested by stakeholders;
- Measures Recommended – This section explains suggested measures that CPRA proposes to recommend to the CPRA Board, and why CPRA proposes to do it; and
- Measures Considered But Rejected – This section explains suggested measures that CPRA does not propose to recommend, and why CPRA does not propose to do it.

CPRA is distributing these draft recommendations to all stakeholders originally invited to provide views and recommendations, to anyone else who requests it, and on its website. CPRA will hold two more webinars on November 17, 2020 in the evening and November 18, 2020 in the morning to 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 by email or telephone message, or via chat during the webinars. Telephone access will again be provided, and it is anticipated that one or more Parishes will again provide public access sessions. Access information for these webinars is included in the Study Invitation Letter, Appendix F.

CPRA will assemble and consider views regarding the draft recommendations that are 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 formal recommendations to the Board. 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. CPRA will present its findings and recommendations to the CPRA Board at its January 20, 2021 meeting, at which stakeholders may present their views directly to the Board.

IMPROVEMENTS ALREADY MADE

Several public comments pertain to matters regarding which CPRA has already made improvements, as they relate to OLACP.

1. Memorandum of Understanding with DWF regarding new or renewal leases in buffer zones and planned project areas, and areas incapable of supporting oyster cultivation.

Several comments suggested that the State should terminate or refuse to renew leases in areas where coastal projects will be done, and to deny new leases in such areas.

DWF is responsible for 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 its management, protection, conservation, and replenishment. La. R.S. 36:602. DWF, through its Secretary, is also responsible for leasing State-owned water bottoms for the purpose of oyster cultivation. La. R.S. 56:425(A); La. R.S. 41:1225.

State oyster leases are for 15-year terms, and so generally cannot be terminated mid-term. La. R.S. 56:428(A). However, CPRA is responsible for reviewing each application to DWF for new oyster leases or renewals or expansions of leases, in order to determine whether the affected water bottom is located in an area where a buffer zone may be necessary to protect sensitive and eroding coastal lands; and if so, for delineating the necessary buffer zone. La. R.S. 56:425(F). In addition, DWF through its Secretary has discretion regarding whether to grant any new lease or expansion, and may take integrated coastal protection into account in exercising that discretion. La. R.S. 56:425(A, C). Further, 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).

By Memorandum of Understanding (MOU) effective November 8, 2019 (see Appendix D), CPRA and DWF agreed on a procedure to work together to fulfill their respective responsibilities efficiently and effectively. Under the MOU, DWF notifies CPRA of oyster lease applications and renewals and the areas covered, and then CPRA notifies DWF of any portions of those areas needed for buffer zones, essential for integrated coastal protection, or that CPRA believes are incapable of supporting oyster populations. MOU, § III(1, 2). Unless DWF disagrees with CPRA's determinations regarding buffer zones or integrated coastal protection areas, DWF will deny the lease application or renewal or allow those areas to be excluded from the lease. DWF also investigates areas that CPRA identifies as incapable of supporting oyster populations, and if DWF concurs, DWF will deny the lease application or renewal or allow those areas to be excluded from the lease. MOU, § III(3). Timeframes, definitions of relevant terms, default conclusions regarding buffer zones and integrated coastal protection areas, and a dispute resolution process are also provided. MOU, § III(4-8).

Through the MOU, CPRA and DWF have implemented and are following a procedure to address conflicts between oyster leasing and integrated coastal protection, as well as non-viable oyster leases, within the requirements of existing law and while respecting both agencies' authorities and responsibilities. The moratorium on new oyster leases that has been in place since

2002 is in the process of being lifted. Acts 2016, Nos. 595, 570. The MOU procedure will preclude new leases in areas where coastal projects are likely to begin in the foreseeable future (generally, 5 years) or in areas that are not conducive to oyster cultivation. Existing leases in such areas and nonproductive leases will be non-renewed as they come up for renewal at the ends of their current 15-year terms. The need to acquire such leases under OLACP will be reduced, as time progresses.

2. Reporting regarding planned and possible coastal projects that may impact oyster leases.

Some comments suggested that CPRA provide more information to lessees regarding upcoming coastal projects and the impacts they may have on existing leases or potential new leases.

Through the Coastal Master Plan implementation process every 6 years, CPRA produces voluminous reporting to the public regarding all projects it is planning. CPRA issues press releases regarding the Master Plan and the process to develop it, posts the draft Master Plan on its website and widely distributes electronic and hard copies, requests public comment on the draft Master Plan and the projects in it, and holds multiple stakeholder meetings (including separate meetings with the oyster industry) specifically to explain the projects and their impacts. CPRA receives public comments on the draft Master Plan, including concerns of the oyster industry and other stakeholders, answers questions about impacts to the extent possible based on the information available, revises the Master Plan and its project list appropriately, and submits the final Master Plan to the Legislative committees for approval. CPRA then publicizes and again posts and distributes the final Master Plan. In this way, CPRA widely disseminates general information regarding planned and possible projects and their impacts.

CPRA goes through a similar process regarding its Annual Plan every year: CPRA posts and distributes its Annual Plan, holds public meetings to explain the projects, develops its final Annual Plans, obtains legislative approval, and posts and distributes the final Annual Plan. Whereas the Master Plan contains all projects under consideration by CPRA, the Annual Plans focus specifically on the next three years. Again and with greater specificity than the Master Plan process, CPRA widely disseminates information regarding imminent projects and their impacts.

Under the environmental laws, CPRA is usually required to obtain permits from the U.S. Army Corps of Engineers and DNR before it can build a project. The permit applications are publicly available, and draft reports identifying the impacts of the project are published and disseminated for public comment as a major part of the application process. There is an array of public meetings and other opportunities for the public, including the oyster industry and other stakeholders, to learn and inquire about the potential impacts of the project through the permitting process.

The application process also requires CPRA to analyze impacts without the project, and to consider alternative designs for the project and their impacts, all of which is explained in detail in the reports for the permit process. In fact, the design of the project is actually *selected* through the permit process, along with the determination whether the project will be permitted at all. Until the permit is obtained, CPRA has a general project goal and design, but *cannot* decide exactly what or where the project will be; this is determined through the permitting process. There is

extensive discussion of the impacts of the general designs for the project being considered, specific to each alternative, and this is publicly available and open to public comment. Comments and specific requirements of numerous governmental agencies are also obtained, which may greatly affect the final design of the project. The final permitting decision is made only after final reports that address all comments are completed and approved by the Corps and DNR.

Accordingly, the specific impacts of the project are not determined until the permit is issued – meaning CPRA cannot describe the *exact* impacts until then. Before that point, CPRA intends a type of project in an area, but the final project actually permitted (if any) may be different in size, function, location, or design.

The extensive modeling and analysis of the specific impacts necessary to describe them is performed during the permitting process. For example, CPRA has applied for permits for the Mid-Barataria Sediment Diversion Project (BA-153). CPRA has sought a permit for a diversion north of Ironton of *up to* 75,000 cubic feet per second. But the diversion ultimately permitted, if any, may be smaller or in a different location or configuration. CPRA may therefore be able to describe the impacts of its intended design, but until a permit is granted, it is not yet determined whether the project will be built or what impacts it will have or where they will occur. Not only is the general project design undecided at that point, but the work to define specific impact of the alternative designs has not yet been done.

Further, it often costs millions of dollars to define specific impacts of a project, such as for the Mid-Barataria Sediment Diversion Project and other diversion projects that cause much of the concern and comments from the oyster industry stakeholders. This cannot be done until the planning phase of the project receives funding, which can come years or decades after a project is included in the Master Plan. Even then, the work to do this usually takes years, and again, the project ultimately permitted may be different.

For all of these reasons, often it simply is not possible to give the level of detail that the oyster industry may want regarding the specifics of the degree and location of project impacts. Nevertheless, CPRA can and does explain its projects extensively to the public, including their general impacts and the areas of those impacts, to the extent it can.

CPRA is specifically required to provide information to the Oyster Task Force (OTF) once per year “regarding the nature, location, and status of current or planned projects for integrated coastal protection to the extent practical.” La. R.S. 56:432.2. OTF was established by the Legislature 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. It is therefore an appropriate body to which to present as much detail as possible regarding potential impacts to oyster cultivation of planned and possible coastal projects. The OLACP Study Group recommends that CPRA continue to request to make such a presentation to OTF once per year, and to do so if allowed by OTF.

3. Working with DWF to develop the Louisiana Oyster Management Strategic Plan and seek funding for it.

Governor John Bel Edwards has made pursuing initiatives to ensure a sustainable oyster industry one of his second-term coastal priorities. To this end, CPRA has been working with DWF to develop and identify funding sources for a Louisiana Oyster Management and Rehabilitation Strategic Plan. This Strategic Plan is intended to guide the Louisiana public oyster resource and oyster industry to a more productive future, to set forth a path for recovery and maintenance of the State's oyster resources, to promote and maintain the oyster resource and industry, and to assist with industry adaptation and development, while reducing conflicts in the coastal zone.

Pursuant to SCR 56 of the 2020 Regular Session, the Legislature urged and requested DWF and CPRA to continue to work together to develop the Strategic Plan and to identify funding for programs and projects contained in the Plan.

The Strategic Plan is not part of OLACP. Nevertheless, CPRA will continue to work with DWF to complete it. As requested by Governor Edwards and the Legislature, DWF and CPRA expect to finalize the Strategic Plan by December 2020. DWF has presented a draft Strategic Plan to OTF and other stakeholders, and both agencies are continuing their work on it and attempting to identify potential sources of funding. At this time, no measures proposed in the draft Strategic Plan implicate OLACP, except the measure regarding non-renewing unproductive oyster leases. However, this is already addressed for purposes of OLACP by the CPRA/DWF MOU discussed above. If other measures are added to Strategic Plan that affect OLACP, CPRA will supplement its recommendations to address any such matters as appropriate.

MEASURES RECOMMENDED

After considering the public comments and its own experience and perspective regarding OLACP, CPRA proposes to recommend the following measures to improve OLACP. The recommendations generally fall into categories of regulatory changes, which require or are best implemented in the regulations; and process changes, which may be addressed in the implementation of the existing regulations.

1. Regulatory Changes.

A. Authorize lessees to retain leases upon waiving all OLACP compensation.

In the past, some lessees have indicated that they would prefer to retain their leases and take the risk that their ability to cultivate oysters on it would not be permanently impaired by coastal projects, rather than receive the compensation authorized under OLACP. CPRA is agreeable to this, provided that: (1) the lessee expressly and in writing waives any right to compensation under OLACP in relation to the project or any future coastal work on the lease; and (2) the lessee does so before CPRA incurs costs for a BA (beyond determination of the DIA, which is necessary to determine which leases are to be acquired), or for an appraisal.

Through this recommendation, the lessee can choose to continue to attempt to cultivate oysters, which, if successful, benefits both the lessee and the public through enhancement of the oyster resource; and CPRA can avoid substantial OLACP BA and appraisal costs. This will also likely expedite project construction, as the OLACP process takes time and is generally performed at the end of project design and close to construction contract letting. This tight timeframe is often necessary because acquisition requires that the design be finalized, so that the impacted leases can be determined, and also requires that funding for construction be in place.

As compromise of a contested claim at no cost to CPRA, regulatory amendment may be unnecessary to implement this recommendation. Nevertheless, CPRA recommends amending the OLACP regulations to state the process and conditions with clarity and binding force.

B. Authorize fixed “in lieu of” payments for lease acquisitions.

The existing regulations authorize but do not require BAs for OLACP acquisitions. LAC 43:VII.307(B). Nevertheless, decisions regarding compensation depend on the DIA, the nature of the water bottoms, and the number of oysters on the water bottoms, which in most circumstances are matters best determined by the biologist. Additionally, the regulations require appraisals for all leases within the DIA of a coastal project. LAC 43:VII.309(B).

In some instances, it is clear that leases are nonproductive, which in the past CPRA’s appraiser has valued at \$50-\$100 per acre. For comparison, the appraiser has valued productive leases at \$500-\$1,000 per acre, and has found that no market evidence supports any value higher than \$1,000 per acre – and in the one appeal where this was challenged, the lessee’s own appraiser ultimately concurred. The appraiser has valued marginally productive leases at \$200-\$450 per acre. The variances depend on exactly *how* productive the leases are, within those general categories.

BAs and appraisals have significant cost, and take time to complete. Where it is obvious that a lease is nonproductive and has no oysters on it, instead of undertaking the BA and appraisal costs only to determine a small acquisition price, it may be more cost-effective to authorize CPRA to offer a fixed price that the lessee could accept or reject. Such a price would have to be higher than the value a BA and appraisal would likely show, in order to incentivize the lessee to forego the appraisal and the possibility it may conclude a higher value. The price would also have to be lower than the combined BA, appraisal, and acquisition costs in order to incentivize and authorize CPRA to make the payment.

As addressed below, CPRA recommends regulatory amendments to deny compensation for nonproductive leases and lease areas. Nevertheless, while OLACP denies compensation to lessees based on payments from oil and gas exploration and production operations (which are not oyster cultivation and are not based on market value), it must be borne in mind that lessees do in fact receive such payments and will consider this income in deciding whether to accept in-lieu payments for the leases, regardless of the productivity of the lease.

CPRA recommends authorizing a fixed acquisition price of \$100 per acre, subject to a \$1,000 minimum payment regardless of the size of the acquisition, provided that: (1) the lessee expressly and in writing waives any right to additional compensation under OLACP or otherwise; (2) the lessee does so before CPRA incurs costs for a BA (beyond the DIA determination) or for an appraisal; and (3) the lessee and CPRA concur that such compensation is appropriate. This fixed price “in lieu of” appraisal would function as a default; if CPRA offers and the lessee accepts this amount, no further BA or any appraisal would be done. If either CPRA or the lessee rejects this default, the acquisition would proceed through OLACP as otherwise provided.

This recommendation would generally be viable only for nonproductive leases, and possibly low-end marginally productive leases. Productive leases would likely require a BA and appraisal to determine their value, unless an administrative settlement can be reached, which is addressed below.

Regulatory amendment would be necessary to implement this recommendation, due to the appraisal requirement. It is also desirable to state the process and conditions with clarity and binding force.

C. Authorize administrative settlements with or without biological assessments or appraisals.

For the same reasons that a fixed default price may be cost-effective for nonproductive lease, administrative settlements may be appropriate to eliminate or reduce BA or appraisal costs in more complex situations where the lessee and CPRA agree on valuation. Again, the price would have to be higher than the price that a BA and appraisal would likely show in order to incentivize the lessee to settle, but lower than the BA and appraisal costs in order to incentivize and authorize CPRA to settle.

CPRA therefore recommends authorizing administrative settlements for OLACP acquisitions, where CPRA determines that the settlement amount is less than the combination of the anticipated BA, appraisal, and acquisition costs. There must be sufficient basis for CPRA’s

determination to settle and the settlement amount, and supporting information may have to be presented to the lessee to persuade him to settle. Some work by the biologist and appraiser may therefore be necessary to develop this information. For example, the DIA determination will always be necessary, and a water bottom assessment may be required to characterize the quality of the lease. Thus, CPRA's transactional cost probably cannot be eliminated entirely. Nevertheless, substantial cost savings may still be realized in appropriate cases.

As compromise of a contested claim, given sufficient basis for CPRA's decision, settlement is appropriate. However, federal partner approval may be necessary on projects where crediting is sought. Where CPRA is acquiring the leases for other agencies or private parties, that agency's or party's consent must be obtained.

Regulatory amendment would be necessary to implement this recommendation, due to the appraisal requirement. It is also desirable to state the process and conditions with clarity and binding force.

D. Authorize waiver valuations ("informal value estimates") for small-value acquisitions.

The existing regulations require appraisals for all leases within the DIA of a coastal project. LAC 43:VII.309(B). However, for typical acquisitions under the federal compensation standard, the federal Uniform Act authorizes "waiver valuations" (also referred to as "informal value estimates") by the acquiring agency, in lieu of appraisal, when the anticipated value is less than \$10,000 and the person performing the waiver valuation has sufficient understanding of the relevant real estate market. 49 CFR 24.102(c)(2). Such waiver valuations are also permitted if the anticipated value is between \$10,000 and \$25,000, though the owner may still require an appraisal. 49 CFR 24.102(c)(2)(ii)(C). The purpose is to provide Agencies a technique to avoid the costs and time delay associated with appraisals for low-value, non-complex acquisitions, where the agency has a reasonable basis for the waiver valuation. 49 CFR Part 24, Appendix A, Section 24.102(c)(2).

The U.S. Army Corps of Engineers allows this as well. Dept. of the Army, Regulation ER 405-1-04, § 4-33 (1/29/2016). This has been done on many levee projects, such as the Corps' recent LPV ARM-09 levee armoring project.

OLACP and the measure and methodology of compensation under this statute are not constrained by federal law, or by any other law except Subpart D of Part VII of Chapter 1 of Title 56 of the Revised Statutes, which fully defines the nature and extent of the property rights afforded by a State oyster lease. *Avenal v. State*, 03-3521 (La. 10/19/04), 886 So.2d 1085, 1095 ("All oyster leases issued on State water bottoms are governed exclusively by this statutory scheme"). OLACP is within Subpart D, and so defines lessees' rights, and therefore the compensation that they may receive. Compensation under OLACP is determined by the CPRA regulations that implement the OLACP statute. La. R.S. 56:431.2(B)(2). Accordingly, CPRA is not bound by the limitations under the federal Uniform Act, in authorizing waiver valuations or the dollar amounts thereof.

Waiver valuations for low-value acquisitions are reasonable under OLACP for the same reasons as under the federal Uniform Act. Further, \$25,000 is similarly a reasonable dollar amount

for defining “low-value.” CPRA has extensive documentation of the value of oyster leases of varying productivity from dozens of prior appraisals. CPRA can therefore reasonably determine lease value in some situations, when the productivity of the leases is determinable, such as from aerial photography clearly demonstrating nonproductivity due to siltation or known areas of very high or very low salinity; or conversely, where the leases are clearly marginally productive or highly productive based on knowledge of productivity in the area, salinity, and similar factors.

Such waiver valuations would potentially have covered more than half of the past OLACP acquisitions, which involved total acquisition payments under \$25,000 *in total* for all leases acquired on the project. The cost savings may therefore be substantial.

CPRA therefore recommends authorizing waiver valuations to be performed by CPRA or a person designated by CPRA, where CPRA determines that the anticipated value is less than \$25,000 and the person performing the waiver valuation has sufficient understanding of the market for leases of similar productivity to the lease to be acquired. CPRA further recommends authorizing settlements for an amount or percentage above the appraisal, as determined appropriate by CPRA such as by reference to the anticipated BA and appraisal cost saved, to increase the likelihood of cost- and time-saving settlements. This waiver valuation would be in lieu of an appraisal.

Regulatory amendment would be necessary to implement this recommendation, due to the appraisal requirement. It is also desirable to state the process and conditions with clarity and binding force.

E. Provide zero value for leases incapable of supporting oyster cultivation.

Several comments recommended that CPRA refuse OLACP compensation for leases or lease areas that are incapable of supporting oyster cultivation, such as because they are silted in, have unsurvivable salinity, or are permanently closed to oyster harvest due to pollution.

The purpose of the State in granting oyster leases is “for oyster cultivation, bedding, and harvesting.” La. R.S. 41:1225. This purpose is not served by oyster leases that are incapable of doing so, and in fact, such leases are required to be nonrenewed. La. R.S. 56:428(A). Further, leases that are incapable of supporting oyster cultivation do not further the public interest in the oyster resource. By definition, there is no oyster resource there.

The oyster industry contends that salinity changes over time, such that areas incapable of supporting oyster cultivation at one time may become capable of supporting oysters years later. However, compensation for government acquisitions is appropriate only on the basis of uses to which property may be put within the foreseeable future.

Under the federal Fifth Amendment, the market value of acquired property is based on the highest and most profitable use for which property is adaptable and needed or likely to be needed *in the reasonably near future*. *Olson v. United States*, 54 S.Ct. 704, 708–09 (1934) (“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered”); *St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC*, 2017-0434, p. 14 (La. 1/30/18); 239 So.3d 243, 253 (compensation must be paid based on the use to which the property can be put “in the not too distant future”).

Accordingly, the mere possibility of future salinity changes cannot justify compensation in an acquisition.

Finally, all oyster leases contain waivers of all claims “whatsoever” against the State for claims arising from coastal projects. *Bayou Canard*, 250 So.3d at 989-90. Similarly, the Louisiana Supreme Court ruled in *Avenal v. State*, 886 So.2d 1085, 1100 (La. 10/19/04), that the lessee waives any claim “whatsoever” if the State needs the water bottoms for coastal restoration. Payments under OLACP are still appropriate because there is a public interest in paying lessees when their oyster leases are required for coastal protection – but as discussed further below, this is for the benefit of the oyster resource, which lessees further through their oyster cultivation efforts. There is no such benefit, however, in paying for leases that are incapable of supporting oyster cultivation.

Accordingly, leases that are currently nonproductive, and are likely to be so for the foreseeable future, serve no public purpose. Payment for them under OLACP likewise serves no public purpose.

Lessees do purchase and sell nonproductive leases, and therefore CPRA’s appraiser has assigned value to them in OLACP acquisitions in the past (generally \$50-\$100 per acre). Lessees claim that they purchase nonproductive leases because they expect the lease to become productive due to salinity changes in the future. However, this is an improper basis for compensation in an acquisition, as explained above. Oil and gas operators claim that the leases are purchased to obtain payments from them for exploration and production activities, but this has no bearing on the purpose for which the State grants oyster leases. Regardless, no OLACP compensation is appropriate for nonproductive leases.

The OLACP statute authorizes and requires CPRA to determine the measure of compensation for lease acquisitions under that statute. La. R.S. 56:432.1(B)(2). For the reasons given above, CPRA recommends precluding compensation for leases, or significant subareas of leases, that are incapable of supporting oyster cultivation in the foreseeable future.

Regulatory amendment would be necessary to implement this recommendation, including by providing a jurisdictional exception to the appraiser directing that zero compensation be paid for leases or significant lease subareas incapable of supporting oyster cultivation in the foreseeable future.

F. Reduce the notice period for the oyster component from one year to six months.

The existing regulations authorize compensation for marketable oysters on an acquired lease when less than one year’s notice is provided before the effective date of the acquisition. LAC 43:VII.311(A)(2). This allows the lessee to harvest the oysters until the effective date, since the lease does not terminate until that date, even though the lessee has been paid for them.

By contrast, when a lease is nonrenewed, including because it is within a buffer zone or needed for a coastal project, DWF allows lessees only six months to remove cultch or other improvements to the water bottom made by the lessee. LAC 76:VII.501(C)(4). DWF through its Secretary may authorize an additional three months, in his discretion. *Id.*

There is no reason to allow more time for removal of oysters upon acquisition of a lease by CPRA, than for removal upon nonrenewal of the lease by DWF. Observing the same six-month period as DWF would standardize the time period for removing the oysters or improvements. It would also decrease the likelihood that CPRA would have to pay the oyster component, since project work on the lease is much more likely to be capable of being delayed for six months than for one year. Correspondingly, six months is still a long time for lessees to remove their oysters.

CPRA therefore recommends reducing the notice period triggering payment for market oysters from one year to six months. CPRA further recommends authorizing CPRA to allow an additional three months to remove the oysters, in its discretion, provided that CPRA determines that this would not impact project construction or other aspects of integrated coastal protection.

Regulatory amendment would be necessary to implement this recommendation.

G. Expressly authorize a harvest efficiency determination in the oyster component of compensation.

The OLACP statute does not expressly authorize, or even mention, the oyster component of compensation. The OLACP regulations, however, authorize compensation for “non-removable marketable oysters on the affected acreage” when less than one year’s notice of the acquisition is provided. LAC 43:VII.311(A)(2).

The regulations do not define “marketable oysters,” except to state that the term “Marketable Oysters – includes both market-size and seed oysters as defined by DWF.” LAC 43:VII.305. Thus, there is a size component to this term: small (25-74 mm, “seed”) and large (≥75 mm, “market-size”) oysters are included, but tiny oysters (0-24 mm, “spat”) are not. *Id.*

It is clear from the regulatory language, which uses the word “includes” in referring to the size limit, that this is not the *full* definition of the term. Common sense dictates that a thing must be “capable of being marketed” to be “marketable.” The word “marketable” means “fit to be offered for sale in a market : being such as may be justly and lawfully bought or sold.” WEBSTER’S THIRD NEW INT’L DICTIONARY, p. 1383. “Market” (as a verb) means “to expose for sale in a market : traffic in : sell in a market,” or simply “to sell.” WEBSTER’S THIRD NEW INT’L DICTIONARY, p. 1383.

Further, the OLACP regulations specifically refer to payment for “**non-removable** marketable oysters.” LAC 43:VII.311(A)(2) (emphasis added). Whether oysters can in fact be harvested (“removed”) must therefore be considered for the oyster component payment.

Thus, the term “marketable oysters” as used in OLACP is defined by reference not only to size, but also by reference to whether the oysters could or likely would be “*marketed*,” i.e., offered for sale, and sold. In turn, whether oysters could or would be marketed depends on whether they could or likely would be harvested, since oysters cannot be marketed without being harvested. An oyster cannot be “marketable” unless the lessee can market it, which is impossible if it is not raised from the water bottom.

When DNR (CPRA’s predecessor) sought to implement OLACP in 2006, it learned that the experts and commentators in the scientific literature had concluded that oyster fishermen can

physically and economically harvest only 5-65% of the oysters on their leases. This means that the actual “harvest efficiency ratio” for oysters is 5-65%. Thus, an oyster lessee would not be able to retrieve in an economically viable manner, and thus could not market, the other 35-95% of the oysters present on the water bottoms.

DNR therefore proposed to determine the number of marketable oysters by multiplying the biologist’s report of the standing crop (the number of oysters present on the water bottom) by the maximum harvest efficiency ratio shown in the scientific literature – 65%. DNR then consulted with the Oyster Task Force (OTF) about this, since the OLACP statute requires consideration of OTF recommendations in adopting regulations for the Program. La. R.S. 56:432.1(B)(2). The OTF disagreed with DNR’s proposed 65% ratio. Instead, the OTF recommended a higher 70% harvest efficiency ratio.

DNR adopted the 70% ratio recommended by the OTF in 2007 (even though this was higher than shown in the scientific literature). DNR did not promulgate regulations to this effect, but applied the 70% ratio as a matter of policy in implementing the regulations. For over a decade DNR, and then CPRA, applied the 70% ratio in this manner. The agencies paid lessees for the oyster component of OLACP compensation, when applicable, for 70% of the standing crop of oysters on the water bottoms.

In 2018, the First Circuit held that the 70% ratio is unenforceable, but only because it was a fixed percentage, and for this reason had to be promulgated as a regulation. *Bayou Canard*, 250 So.3d at 988. The First Circuit *did not* rule (or even suggest) that the 70% figure was incorrect. Nevertheless, CPRA cannot use the 70% fixed ratio without amending the regulations to state it as a rule, even though it is higher than the scientific literature shows they could realistically harvest. Since that decision, CPRA has retained oyster expert Dr. Eric Powell to develop a computer model to determine lease-specific harvest efficiency ratios.

The OTF now asserts that lessees can economically harvest 95% of the oysters on the bottom, but this is contrary to the scientific evidence. In addition to the prior scientific literature, Dr. Powell confirmed during his work for CPRA that 70% is higher than the ratio that lessees can realistically and economically harvest in almost any situation.

CPRA therefore recommends expressly requiring the oyster component of OLACP compensation to include harvest efficiency in the enumeration of marketable oysters, and to provide the 70% ratio as a rebuttable presumption. The computer harvest efficiency model Dr. Powell is developing for CPRA depends on water bottom and oyster population data from the BA, but also information regarding the lessee’s oyster harvesting equipment, practices, and costs. Accordingly, CPRA also recommends authorizing lease-specific determination of harvest efficiency to rebut the 70% presumption, but only if the lessee submits the data required by CPRA to make this determination.

Regulatory amendment would be necessary to implement this recommendation.

2. Process Changes.

A. Avoid oyster leases in project planning.

As projects are being planned, CPRA may not always take the presence of oyster leases, or the locations of oyster resource on those leases, into account. It is possible that at least some projects could be designed to avoid or reduce impacts to oyster leases or areas with significant oyster populations, particularly for aspects potentially allowing more flexibility of location such as borrow siting or access routes. The earlier in the design process this is known, the better for avoiding such conflicts.

CPRA could hold a meeting with the biologist early in the developmental stages of the project to determine if it is possible to alter the design of the project to avoid or reduce oyster lease impacts. Small changes to project designs can sometimes significantly reduce the number of oyster leases impacted by the project design, or avoid reef or shell areas of leases where oysters are in fact growing or capable of cultivation.

This may start by comparing the oyster lease GIS layer to the project design layers, to avoid lease conflicts entirely. If it becomes more of a question of the relative cost of avoiding a lease versus the cost of acquiring the lease, initial biological inspection or assessment may be appropriate to assess where oysters are or may be cultivated on the lease (and thus the likely cost). The likelihood and amount of cost savings would vary from project to project. The cost of acquiring very productive leases (particularly large lease with significant oyster resource) may greatly exceed redesign or avoidance costs; while the cost of acquiring small areas or nonproductive or marginally productive leases, or leases with no oyster resource on them, may not justify redesigning in order to avoid them.

Similarly, project work scheduling may be designed so as to delay work on the lease, in order to enable the acquisition effective date to be pushed back far enough to avoid paying the oyster component.

This is similar to CPRA's normal property rights analysis within the planning process. CPRA has already begun to do this in project planning and development on an informal basis, and has been successful in avoiding portions of leases with significant oyster resource. For example, on the Lake Borgne project (PO-180), preliminary poling was done to enable a borrow area to be moved to avoid leases and oyster resource. CPRA has also been able to phase project work to avoid paying for marketable oysters. Nevertheless, CPRA recommends expressly incorporating this process into its project planning and development procedures.

This is a procedural measure, and so no regulatory amendment is required.

B. Truncate BAs when the biologist concludes leases are incapable of supporting oyster cultivation.

Several public comments suggested completely eliminating BAs when leases are clearly nonproductive.

Some biological assessment is necessary to identify the DIA of the project, as well as to best support the conclusion that leases are nonproductive. Thus, the BA cannot be eliminated entirely. However, it may be possible to truncate BAs in certain circumstances.

Some leases are in areas that the biologist can determine are likely unsuitable for oyster survival and growth based on aerial or satellite imagery, historical salinity and other data, prior BAs in the area, DWF data, or past experience of the biologist. In such situations, the biologist may be able to reach preliminary conclusions regarding the productivity of such leases before inspecting them, by conducting such a “desktop review.” For example, the leases in the DIA of the Bay Denesse project (BS-31) were most likely unproductive and devoid of oysters, based on imagery and other information showing they were largely silted in. This was, in fact, the case – all 265 acres that CPRA acquired were nonproductive and contained no oysters.

Even if a lease is believed to be nonproductive based on such information, the biologist recommended against any fixed rule entirely eliminating the water bottom assessment (i.e., poling) or sampling. The biologist may still need *some* direct assessment in order to confirm that the leases are nonproductive, such as by poling if the water is deep enough, visual inspection if not, or dredge sampling to confirm the absence of oysters. Sufficient data must be obtained to support the biologist’s opinion.

Nevertheless, where the biologist concludes that existing information or a truncated BA is sufficient to determine that a lease is nonproductive or that there are no oysters present, a biological opinion based on such evidence should be sufficient, without conducting a full-scale BA. Any component of the BA, or the full extent of any component, that the biologist concludes is unnecessary to his opinion, should be eliminated.

CPRA has already begun to do this, such as on the Bay Denesse project, where poling was largely precluded by the shallowness of the water due to siltation and vegetation growth (an airboat had to be used to inspect it), dive samples were eliminated for the same reason, and simple dredge samples were used to confirm the absence of oysters. The biologist concluded that this truncated BA was sufficient to conclude that the leases were nonproductive and that there was no oyster resource on them.

This truncation resulted in significant cost savings, compared to the full BA procedure. Nevertheless, the BA still cost \$22,390, compared to \$19,901 in acquisition payments due to the appraiser’s \$75 per acre minimum value of for nonproductive acreage. Further truncation may have been possible. For example, if the biologist had concluded at the outset that the desktop review was sufficient to conclude nonproductivity, the study area might have been reduced, even less inspection performed, or other cost-reduction measures taken.

The OLACP regulations do not dictate the format or content of the BA (with one exception discussed below), but only require the biologist’s opinions regarding the water bottoms, the oyster populations, and related matters. LAC 43:VII.307(E). The nature and extent of the BA is a matter for determination by the biologist, as to the assessment necessary to support those opinions.

CPRA therefore recommends expressly considering with its biologist means to further truncate BAs, at the outset of each BA, and truncating the BAs to the extent the biologist concurs.

This consideration should include whether the BA warrants truncation and the rationale for this decision; and if so, the minimum-cost assessment activities that the biologist believes would suffice for a biological determination of the water bottoms and oyster crop. However, it must be borne in mind that the truncated assessment may still produce evidence contrary to a preliminary conclusion of nonproductivity, so consideration must be given to minimizing extra cost or time delay if a more extensive or full BA is ultimately necessary.

This is largely a procedural measure, so generally, no regulatory amendment is required. However, the regulations do provide that if a BA is in fact done, samples must be taken “at a minimum” within all leases in the PIA. LAC 43:VII.307(E)(2)(b). CPRA recommends amending this to add an exception to the extent that the biologist determines it is unnecessary to his opinion or can be modified.

C. Reduce dive samples from 18 to 9.

CPRA has chosen to conduct six square-meter dive samples with three replicates per dive (18 total dive samples), to determine the number of oysters present on the water bottom; followed by dredge samples on firm mud areas to confirm the absence of oyster resource there.

However, CPRA’s biologist has concluded that using only *three* dive samples with three replicates per dives (9 total dive samples), with some inside and some outside the DIA, is statistically sufficient to characterize the oyster populations. CPRA’s appraiser has agreed that this is sufficient for the appraisal. Thus, using only 9 total dive samples is sufficient.

CPRA’s biologist estimates that dive sampling generally involves most of the sampling cost, which is about half the total cost of a typical BA. Cutting the number of dive samples by half would not cut the sampling cost in half. However, CPRA’s biologist estimates that doing so would generally reduce the sampling cost by a third. Thus, this measure would cut the total cost of a BA by approximately 16% (1/3 of the 50% sampling cost).

CPRA recommends that by default, only *three* dive samples with three replicates per dives (9 total dive samples) should be taken for a BA. However, in the event that the biologist concludes that additional samples are required in order to support his conclusions, additional sampling would still be permissible.

This is purely a procedural measure, and so no regulatory amendment is required.

D. Consider reducing the study area in appropriate situations.

BAs under the DWF seed ground damage methodology generally cover the Potential Impact Area (PIA), which is usually 1,500’ around the project footprint. CPRA has used this methodology for OLACP, as discussed above, performing BAs over the entire PIA of a project. However, nothing requires it for OLACP. In fact, OLACP acquisition is authorized only in the DIA, which is much smaller than the PIA, usually only 150’ around the project footprint.

If there are leases within the PIA but not the DIA, the result is that CPRA performs a BA for a project where it will not acquire any leases. No appraisal is performed in such instances, but the cost of the BA can be substantial, even though it is unnecessary.

However, this has happened only once, on the Golden Triangle project (PO-163). Also, the design of a project often changes, even after the OLACP acquisition process has begun. For example, on the Queen Bess project (BA-202), originally there were no leases in the DIA, but the project was modified, and ultimately acquisition was necessary (though it was very small, totaling only \$592 in acquisition costs). Additionally, having the BA for the PIA would enable CPRA to consider the impacts of similar project changes, and defend any assertion or claim that lessees may make that there were direct impacts outside the DIA and if so, their extent. This also provides the biologist and the appraiser a firm basis for their conclusions, whereas reducing the study area leaves more avenue for challenging those conclusions.

By contrast, while the PIA is generally 10 times larger than the DIA, studying only the DIA would not reduce the BA cost by this much. Mobilization, sampling, reporting, and other costs besides the bottom assessment (poling) time would not be reduced much, if at all; and even the poling cost would not be reduced very much because it is done by poling at regular intervals on straight lines throughout the study area and the incremental cost of longer poling lines is not very great. The biologist estimates that cutting the line length, even substantially, would reduce the poling cost only by a small amount – say 25%. Since poling constitutes 30% of the BA cost, this would be at most a 7% cost reduction (25% of 30%).

Finally, an MOU between DNR and DWF regarding coastal use permitting provides that DNR will require “a water bottom assessment (unless waived by DWF)” for all permits “affecting state water bottoms” leased by DWF for oyster cultivation. MOU between DNR and DWF for Activities Occurring in or Affecting the Louisiana Coastal Zone, § 3 (2/3/2005). DWF accepts the OLACP BA as satisfying this requirement. Therefore, regardless of OLACP, DWF can require a full BA for CPRA to obtain a permit for the project, and doing this for OLACP satisfies the permitting requirement as well as OLACP.

Accordingly, in general, reducing the BA study area to the DIA, or eliminating it entirely when there are no leases in the DIA, would not be advisable as saving relatively little cost but creating risk of project delay or successful challenge by lessees. It would even be wasteful, if DWF still requires a BA for the full PIA to allow the project permit. However, it may still be possible in some situations to reduce the study area, if the biologist concludes that a smaller study area is sufficient to and support an opinion of water bottom character and oyster populations, *and* DWF agrees to allow the reduced study area (or to waive the BA entirely) for permitting purposes. This is may be the case with obviously nonproductive leases, very small acquisitions, and where there no leases in the DIA.

CPRA therefore recommends expressly considering with its biologist and consulting with DWF as to whether the study area can be reduced, at the outset of each BA.

This is largely a procedural measure, so generally, no regulatory amendment is required. However, the regulations do provide that if a BA is done, samples must be taken “at a minimum” within all leases in the PIA. LAC 43:VII.307(E)(2)(b). CPRA recommends amending this to add an exception to the extent that the biologist determines it is unnecessary to his opinion or can be modified.

MEASURES CONSIDERED BUT REJECTED

In preparing these draft recommendations, CPRA considered all public comments received. However, CPRA has not recommended several of the proposed measures. These measures generally fall into categories of programmatic changes, which would require statutory change or wholesale revision of OLACP; regulatory changes, which require or are best implemented in the regulations; and changes that are outside CPRA's jurisdiction.

1. Programmatic Changes.

A. Decline to apply OLACP because it is an allegedly unconstitutional donation.

Some comments asserted that OLACP compensation is an impermissible donation in violation of La. Const. art. 7, § 14 because the leases provide and *Bayou Canard* and *Avenal* held that lessees waive all claims arising from coastal projects. Further, lessees pay only \$3 per acre per year to the State for their leases; and the leased water bottoms are State property and the State should not have to pay far more than this nominal rental to use its own property for the public purpose of combatting coastal erosion and subsidence.

However, statutes are presumed to be constitutional. *W. Feliciana Par. Gov't v. State*, 2019-00878, p. 8 (La. 10/11/19); 286 So.3d 987, 993. CPRA must therefore apply the OLACP statute. Notwithstanding the lease waivers and other points raised by the commenters, compensation under the Program should be interpreted as being for the public benefit of the oyster resource rather than for the personal benefit of the lessee.

La. Const. art. 9, § 1 and the Louisiana Supreme Court in *Save Ourselves, Inc. v. La. Environmental Control Commission*, 452 So.2d 1152, 1157 (La. 1984) require protection and conservation of natural resources and balancing of environmental, economic, social, and other factors. "The legislature shall enact laws to implement this policy." La. Const. art. 9, § 1. In enacting OLACP, the Legislature sought to protect, conserve, and replenish the oyster resource. CPRA recognizes that payment through OLACP assists in preserving the oyster industry by enabling oyster lessees to recover from acquisition of their leases for integrated coastal protection, and that in turn, the oyster industry furthers the oyster resource. Eliminating compensation to the lessees would impair their ability to cultivate oysters, and thus impair the resource. Further, the Legislature considers the oyster industry and its activities to be a benefit to the State and its citizens. La. R.S. 56:421(A).

Consequently, there is a public interest in CPRA paying compensation under OLACP. The facts that the payment is called "compensation" and measured by lease and oyster value do not impair the existence of a public purpose for it, any more than does the fact that it is called "acquisition" when obviously the State cannot literally acquire its own water bottoms or leases.

B. Convert OLACP to an oyster seed ground improvement program funded by CPRA.

Some comments proposed that for the same reasons as the comments that OLACP is an unconstitutional donation, instead of paying OLACP compensation to lessees, the funds should be spent on public seed grounds to benefit the entire oyster industry.

The same reasons addressed above regarding eliminating OLACP also support continuing to pay the compensation to lessees – the OLACP statute is presumed to be constitutional, and CPRA has concluded that paying the compensation to the lessees furthers the oyster resource and the public interest in it, along with the oyster industry, which the Legislature considers to be of public benefit. Using OLACP compensation on the seed grounds would be contrary to the OLACP statute, which provides for compensation to the oyster lessees when their leases are acquired. Further, eliminating payment to the affected lessees and instead spreading it over all lessees (all of whom have equally waived all claims arising from coastal projects) would disproportionately disadvantage the affected lessees.

Additionally, this proposal would require entirely new oyster cultivation projects that have never been included in the Master Plan, or even considered by CPRA. Leaving oyster cultivation to the lessees leaves this in the hands of those with the relevant expertise, as well as economic incentive to do it well. By contrast, oyster cultivation is outside of CPRA's expertise. Devolving responsibility for it to CPRA would entail adding staff to administer it, or hiring a contractor to do so and incurring that significant cost while still requiring CPRA to obtain staff sufficiently trained to oversee such an effort.

C. Convert OLACP to an oyster lease relocation program.

One comment suggested converting OLACP into a relocation program for oyster leases displaced by coastal projects. This would be a reversion to the greatly problematic Oyster Lease Relocation Program that OLACP successfully replaced, and which was massively more expensive than OLACP. Acts 2006, No. 425. Further, oyster lease relocation is outside of CPRA's expertise, and so would require CPRA to retain additional staff or incur significant contractor cost to administer. This would also be contrary to the OLACP statute, which requires compensation, not relocation (and again, repealed the previous program for relocation). Finally, relocation instead of acquisition has great potential to delay projects, as often occurs under the federal relocation assistance program, and the avoidance of which was a fundamental purpose of OLACP in the first place. Additionally, even when the prior relocation program was in existence, relocation was rarely utilized by the lessees.

D. Require payment of OLACP compensation as reimbursement for performing lease improvements, rather than as direct payment.

One comment suggested that to ensure OLACP compensation is in fact used for the benefit of the oyster resource, OLACP compensation should be paid only as reimbursement for actual expenditures by the lessees in furtherance of the oyster resource instead of direct payments to lessees.

As addressed above, CPRA has concluded that paying the compensation to the lessees furthers the oyster resource and the public interest in it, as well as the oyster industry. Additionally, the proposal would require experience regarding the oyster industry that CPRA lacks, and would be administratively burdensome and costly due to the additional bureaucracy required to implement it. The proposal would require CPRA to add staff to administer such a program and determine whether “qualified” lease improvements (which are usually underwater and not easily visible) had in fact been made. Alternatively, CPRA would have to hire a contractor to do so and incur that significant cost, while still having to add staff sufficiently trained to oversee such an effort. This would increase the cost of OLACP. The State already has insufficient funds for needed coastal projects, and CPRA considers the existing compensation method, modified as recommended herein, to be appropriate.

In any event, the OLACP statute expressly requires CPRA to “issue payment to the leaseholder in the full amount of its determination of compensation.” La. R.S. 56:432.1(B)(3). Accordingly, converting to a reimbursement program would be contrary to the OLACP statute.

E. Pay for indirect impacts from diversions as well as direct impacts.

One public comment suggested paying lessees for indirect impacts, as well as direct ones, and specifically regarding impacts from freshwater or sediment diversions. The OLACP statute limits payment to dredging, direct placement of material, or activities for construction or maintenance of a project, which is all direct impact. La. R.S. 56:432.1(B). There is no authority under the OLACP statute to pay for indirect impacts. To the contrary, in the same act in which OLACP was enacted, Act 425 of the 2006 Reg. Sess., the Legislature expressly *precluded* claims arising from “diversions of fresh water or sediment” and rejected such an extension of the Program. La. R.S. 56:427.1.

Statutory amendment would therefore be necessary to authorize compensation for indirect impacts. Any such amendment would eliminate the express limitation of compensation to direct impacts, which was a fundamental purpose of the statute, and would be directly counter to this purpose. Further, the Louisiana Supreme Court in *Avenal* expressly held that claims for diversions are precluded under La. Const. art. 9, § 1, so any such amendment would appear to be unconstitutional. Finally, the cost of paying for indirect impacts would be enormous, running to the billions of dollars, at a time when the State already has insufficient funds to construct the existing Master Plan.

2. Regulatory Changes.

A. Do not pay the oyster component in addition to the lease component.

One comment suggested that it is double payment to pay for marketable oysters on a lease in addition to the lease value, such that the oyster component of compensation should be eliminated.

However, oysters are a crop, analogous in many ways to more traditional plant crops (though there are differences, including State ownership of the oysters until they are harvested). Under the measure of just compensation applicable to coastal projects, standing crops are valued in addition to the land on which they are grown, unless the farmer is able to harvest that crop.

NICHOLLS ON EMINENT DOMAIN, § 13.13[6]. Harvesting oysters requires time and appropriate conditions. The original 1-year notice period triggering payment under the oyster component was selected to allow sufficient time for lessees (oyster farmers) to harvest the oysters, although as recommended above, six months is sufficient for this purpose. Accordingly, it is reasonable under just compensation principles to pay for the oysters in addition to the lease value.

OLACP is not constrained by just compensation requirements except to the extent of the measure of compensation promulgated by CPRA in the OLACP regulations, since Title 56 of the Revised Statutes fully defines the nature and extent of the property rights afforded by a State oyster lease and OLACP is part of Title 56. *Avenal*, 886 So.2d at 1095. Accordingly, CPRA *can* eliminate compensation for marketable oysters by regulatory amendment. However, CPRA considers this payment to be reasonable because the oysters *are* the oyster resource and so paying compensation for them furthers that resource, as addressed above. As noted above however, CPRA is suggesting reducing the time limit for triggering compensation for the oysters from one year to six months as a means for addressing the commenter's concerns.

B. Pay for cultch planted by the lessee, in addition to the lease component.

One comment suggested that lessees should be paid the value of cultch they have added to leased water bottoms, in addition to the market value of the lease itself.

The Louisiana Supreme Court has suggested that “In some situations, as in a long-term lease in which the lessee has made significant improvements, the lessee may have a greater interest than the owner in restoring damaged property.” *Inabnet v. Exxon Corp.*, 93-0681, p. 20 (La. 9/6/94); 642 So.2d 1243, 1255, n. 15. However, this language (which was dicta, not a holding) pertains to whether the lessee or the State as owner of the leased water bottoms would have the superior interest in suing private third parties for damages to improvements on those bottoms. No such claim is valid against the State: ten years later, the Court held that “the rights granted [under the oyster leases] have never been recognized by this Court as anything other than rights granted against third parties to the leases, such as oil companies, not against the State.” *Avenal*, 886 So.2d at 1100.

Moreover, cultch is a component part of the leased waterbottom, and so the value of the cultch is included in the value of the lease on which the cultch is located. La. C.C. arts. 462, 463, 465, 469. Further, under the measure of just compensation applicable to coastal projects, such component parts are compensable only to the extent they contribute to the market value of the thing that they are a part of, so again, the cultch is included in the lease value. NICHOLLS ON EMINENT DOMAIN, §§ 13.01[16], 13.02, 13.07[2]. Accordingly, the value of any cultch is already included in the lease payment. Furthermore, lessees can and do remove the cultch, as the DWF regulations discussed above recognize, so paying them for it would be duplicative.

Also, it is often difficult to distinguish between natural and added cultch, and lessees typically have no records as to how much cultch they have added, or where they added it. Compensation for cultch is therefore impractical, as well as duplicative. Finally, any such payments would be very expensive both to determine and to pay. The State already has insufficient funds to construct the existing Master Plan, and CPRA considers payment for the lease itself to be sufficient to fulfill the public purpose for OLACP compensation.

C. Require proof of productivity in the past.

One comment suggested authorizing only a nominal payment under OLACP, or refusing to pay the oyster component of OLACP compensation, unless the lessee demonstrates actual productivity in the past.

Current leasing regulations do not require reporting or trip tickets by lease, and lessees therefore do not gather or maintain documentation of actual harvest at the present time. Requiring such documentation would therefore preclude compensation under OLACP. CPRA does not consider this to be appropriate for the reasons given above, including the benefit of OLACP compensation to the oyster resource.

Further, under this proposal, the only evidence of production would be unreliable anecdotal evidence from the lessees, which is a problematic basis for compensation. By contrast, the BA provides clear and scientifically valid evidence of any standing crop of oysters and the productivity of the lease. Also, as to the oyster component of compensation, CPRA simply pays for the oysters that are there upon inspection (less harvest efficiency); *prior* production is irrelevant. As to the lease component, the appraiser values the lease according to its oyster production *potential* (productivity), so actual prior production is not the determinative factor.

Settlements, fixed in-lieu payments, and valuation waivers can significantly decrease total costs, as recommended above. Regardless, tying compensation to evidence of production is not feasible, given existing reporting requirements, which are outside of CPRA authority.

D. Require lessees to bear the burden of proving value.

Some comments suggested shifting the burden of proving lease value to the lessee, including proving that actual harvest has occurred.

The OLACP statute places the burden on CPRA to determine compensation. La. R.S. 56:432.1(B)(2). Therefore this proposal is contrary to the statute. Further, lessees do not maintain records of harvest by lease, as explained above, so requiring this would be effectively deny OLACP compensation.

Further, among the key benefits sought by OLACP are speed and certainty, which would be jeopardized if the onus were placed on lessees instead of CPRA to establish value. Lessees may easily delay projects if they failed to move forward with a valuation on CPRA's time schedule, which would not be unexpected. In fact, lessees may use such delays or the possibility of delay to extract above-market settlements, prevention of which was a chief reason for OLACP's enactment.

E. Fund oyster lease acquisition for private coastal restoration projects.

One comment suggested that CPRA pay for private coastal restoration. The State already has insufficient funds to construct its own projects under the existing Master Plan, and lacks funds to pay for private coastal projects as well. Private coastal restoration is laudable and beneficial to the public, but by definition it is privately funded.

3. Measures Outside CPRA Jurisdiction.

Several public comments suggested measures that are outside the jurisdiction of CPRA, and therefore cannot be implemented by CPRA:

- Raise oyster lease rates;
- Reimpose a requirement to actually cultivate a lease in order to maintain it;
- Require reporting of oyster harvest by lease instead of by meaningless zones;
- Require reporting of oyster cultivation efforts other than harvest, by lease;
- Require lessees to collect data on productivity, even if it is not required to be reported;
- Convert public seed grounds to leasable areas;
- Create new oyster production areas by planting cultch; and
- Promote alternative oyster culture.

Implementation of these suggested measures would be under the jurisdiction and authority of DWF or the Louisiana Legislature.

CPRA OLACP STUDY GROUP

- James Altman, Land Manager, CPRA
- Bush Benton, appraiser, Stegall, Benton & Associates, LLC
- Morgan Crutcher, Governor's Office of Coastal Activities
- Ronnie Duke, biologist, T. Baker Smith
- Bren Haase, Executive Director, CPRA
- Kenneth King, biologist, Delta Coast Consulting
- Brian Lezina, Assistant Administrator, Planning & Research Division, CPRA
- Lawrence Marino, counsel, Oats & Marino
- David Peterson, General Counsel, CPRA
- Charles Sawyer, CPRA
- Ryan Vivian, Land Rights Attorney, CPRA
- Harry Vorhoff, Deputy Director, Governor's Office of Coastal Activities, counsel

Coastal Protection and Restoration Authority

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

APPENDIX K

**CPRA WEBINAR PRESENTATION – PHASE 2,
SOLICITATION OF COMMENTS**

Oyster Lease Acquisition and Compensation Program

Draft Recommendations for Improvements



Solicitation of Stakeholder Comments
November 17 and 18, 2020



OLACP Study

OLACP authorizes compensation to lessees when CPRA “acquires” State oyster leases for coastal projects

CPRA implements OLACP

CPRA regulations define the compensation under OLACP

Oyster industry, NGO, and other coastal stakeholders have raised questions regarding potential changes to OLACP

CPRA itself has noted inefficiencies or other issues that could be improved

CPRA Board Chairman Kline directed CPRA to perform a study to evaluate potential improvements

And propose recommendations for improvements to the CPRA Board

OLACP Study

September 1, 2020 – CPRA issued a solicitation of views to stakeholders

September 21 & 23, 2020 – CPRA held public webinars to solicit stakeholder views

<https://coastal.la.gov/calendar/?y=2020>

October 7, 2020 – Deadline for comments – Stakeholders submitted 4 written comments, and several comments via chat

<https://coastal.la.gov/calendar/?y=2020>

CPRA reviewed and considered these comments, and its own experience

November 6, 2020 – CPRA published its draft recommendations

<https://coastal.la.gov/wp-content/uploads/2020/09/OLACP-Study-Draft-Recommendations-2020-11-06-Final.pdf>

<https://coastal.la.gov/wp-content/uploads/2020/09/OLACP-Study-Draft-Recommendations-2020-11-06-Appendices-Final.pdf>

OLACP Study

These recommendations are only a draft

CPRA requests comments by December 4, 2020

CPRA will consider all comments

CPRA will publish its final recommendations on January 11, 2021

CPRA will present its final recommendations to the CPRA Board on January 20, 2021

Stakeholders may address the CPRA Board regarding the final recommendations

If the CPRA Board approves recommendations requiring regulatory changes, CPRA would then publish a Notice of Intent

Stakeholders could then comment on the proposed changes

Improvements Already Made

Several comments pertain to matters CPRA has already addressed

1. Deny, non-renew, or terminate leases where coastal projects will be done
OLACP acquisition would be unnecessary, and unproductive leases eliminated
2. Provide more information to lessees about coastal projects and impacts
Lessees and potential lessees could better identify suitable oyster cultivation areas
3. Work with DWF to develop and fund an Oyster Strategic Plan
Gov. Edwards and the Legislature requested a Plan to guide the oyster resource and oyster industry to a more productive future

1. MOU with DWF regarding oyster leasing

CPRA and DWF signed a Memorandum of Understanding in 2019 regarding oyster leasing in relation to coastal projects

- DWF notifies CPRA of lease applications and upcoming renewals, and areas covered

- CPRA notifies DWF of any portions needed for buffer zones, essential for coastal protection (generally within 5 years), or nonproductive for oyster cultivation

- As to buffer zones or coastal protection areas, unless DWF disagrees, it will deny the application or renewal

- As to potentially nonproductive areas, DWF will investigate and if it agrees, deny the application or renewal

- Addresses timeframes, definitions, default conclusions regarding buffer zones and coastal protection areas, and dispute resolution between DWF and CPRA

Over time, the MOU will reduce the need to acquire leases under OLACP

2. Reporting of Coastal Projects and Impacts

CPRA already provides this information, in several different respects, to the extent of its ability

Master Plan: Every 6 years, CPRA publishes draft Plan and project information, holds stakeholder meetings, receives public comment, publishes final Plan, and presents Plan for approval at Legislative hearings

Annual Plan: Similar to Master Plan, except annual with 3-year timeframe

Permits: For each project, CPRA publishes applications, publishes draft reports analyzing impacts of the project and alternatives, holds public meetings, receives public comments, and publishes final reports regarding impacts

There is an array of means by which the public can learn and inquire about projects and their potential impacts

2. Reporting of Coastal Projects and Impacts

Often CPRA simply cannot give the level of detail requested by the oyster industry regarding the degree and location of impacts

- Detailed specifics of projects and their impacts are unknown until an alternative is approved through the permit process

- Modeling that is necessary to determine specific impacts is costly and impossible until specifically funded

But CPRA does publish all planned projects and the information it has regarding potential impacts

2. Reporting of Coastal Projects and Impacts

Oyster Task Force is a quasi-public body that advises the State regarding oyster industry matters

CPRA is required to make annual presentations to OTF regarding the nature, location, and status of current or planned coastal projects

CPRA recommends that it continue to request to make such presentations to OTF

3. Oyster Strategic Plan

CPRA is working with DWF to develop the Oyster Strategic Plan

As directed by Gov. Edwards and requested by the Legislature

DWF has prepared draft Plan, with CPRA assistance, and presented for public comment

Final Plan is expected by December 2020

CPRA will continue to work with DWF to complete it

The Oyster Strategic Plan is not part of OLACP

No proposed measures affect OLACP, except non-renewal of unproductive leases, which is already being addressed

If measures are added that affect OLACP, CPRA will supplement its recommendations as appropriate

Measures Recommended

1. Authorize lessees to retain leases upon waiving all OLACP compensation

Some lessees may prefer to retain a lease, waive OLACP compensation, and take the risk that the lease is permanently impaired

- Increased flexibility to lessees

- Cost savings – assessment and appraisal unnecessary

- Project time savings

Regulatory amendment may be unnecessary, but CPRA recommends it to state the process and conditions

2. Authorize fixed “in lieu of” payments for lease acquisitions

When leases are clearly nonproductive, authorizing a flat \$100/acre (\$1,000 minimum) fixed payment could avoid or reduce total cost and time

- Little change to current compensation – minimum appraised value \$50-\$100/acre

- Cost savings – assessment and appraisal unnecessary

- Project time savings

CPRA also recommends eliminating compensation for nonproductive leases

- Would apply after assessment and appraisal; this would avoid costs up front

Regulatory amendment is necessary to authorize exception to the appraisal requirement, and to state the process and conditions

3. Authorize administrative settlements with or without biological assessments or appraisals

When CPRA and lessees agree on the value of productive or marginally productive leases, settlement would avoid or reduce total cost and time

- Likely increase to current compensation – but total cost is reduced

- Cost savings – assessment and appraisal unnecessary or reduced

- Project time savings

CPRA must have sufficient basis to determine compensation and costs

- Limited assessment may still be needed, but avoids remaining cost

Regulatory amendment is necessary to authorize exception to the appraisal requirement, and to state the process and conditions

4. Authorize waiver valuations for small-value acquisitions

Federal law allows agency valuations (“informal value estimates”) in lieu of appraisals, in order to reduce cost and time

- Applies to small-value acquisitions, when the agency has a reasonable basis for value

- Federal law does not apply to OLACP, but the rationale still applies

Authorizing waiver valuation up to \$25,000 would reduce total cost and time

- Likely no change to current compensation – CPRA is very familiar with lease valuations

- Cost savings – appraisal unnecessary

- Project time savings

Regulatory amendment is necessary to authorize exception to the appraisal requirement, and to state the process and conditions

5. Provide zero value for leases incapable of supporting oyster cultivation

Purpose of State oyster leases is for oyster cultivation

Under the federal and state Constitutions, compensation is limited by the use to which the property can be put “in the reasonably near future”

Constitutions do not govern OLACP compensation, because that is determined by OLACP regulation, but the rationale still applies

Regulatory amendment is necessary to authorize exception to compensation for unproductive leases

6. Reduce the notice period for the oyster component from 1 year to 6 months

OLACP regulations authorize compensation for oysters, in addition to lease value, when CPRA provides less than 1 year's notice of the acquisition

By contrast, when DWF terminates a lease, its leasing regulations allow lessees only 6 months to remove cultch or improvements – including oysters

DWF regulations authorize a 3-month extension, in DWF discretion

Same extension authority is reasonable for OLACP, if it will not impact the project

Regulatory amendment is necessary to change the notice period

7. Expressly authorize harvest efficiency determination in the oyster component of compensation

OLACP regulations authorize compensation for “marketable oysters” when less than 1 year’s (or 6 months’) notice is provided

“Marketable” means “capable of being marketed”

Oysters that cannot be harvested cannot be marketed

Scientific literature demonstrates oyster fishermen can physically and economically harvest 5%-65% of the oysters on the water bottom

This is the “harvest efficiency ratio” – 5%-65%

OTF urged a 70% HER, and CPRA consented

For over a decade, CPRA paid OLACP oyster component based on the 70% HER

Paid lessees for 70% of the standing crop on the water bottoms

7. Expressly authorize harvest efficiency determination in the oyster component of compensation

In 2018, *Bayou Canard* held that the fixed 70% HER is unenforceable

But only because it was a fixed percentage, and so had to be promulgated as a regulation

Court did not rule or suggest that the 70% HER was incorrect

CPRA cannot use the fixed 70% HER without amending the regulations

CPRA is developing a computer model to make lease-specific HER determinations

OTF now asserts a 95% HER

This is contrary to the scientific evidence

7. Expressly authorize harvest efficiency determination in the oyster component of compensation

70% HER is above the ratio based on scientific evidence and prior OTF letter

Paying lessees only for oysters they could physically and economically harvest remains appropriate

There is no public benefit to paying for oysters that would not have been harvested

Regulatory amendment is necessary to expressly authorize 70% HER limit

CPRA recommends implementing it as a rebuttable presumption

CPRA recommends authorizing lease-specific HER determination to rebut presumption

But only if lessee provides the detailed information about its harvesting equipment, methods, and costs that CPRA requires to make such a determination

8. Process change: Avoid oyster leases in project planning

In planning projects, it may be possible to design them to avoid leases or lease areas with significant oyster resource

- Even if lease cannot be avoided, it may be possible to reduce the impact

- Project work could be phased to allow longer notice periods

E.g., consult lease map databases, or obtain biologist input, in the planning phase

- Similar to consulting property ownership or pipeline databases in planning phase

CPRA is already beginning to do this informally

- Avoided the most productive areas of some leases

- Phased some work to lengthen notice period, avoiding oyster component of compensation

CPRA recommends expressly incorporating this process into its project planning and development procedures

9. Process change: Truncate assessments when the biologist determines it is appropriate

In some situations, biologist will not need the full assessment to determine that a lease is nonproductive or has no oysters

“Desktop review” may clearly demonstrate that oysters do not or cannot grow there

Biologist may conclude from partial assessment that nothing further is needed

Any assessment component, or the full extent of any component, that the biologist concludes is unnecessary to his opinion, should be eliminated

Regulatory amendment is necessary to authorize eliminating sampling, but otherwise the form of the assessment is determined by the biologist

CPRA recommends expressly considering means to truncate assessments with the biologist, at the outset of each assessment

CPRA is already beginning to do this

10. Process change: Reduce dive samples from 18 to 9

CPRA has chosen to take 18 dive samples per project to determine the number of oysters present on the water bottoms

CPRA's biologist advises that 9 samples is usually sufficient to make this determination

This would reduce the assessment cost by approximately 16%

CPRA recommends requiring only 9 samples per project, by default

If biologist concludes additional samples are needed, this would remain permissible

OLACP regulations do not address the number of samples needed, so regulatory amendment is unnecessary

11. Process change: Consider reducing the study area

Assessments cover “Potential Impact Area,” typically 1,500’ around footprint

OLACP applies only in “Direct Impact Area,” typically 150’ around footprint

In rare situations, there are leases in PIA, but none in DIA

Reducing study area to DIA would save only about 7% of assessment cost

Information from PIA is useful if project changes or to defend claims by lessees in PIA

DWF requires assessment of PIA for CPRA to obtain its coastal use permit anyway

Reducing study area may be appropriate if biologist concurs *and* DWF waives or reduces its requirements

CPRA recommends considering with biologist and DWF whether study area can be reduced, at outset of each assessment

Regulatory amendment is necessary to authorize eliminating sampling, but otherwise the form of the assessment is determined by the biologist

Measures Considered But Rejected

1. Decline to apply OLACP because it is an allegedly unconstitutional donation

Comment urges that under the leases, *Bayou Canard*, and *Avenal*, lessees waive all claims arising from coastal projects

Also that State should not have to pay to use its own property for coastal protection

Statutes are presumed to be constitutional

Comment is contrary to OLACP statute

OLACP compensation should be interpreted as being for public benefit of the oyster resource, not personal benefit of the lessee

Oyster industry furthers the oyster resource, by cultivating oysters

Compensation furthers preservation of oyster industry, by enabling lessees to recover

Eliminating compensation would impair lessees' ability to cultivate oysters – and the resource

Legislature considers the oyster industry to be a benefit to the State

2. Convert OLACP to an oyster seed ground improvement program funded by CPRA

Comment urges similar rationale to unconstitutional donation comment

Statutes are presumed to be constitutional

Comment is contrary to OLACP statute

OLACP compensation should be interpreted as being for public benefit of the oyster resource, rather than personal benefit of the lessee

Also, comment would require CPRA to develop new oyster cultivation projects

- Oyster cultivation is outside CPRA expertise

- Would require additional staff and cost to administer

3. Convert OLACP to an oyster lease relocation program

Comment urges return to previous Oyster Lease Relocation Program

- OLACP was enacted specifically to *replace* OLRP

- OLRP was very expensive and time-consuming when used – yet was rarely used

Comment is contrary to OLACP statute

Comment would require CPRA to develop lease relocation capability

- Oyster cultivation is outside CPRA expertise

- Would require additional staff and cost to administer

Likely to delay coastal projects

- Federal relocation program is major source of project delay

4. Convert OLACP compensation to reimbursement for lease improvements, instead of direct payment

Comment urges similar rationale to unconstitutional donation comment

Statutes are presumed to be constitutional

Comment is contrary to OLACP statute

OLACP compensation should be interpreted as being for public benefit of the oyster resource, rather than personal benefit of the lessee

Also, comment would require CPRA to develop lease improvement capability

- Oyster cultivation is outside CPRA expertise

- Would require additional staff and cost to administer

5. Pay for indirect impacts from diversions, as well as direct impacts

Comment is contrary to:

OLACP statute

La. R.S. 56:427.1, which precludes claims arising from diversions

La. R.S. 56:423, which subordinates oyster leases to integrated coastal protection

Avenal, holding claims for diversions are precluded under La. Const. Art. 9, § 1

Lease waiver clauses expressly, specifically, and at length preclude claims arising from diversions

Cost would be enormous

6. Do not pay the oyster component in addition to the lease component

Comment suggests this is double payment

Federal law compensates standing crops in addition to land

Matter of fairness, because it takes time and effort to grow crop to maturity

Federal law does not apply to OLACP, but the rationale still applies

Oysters are similar in nature to agricultural crops, though not exactly

Compensation for oysters is reasonable because oysters *are* the resource

Compensation for the oysters furthers the resource

Oyster component will be paid less often, under other recommendations

7. Pay for cultch planted by the lessee, in addition to the lease component

Comment urges that lessees make large expenditures for cultch

State owns the water bottoms, into which such improvements are incorporated

Inabnet raised *possibility* lessees might have superior interest to State in suing oil and gas operations for damages to water bottoms lessees had improved

But *Avenal* held that no such right had ever been recognized against the State

Value of cultch is already included in market value of lease

Lessees can and do remove cultch

Difficult to distinguish natural from added cultch – lessees lack records

Cost would be significant – both to determine, and to pay

8. Require proof of productivity in the past

Comment urges nominal compensation, or eliminating oyster component, unless lessee demonstrates actual productivity from the lease in the past

Lessees lack lease-specific documentation of oyster production

Existing DWF leasing and DHH health regulations do not require it

Requiring such evidence would effectively preclude OLACP compensation

Determining past productivity would rely on anecdotal claims from lessees

Assessment and appraisal rely on *verifiable* data – count of existing crop, and lease productivity potential

9. Require lessees to bear the burden of proving value

Comment is contrary to OLACP statute

Lessees lack lease-specific documentation of oyster production

Requiring such evidence would effectively preclude OLACP compensation

Determining past productivity would rely on anecdotal claims from lessees

Assessment and appraisal rely on verifiable data

Likely to delay coastal projects

CPRA must retain control of project schedule – speed was primary purpose of OLACP

Lessees would lack incentive to pursue acquisitions speedily

Lessees may use possibility of delay to extract above-market settlement

10. Fund lease acquisition for private coastal projects

CPRA already has insufficient funds for its own projects

Private coastal restoration is laudable

But by definition, it is privately funded

10. Measures outside CPRA jurisdiction

- Raise oyster lease rates
- Reimpose requirement to actually cultivate a lease in order to maintain it
- Require reporting of harvest by lease instead of by meaningless zones
- Require reporting of oyster cultivation efforts other than harvest, by lease
- Require lessees to collect data on productivity, even if not required to be reported
- Convert public seed grounds to leasable areas
- Create new oyster production areas by planting cultch
- Promote alternative oyster culture

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 – 1/11/21

- 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 11/17 & 11/18 Webinars

**Deadline for submission is
December 4, 2020**

This presentation is available at
<https://coastal.la.gov/calendar/>

Chat

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Participants



Chat



Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program:
Recommendations for Improvement

APPENDIX L

**STAKEHOLDER WEBINAR COMMENTS – PHASE 2,
SOLICITATION OF COMMENTS**

OLACP Webinar 3 – November 17, 2020
CHAT LOG

November 17, 2020 5:28 PM from Jerry Graves to everyone:
yes

November 17, 2020 5:29 PM from Amanda Voisin to everyone: Yes, I can hear you.

November 17, 2020 5:32 PM from Amanda Voisin to everyone:
Here in Lafourche, we have had one person show up for the public viewing. Nicole Lundberg from LSU Ag Center is here.

November 17, 2020 6:20 PM from Jerry Graves to everyone: Whether directly or indirectly, as defined in the law and CPRA regs, leaseholders will be impacted by largescale sediment diversions. If not OLACP, under which program or funding source will CPRA compensate such leaseholders for adverse impacts resulting from the influx of freshwater and sediment?

November 17, 2020 6:21 PM from Capt. George Ricks to everyone:
Given the fact that CPRA's own computer modeling of salinity levels in the basins directly impacted by Mid Barataria and Mid Breton Diversions show total freshening of these basins, what compensation will be made when direct impact is inevitable. Affected leases will be rendered 100% unproductive not 70%.

November 17, 2020 6:23 PM from Jerry Graves to everyone:
What is the process by which CPRA makes a regulatory amendment? Thanks.

November 17, 2020 6:24 PM from Jerry Graves to everyone:
Thanks, guys.

November 17, 2020 6:25 PM from Amanda Voisin to everyone:
Thank you for the effort put into these recommendations. Lafourche Parish will be following up with additional comments to these recommendations, but we appreciate this effort to improve the OLACP program.

November 17, 2020 6:39 PM from Andrew Wilson to everyone: 1.
I'm late getting on but in the eventual comments could a detailed explanation be included to explain why acquisition of oyster leases for private coastal restoration projects not be considered as a discretionary action item for CPRA?

November 17, 2020 6:42 PM from Andrew Wilson to everyone: 2.
If a private entity pays for an expensive project with private funds and CPRA only has to pay the meager cost of acquiring an oyster lease, doesn't the cost/benefit analysis suggest that the state would receive a massive benefit for a meager cost?

November 17, 2020 6:44 PM from Andrew Wilson to everyone: 3.
Would CPRA oppose a bill/ legislative initiative to establish the procedure and obtain the authorization including funding for for such acquisitions?

Webinar 4 - November 18, 2020
CHAT LOG

November 18, 2020	9:03 AM	from Sharon McBreen to everyone:	yes
November 18, 2020	9:03 AM	from Seth Blitch to everyone:	I
read you			
November 18, 2020	9:03 AM	from Amanda Voisin to everyone:	
Yes, can hear you.			
November 18, 2020	9:04 AM	from Robert Spears to everyone:	yes
November 18, 2020	9:57 AM	from Adele Cadard to everyone:	Is
there any consideration of the marshland owners adjacent to the oyster leases?			
November 18, 2020	9:59 AM	from Adele Cadard to everyone:	The
current speaker is going in & out.			
November 18, 2020	9:59 AM	from Adele Cadard to everyone:	The
current speakers voice is going in and out.			
November 18, 2020	10:01 AM	from Mike Carloss to everyone:	Is
a funded project primarily through NAWCA (USFWS federal funds) considered a privately funded project?			
November 18, 2020	10:01 AM	from Adele Cadard to everyone:	
That has not happened. My family owns over 3000 acres of St Bernard Marsh. Much of the area is under oyster leases. Who do I contact?			
November 18, 2020	10:03 AM	from Adele Cadard to everyone:	I
am now hearing nothing. Could someone please email me the answer to the last question? Thanks!			
November 18, 2020	10:05 AM	from Adele Cadard to everyone:	
Thank you!			
November 18, 2020	10:05 AM	to Adele Cadard (privately):	
Coastal@la.gov			
November 18, 2020	10:09 AM	from sroy@matrixnewworld.com to everyone:	
To clarify the determination of currently leased non-productive water bottoms, will that be the task of the CPRA Biologist AND LDWF to research and then concur?			
November 18, 2020	10:10 AM	from sroy@matrixnewworld.com to everyone:	
Sarah Roy, not sure how to change			
November 18, 2020	10:13 AM	from corey miller to everyone:	
recommendation #2, slide 13 states both a flat rate compensation and no			

compensation for non-productive leases. what will determine which course of action?

November 18, 2020 10:15 AM from corey miller to everyone:
thank you

November 18, 2020 10:28 AM from corey miller to everyone: is
there a video/audio recording of this presentation or the one from last night
available?

November 18, 2020 10:30 AM from corey miller to everyone:
perfect. thank you for your time and transparency through these discussions

November 18, 2020 10:33 AM from sroy@matrixnewworld.com to
everyone: I would think the data collected by biologists during a BA would be
extremely useful and have applications for CPRA outside of the OLACP. If that data
is no longer collected and maintained within a database, how can monitoring and
future modelling/forecasting be conducted accurately? Are additional biological
assessments conducted during the planning phases that address the benthic
invertebrate community?

November 18, 2020 10:49 AM from sroy@matrixnewworld.com to
everyone: Thank you, my thought process is whether or not the data
collected/needed from a BA for OLACP could be provided from studies initiated
earlier on in a project's planning stages. I will follow up with an email in order
to direct the question to the right place. Thank you, again!

November 17, 2020 6:54 PM to Andrew Wilson to everyone: 4. I'm advised that CPRA assisted a private funding source with the Bay Denesse NAWCA project. According to anecdotal sources, the private funding source paid CPRA to acquire/ extinguish certain oyster leases in the project area. Will CPRA no longer do that?

Coastal Protection and Restoration Authority

Oyster Lease Acquisition and Compensation Program:
Recommendations for Improvement

APPENDIX M

STAKEHOLDER EMAIL COMMENTS – PHASE 2,
SOLICITATION OF COMMENTS



Guy McInnis
Parish President

St. Bernard Parish Government

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4227 Fax (504) 278-4330
www.sbp.net

November 23, 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 the parish's economy and has major implications in terms of employment and tax revenue. St. Bernard Parish Government (SBPG) therefore has a direct interest in the sustainability of the commercial oyster harvesting industry. Please accept the below comments regarding the Coastal Protection and Restoration Authority (CPRA) *Oyster Lease Acquisition and Compensation Program: Draft Recommendations for Improvement*.

1. SBPG previously expressed concerns regarding the efficiency of the Oyster Lease Acquisition and Compensation Program (OLACP). 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 a biological assessment ranged from \$25,000 to \$300,000 and the cost of an appraisal ranged from \$17,000 to \$70,000. Consequently, the OLACP seemed to be an inadequate mechanism for fairly and efficiently compensating the high volume of leaseholders who will be impacted by largescale CPRA projects statewide.

The referenced Draft Recommendations for Improvement include a number of measures that would certainly make the OLACP more efficient. However, the CPRA has made it clear that the agency intends to continue: 1) narrowly defining *direct* impacts; 2) maintaining a 150' limit on the *direct impacted area*; and 3) dismissing the adverse effects associated with largescale sediment diversions as *indirect* impacts. Although SBPG understands the legal and regulatory basis for such assertions, the likely outcomes are worth noting: 1) some of the most vulnerable leaseholders in St. Bernard Parish and elsewhere will simply be deemed ineligible for the OLACP and as a result, 2) there may be severe economic consequences. **The recommended improvements therefore fail to address SBPG's overarching concern: how will the CPRA fairly and efficiently compensate leaseholders who are adversely impacted by largescale sediment diversions?**


2. The CPRA states in its draft recommendations that it will begin to “avoid oyster leases in project planning” (ii). However, the agency’s distinction between direct and indirect impacts is critical here. It is irrelevant whether a lease is immediately (directly) impacted by a dredging project or will be adversely impacted over time (indirectly) by the persistent influx of freshwater and sediment. In both instances, the lease will no longer be suitable for oyster cultivation and economic consequences will occur. SBPG understands that implementing a \$50 billion comprehensive master plan will involve impacts to commercial oyster harvesters and other stakeholder groups. The parish also agrees that to the extent possible, the CPRA should avoid oyster leases during project planning. **However, in instances where it is simply not feasible to avoid impacts to oyster leases (i.e., largescale sediment diversions), the CPRA should: 1) publicly acknowledge the magnitude of projected impacts; 2) factor the cost of mitigating such impacts into the overall project benefit-cost analysis; 3) strongly consider less-disruptive project alternatives; and 4) be explicit about how the agency intends on compensating leaseholders and other stakeholder groups for unavoidable impacts.**

3. Finally, SBPG concurs with the comments recently submitted by Mitch Jurisich, chairman of the Louisiana Oyster Task Force (OTF). Historically, directly engaging commercial oyster harvesters has been challenging due to the nature and location of the work they perform. Those working in the industry typically have limited availability to attend meetings in-person or otherwise. However, oyster industry stakeholder groups enjoy broad representation on the OTF, an active and accessible advisory board that conducts public meetings on a regular basis and is eager to engage with the CPRA and other relevant agencies.

Jurisich’s letter cites a statute (La R.S. 56:421) outlining the OTF’s legal obligation to advise the CPRA and other State agencies on matters pertaining to the oyster industry. Aside from the legality of OTF’s advisory role, the CPRA should also have an interest in maintaining ongoing communications with the advisory board for the purpose of gaining valuable industry insight that would otherwise be impossible to ascertain. The CPRA recommendations go into great detail regarding the dynamic nature of the coastal master plan and the uncertainty surrounding restoration projects and their impacts on oyster cultivation (10 & 11). However, the agency concludes this statement by citing La R.S. 56.432.2 and suggesting that going forward, the CPRA should “present as much detail as possible regarding potential impacts to oyster cultivation of planned and possible coastal projects [...] once per year” (11). **SBPG is concerned that the CPRA has not fully engaged the OTF in the OLACP Group Study effort and is generally not communicating with the advisory board frequently enough regarding the potential impacts of coastal restoration projects on oyster cultivation.**

Thank you for your time and consideration.

Sincerely,



Guy McInnis
Parish President



Louisiana Farm Bureau Federation, Inc.

9516 Airline Highway • Baton Rouge, LA 70815 | P.O. Box 95004 • Baton Rouge, LA 70895-9004
O: (225) 922-6200 | lafarmbureau.org

December 3, 2020

TO: Coastal Protection and Restoration Authority

RE: Recommendations for Comment – Coastal Protection and Restoration Authority (CPRA) – Concerning the Oyster Lease Acquisition and Compensation Program (OLACP)

FROM: Louisiana Farm Bureau Federation

The Louisiana Farm Bureau Federation submits the following comments to proposed recommendations from the CPRA concerning the OLACP.

Recommendation 1: Authorize lessees to retain leases upon waiving all OLACP compensation.

Comment: We oppose lessees waiving rights to compensation in order to retain a lease. Oyster leases have a buy-out value. This recommendation requires further explanation and clarification as to how lease value is determined for compensation purposes.

Recommendation 2: Authorize fixed “in lieu of” payments for lease acquisitions.

Comment: We oppose a fixed payment for lease acquisitions. We recommend that a full evaluation process be conducted to determine the true value of a lease.

Recommendation 3: Authorize administrative settlements with or without biological assessments or appraisals.

Comment: We oppose administrative settlements without biological assessments or appraisals. We support a direct impact area determination that a coastal restoration project will have on the oyster lease and a water bottom assessment to characterize the quality of the lease.

Recommendation 4: Authorize waiver valuations (“informal value estimates”) for small-value acquisitions.

Comment: We oppose waiver valuations. All potential acquisitions should receive full evaluations to determine the lease value.

Recommendation 5: Provide zero value for leases incapable of supporting oyster cultivation.

Comment: We oppose a zero value for leases incapable of supporting oyster cultivation. These leases had value when originally established. Due to circumstances beyond the lessees control i.e. coastal restoration projects, the productive ability of the lease has been compromised. These compromised leases should be subject to compensation based on historical production prior to the event resulting in non-productivity. Furthermore, these leases could regain productivity and this potential should be recognized.

Recommendation 6: Reduce the notice period for the oyster component from one year to six months.

Comment: We oppose reducing the notice period for the oyster component from one year to six months. This timeframe is not sufficient and does not recognize conditions being placed on the lessee to comply. Such as labor availability, government regulations prohibiting lessee from entering the lease during quarantines and every day business activities associated with the oyster farming industry. We recommend a minimum of three years to allow lessees time for removal of oysters upon acquisition of a lease by CPRA.

Recommendation 7: Expressly authorize a harvest efficiency determination in the oyster component of compensation.

Comment: We support this recommendation with the inclusion that the number of marketable oysters on a lease be determined by multiplying the number of oysters

present on the water bottom (as determined by a biologist report) by the maximum harvest efficiency ratio of 70%.

Recommendation 8: Avoid oyster leases in project planning.

Comment: We recommend that property rights must be recognized in the coastal planning project process. CPRA must take into account the presence of oyster leases in a coastal project design and avoid areas where oysters are capable of cultivation. The valuation of the oyster lease must be taken into account in the environmental impact determination of a project.

Recommendation 9: Truncate BAs when the biologist concludes leases are incapable of supporting oyster cultivation.

Comment: We oppose cutting short biological assessments when a biologist concludes leases are incapable of supporting oyster cultivation. Complete evaluations must be conducted to confirm the productive capability of a lease. All historical data of an impacted area should be examined including impacts from freshwater diversions.

Recommendation 10: Reduce dive samples from 18 to 9.

Comment: Lease holders should be able to negotiate sampling procedures based on circumstances related to the lease in question furthermore the lease holder or their representative should be present when sampling is conducted.

Recommendation 11: Consider reducing the study area in appropriate situations.

Comment: We oppose reducing the study area of a potential project impacted area. Biological assessments should cover the entire project's potential impacted area. This could impact future expansion of oyster cultivation in an area. All available acres in a potential impacted area should be examined for relocation opportunities.

From: [Kenneth Ragas](#)
To: [Coastal](#)
Subject: OLACP
Date: Friday, December 4, 2020 4:43:29 PM

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Hi,

The state oyster industry will be totally wiped out by the two river diversions. So, why are you asking for input from the public? The people of Plaquemines and St. Bernard parishes oppose the fresh water river diversions.

Take care,

Kenneth Ragas

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

APPENDIX N
COMMUNICATIONS WITH OTF

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



State of Louisiana

JOHN BEL EDWARDS
GOVERNOR

October 26, 2020

Mitchell B. Jurisich, Jr.
Chairman
Oyster Task Force
P.O. Box 82
Empire, LA 70050

Dear Chairman Jurisich,

I am writing in response to your email received Monday, September 28, 2020, inviting “a representative of CPRA to a future LOTF meeting to meet and confer about the OLACP Program before seeking public views and recommendations.” Public views and recommendations had already been solicited at the time of receipt of this letter; however, I appreciate and welcome your invitation to attend a future Oyster Task Force meeting to confer about the OLACP Program.

CPRA is currently drafting recommendations concerning the OLACP and anticipates sharing those draft recommendations with the public on November 6 and subsequently holding public meetings on November 17 and 18. Pursuant to the OLACP statute and to demonstrate CPRA’s commitment to working with the Oyster Task Force, CPRA is available to present the draft recommendations at an Oyster Task Force meeting on November 6, or another date before comments on the draft recommendations are due on December 4, to allow the OTF and its attendees the opportunity to provide feedback on the draft recommendations. Please let me know if a presentation of the draft recommendations at an OTF meeting in this timeframe is of interest to you.

Responding to other statements in your September letter, I would like to clarify that the OLACP is not a part of the Louisiana Oyster Management and Rehabilitation Strategic Plan. Nevertheless, CPRA remains committed to working with the OTF on evaluating the OLACP and considering how the program may be improved.

Executive Division

We also understand the difficulties that COVID-19 has caused with respect to public meetings and adjusting to telephone-based conference call and internet based webinars in lieu of in-person meetings. CPRA has followed all recommended guidelines and emergency procedures for operating during the pandemic in a safe way and we look forward to more in-person meetings in the future. Per your request, attached are the public comments received by CPRA with respect to its ongoing OLACP study.

Sincerely,



Bren Haase
Executive Director
Coastal Protection and Restoration Authority

CC: Chip Kline, Executive Assistant to the Governor for Coastal Activities
Jack Montoucet, Secretary of Louisiana Department of Wildlife and Fisheries

Coastal Protection and Restoration Authority

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

APPENDIX O

MODEL STATE OYSTER LEASE

Oyster Bedding Ground Lease

- OF -



Parish of ASCENSION Lease Register No 137 Folio 53 this 16th of December 2010

Application No 20100504 Taken up by Application No _____

Transferred Date: / / Name _____

Address _____

Transferred Date: / / Name _____

Address _____

Transferred Date: / / Name _____

Address _____

Cancelled / / Reinstated / /

Cancelled / / Reinstated / /

Cancelled / / Reinstated / /

Cancelled / / Reinstated / /

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Recorded in C.O.B. Folio

Recorded in C.O.B. Folio

Entry Number

Entry Number

Parish of on the

Parish of on the

day of

day of

Comments: _____

LEASE OF WATER BOTTOMS FOR OYSTER PURPOSES

STATE OF LOUISIANA, PARISH OF EAST BATON ROUGE
THE DEPARTMENT OF WILDLIFE AND FISHERIES OF LOUISIANA, through its Secretary,
hereinafter referred to as "Lessor," hereby leases unto

_____ of PRAIRIEVILLE, Parish of ASCENSION, hereinafter referred to as
"Lessee," qualified to lease water bottoms for oyster purposes in this State,
in accordance with Application No. 20100504 registered on the 16th day of
December 2010, the oyster bedding ground surveyed by Raymond C. Impastato,
Surveyor, on the 26th day of August 1997, and the plans of survey filed
with this Department on the 16th day of December 2010, located in the Parish of
PLAQUEMINES and described as follows, to wit:

Seven Hundred Thirty-Three (733.00) acre(s) in _____

CONDITIONS

Future Litigation

Lessee hereby acknowledges that pending or future litigation may affect his rights in this lease; and Lessee agrees to hold the Department of Wildlife and Fisheries and/or the Wildlife and Fisheries Commission harmless and assume all risk for any and all impairment of his rights which may occur as a result of any order or judgment of court, including, but not limited to, cancellation or revocation of this lease or a portion of the acreage hereunder, and/or for any loss which may occur as a result thereof.

Coastal Wetlands Restoration Advisory

Lessor hereby formally advises and Lessee acknowledges the following: The State has undertaken, and intends to undertake, a number of coastal restoration projects, including freshwater diversion projects, within the State. The decision to undertake these projects was based upon the need to conserve, restore, create, and enhance coastal wetlands as well as dependent fish and wildlife populations through a number of methods, including the recreation of the historical role of the Mississippi River system, which formerly not only nourished but also established these wetlands prior to the construction of the Mississippi River levee system. Inasmuch as these wetlands continue to disappear at an alarming rate, it is necessary to partially divert the flow of a number of the rivers, streams, canals, bayous, and other water bodies within the State of Louisiana, or to move dredge spoil or conduct other coastal restoration projects to re-establish these wetlands. As a result, it is possible, if not probable, that these coastal restoration projects may have some adverse effect on the waters and water bottoms, as well as on any oysters on some of the State water bottoms leased to oyster fishermen.

The State is obligated pursuant to Article IX, Section I of the Louisiana Constitution as well as the public trust doctrine associated therewith, to undertake these coastal restoration projects so as to protect Louisiana's natural resources for the benefit of the people of the State. Accordingly, pursuant to the Louisiana Constitution and the public trust doctrine, the State as Lessor hereby conveys to Lessee a limited interest in the water bottom which is described in this lease, subject to the conditions that: (1) this lease is subservient to the State's past, present or future coastal restoration projects; (2) the State's coastal restoration projects may cause adverse effects in the area of this lease; and, (3) the State is only issuing this lease based upon the mutual understanding of both the State and Lessee that Lessee's property interest conveyed by this lease shall not include any right whatsoever to make claims against the State as a result of freshwater diversion or any other coastal restoration projects provided that, the State and the United States shall remain responsible for their own (1) acts or omissions which are not reasonably related to the legitimate governmental objective for which the policy-making or discretionary power of the State and/or the United States exists; or (2) acts or omissions which constitute criminal, fraudulent, malicious, outrageous, reckless, or flagrant misconduct.

By executing this lease, Lessee hereby acknowledges that lessee has read the entire contents of this lease and that Lessee is aware that these coastal restoration projects may have adverse effects on the waters and water bottoms, as well as on any oysters located on this oyster lease. Despite awareness of these facts, Lessee still wishes to execute this lease and cultivate the leasehold for the purpose of producing and harvesting oysters. At the same time, the State agrees that immediately following the issuance of each approved annual Coastal Wetlands Conservation and Restoration Plan, the State will make a good faith effort to advise Lessee by regular mail at the last known address given by Lessee if it appears that this lease may be adversely affected by any planned or approved projects contained in that Plan. Further, prior to January 1 of each successive year of this Lease, the State will make a good faith effort to advise Lessee by regular mail at the last known address given by Lessee if it appears that this lease may be adversely affected by any existing projects constructed under the auspices of the aforementioned plan.

Allocation Of Risk and Liability, And Indemnification

Lessee further acknowledges that Lessee has no intent to pursue any claims arising under this oyster lease or any renewal or extension thereof against the State of Louisiana, the Wildlife and Fisheries Commission, the State's departments and agencies, political subdivisions of the state, the United States, and the agency, agent, contractor, or employee thereof, related to or arising out of or resulting from diversions of fresh water or sediment, dredging or direct placement of dredged or other materials, or any other actions taken for the purpose of coastal protection, conservation, or restoration as defined in La. R.S. 56:423.. Further, in consideration of the issuance of this lease, Lessee shall assume all liability and risk of loss, and agrees that this lease is subservient to all past, present or future activities as described above. Lessee also agrees to indemnify and hold the political subdivisions wherein lies the acreage associated with this oyster lease, and any political subdivision which has implemented or may implement an activity as described above affecting this oyster lease as well as the State of Louisiana, the Wildlife and Fisheries Commission, the United States, and any agency, agent, contractor, or employee thereof, harmless from and for, all loss, damage, costs and/or expense in any way associated with this oyster lease and the oysters, cultch, reefs and beds located therein, including any loss, sustained by the Lessee and any affiliated persons or entities working with or through Lessee, arising out of, connected with, incident to, or directly or indirectly resulting from or related to diversion of freshwater or sediment, dredging or direct placement of dredged spoil or other material or any other action taken for the purpose of coastal protection, conservation, or restoration undertaken by the State of Louisiana, the Wildlife and Fisheries Commission, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof. Damages include, but are not limited to, oyster mortality, oyster disease, damaged oyster beds or decreased oyster production, loss of revenue and/or loss of income due to siltation, changes in salinity, pollution or other causes, regardless of the passive, concurrent, active or sole negligence of the State of Louisiana, the Wildlife and Fisheries Commission, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof. and regardless of whether liability without fault, strict liability, absolute liability, or liability for inverse condemnation, liability for a "taking" in violation of the constitutions of the United States or the State is alleged or imposed upon the State of Louisiana, the Wildlife and Fisheries Commission, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof.

VENUE

Any lawsuit in which the Lessor, the Louisiana Wildlife and Fisheries Commission or the State of Louisiana is a party, and which (1) contests the validity of this lease or any of the provisions thereof, (2) asserts any right granted hereunder or related hereto; (3) seeks the performance of any duty imposed herein; (4) arises in any matter out of or in any way connected to this lease or any provision thereof or, (5) states any claim against the State or any agency, officer, department, official, representative or employee of the State under any theory of law, including, but not limited to tort, breach of contract, abuse of or challenge to agency discretion, inverse condemnation, unconstitutional "takings", equity or administrative relief, or any action arising out of or in any way related to damages or losses associated with this lease and/or the oysters, cultch, reefs, water bottoms, water condition, and or beds located therein shall only be maintained in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, except as provided below.

Any lawsuit claiming ownership or title to water bottoms may be brought in any court of competent jurisdiction; provided, however, that any lawsuit claiming ownership or title to this lease wherein the Lessor, the Louisiana Wildlife and Fisheries Commission or the State of Louisiana is a party shall only be maintained in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

OTHER CONDITIONS

This lease is issued in accordance with Act 201 of 1980 which amended and reenacted Section 426 of Title 56 of the Louisiana Revised Statutes relative to the renewal of oyster leases for Louisiana water bottoms.

This lease shall begin on the date hereof and shall expire on January 1st, 2026. The rent shall be Two and No/100 Dollars (\$ 2.00) per acre, or any fraction of an acre, per annum. The receipt of the rent paid in advance at the time of the signing of this lease up to the first day of next January to wit:

The sum of One Thousand Four Hundred Sixty-Six and no/100 Dollars (\$ 1466.00) is herewith acknowledged, and annually thereafter the sum of Two and No/100 Dollars (\$ 2.00) per acre or any fraction of an acre shall be paid in advance, on or before the first day of January in each year until the expiration of this original lease.

This lease is issued and the water bottoms herein leased shall be held subject to the provisions of R.S. 56:421 through 452, both inclusive, and the rules and regulations of the Department as provided in said Act.

This lease is made and accepted subject to any and all changes in the laws of Louisiana or the regulations of the Department of Wildlife and Fisheries of Louisiana, on the subject of the yearly rental, the time and manner of payment, the notice of rental, delinquency, and the mode and manner of forfeiture hereof; and all such changes shall be held and considered as if written into this lease at the time of its signing.

This lease is also subject to Department policies not stipulated by regulations.



Lessee

**STATE OF LOUISIANA
DEPARTMENT OF WILDLIFE
AND FISHERIES OF LOUISIANA**

Thus done and signed in quadruplicate at

New Orleans, Louisiana, this 16th

day of December, 2010

By: Raymond C. Impastato
Oyster Lease Manager
Dept. of Wildlife and Fisheries of Louisiana