BIOLOGICAL OYSTER ASSESSMENT

for

Breton Landbridge Marsh Creation (BS-0038), Plaquemines Parish, LA

Prepared for:

CPRA
Coastal Protection and Restoration Authority of Louisiana

May 15, 2020

Prepared by:

Freese and Nichols Team
PREFACE

This Biological Oyster Assessment was prepared for the Office of Coastal Protection and Restoration Authority of Louisiana (CPRA) in preparation for the Breton Landbridge Marsh Creation Project (BS-0038). The Freese and Nichols Team consisting of ENCOS, POWER Engineers and Freese and Nichols staff worked together to complete the task of assessing the oyster lease within 1,500 feet of the marsh creation project. This document was completed in May 2020 by the Freese and Nichols Team principal investigator, Jude LeDoux. Mr. LeDoux can be contacted at:

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LDNR OLDEB Certified Oyster Biologist
POWER Engineers
301 Main Street, Suite 2200
Baton Rouge, LA 70801
(225) 900-8012
jude.ledoux@powereng.com
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Appendix A Oyster Lease Holder Notification Letter
INTRODUCTION

The Breton Landbridge Marsh Creation Project is located near Delacroix, within the interior marsh in Plaquemines Parish, LA (Figure 1). The goals of the project are to create and nourish back marsh and create a platform upon which native vegetation can grow.

Records maintained by the Louisiana Department of Wildlife and Fisheries (LDWF) depict one oyster lease in the 1,500-foot buffer area around the marsh creation project. The Freese and Nichols Team sampled for oysters on April 21, 2020 on the part of the oyster lease within 1,500 feet of the project area. The lease is number 3375509 and is registered to Anita Cognevich, Maja Thompson, and Matthew Farac, III (Figure 2).

Notification detailing the proposed activity as well as sampling intent as set forth in LAC 43:857(E) was sent to the respective owner/agents on April 1, 2020 (Appendix A).
Project Location
LAT: 29.71157°
LONG: -89.811512°

COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA
BRETON LANDBRIDGE MARSH CREATION

Vicinity Map
Legend
- 1,500 FT Buffer Study Area
- 150 FT Buffer Direct Impact Area
- Breton Landbridge Marsh Creation

1 inch = 625 feet

1,500 FT Buffer Study Area
150 FT Buffer Direct Impact Area
Breton Landbridge Marsh Creation
Oyster Lease Study Area
Oyster Lease #3375509

Coastal Protection and Restoration Authority of Louisiana
Breton Landbridge Marsh Creation
Oyster Lease #3375509

Freese and Nichols, Inc.
900 Camp Street, Suite 305
New Orleans, Louisiana 70130
Phone: 504-479-1065

Date: 5/7/2020
Date Created: 5/4/2020 7:29:23 AM
Path: H:\ENVIRONMENT\Final_Exhibits\Fig2_Oyster Lease.mxd
STUDY AREA

The study area was the part of oyster lease 3375509 within 1,500 feet of the marsh creation project boundary (Figure 2). It does not include the portion of the lease further than 1,500 feet from the marsh creation project boundary. Lease areas within 150 feet of a project boundary would be in the direct impact area of the project. L. 3375509 is outside the direct impact area of the marsh creation boundary. The study area covered 15.7 acres of the 49.6-acre oyster lease.

METHODS

Field sampling and data collection was conducted by ENCOS with assistance from Nina Reins, Freese and Nichols, Inc., and Jude LeDoux, POWER Engineers, who provided quality assurance.

BOTTOM-TYPE ASSESSMENT
A bottom-type assessment was conducted on the portion of the oyster lease within 1,500 feet of the project area. Pre-determined transects, spaced 140 feet apart, were navigated and the bottom was tested with a fabricated pole approximately every 40 feet along the transects. Bottom type could be classified as soft mud, moderately firm mud, firm mud or sand, buried shell, and exposed shell/reef. A SonTek M9 RiverSurveyor upgraded with Hydrosurveyor firmware and interfaced with Hypack computer software collected the bathymetric data. Position on the water was collected with an accuracy of <3.3 feet with an SBAS GPS mounted on the SonTek M9.

OYSTER ASSESSMENT
Two locations were sampled with a 2-foot wide oyster dredge to determine if Eastern Oysters (Crassostrea virginica) were present. The dredge was towed for three minutes at each location. Sample locations were randomly selected outside the 150-foot direct impact buffer and inside the 1,500-foot project buffer based on
the results of the bottom-type assessment. Dredge sample locations are depicted in Figure 3.

Each dredge tow was photographed upon completion. All material collected was placed in a container for processing. Samples were immediately photographed and processed at the sample sites. Recent mortality was defined as the absence of internal fouling organisms and/or the presence of oyster remains. Every attempt is made to pair dead valves to comprise a dead box; however, when no opposing valve is located, the single dead valve is recorded. Recent mortality estimates are obtained by adding the total number of dead boxes and valves. Exposed and buried shell color was noted and recorded for each sample location. The relative abundance of other organisms present (none/light/medium/heavy) and shell coloration was also recorded.

BATHYMETRY
Water depths were measured simultaneously with the bottom-type assessment. Bathymetric data were corrected to mean low water (MLW) from the National Oceanic Atmospheric Administration (NOAA) tide station, 8761305, located at Shell Beach, Louisiana.

WATER QUALITY
Top and bottom water temperature (°C) and salinity (ppt) were measured in the study area with a calibrated YSI ProDss water quality meter.

RESULTS

BOTTOM-TYPE ASSESSMENT
Soft mud, moderately firm mud, and buried shell (Table 1) were the bottom types observed in the study area (Figure 3). There were no reefs or areas of exposed shell detected within the study area. Water depths ranged from -3.5 to -5.0 feet MLW (Figure 4).
Bottom Type Categories

Legend

- **Dredge Coordinates**
- **Dredge Transsects**
- **1,500 FT Buffer Study Area**
- **150 FT Buffer Direct Impact Area**
- **Breton Landbridge Marsh Creation**

**Bottom Type Categories**

- Soft Mud
- Moderately Firm Mud
- Buried Shells

**Coastal Protection and Restoration Authority of Louisiana**

**Breton Landbridge Marsh Creation**

**Legend**

- **Dredge Coordinates**
- **Dredge Transsects**
- **1,500 FT Buffer Study Area**
- **150 FT Buffer Direct Impact Area**
- **Breton Landbridge Marsh Creation**

**Bottom Type Categories**

- Soft Mud
- Moderately Firm Mud
- Buried Shells
Breton Landbridge Marsh Creation

1,500 FT Buffer Study Area
150 FT Buffer Direct Impact Area
Oyster Lease Study Area
Oyster Lease #3375509

Legend
- 1,500 FT Buffer Study Area
- 150 FT Buffer Direct Impact Area
- Breton Landbridge Marsh Creation
- Contours (feet)
  - -3.25'
  - -4'
  - -4.5'
  - -5'

INSET MAP OF STUDY AREA

1 inch = 400 feet

FREESE AND NICHOLS, INC.
900 CAMF STREET, SUITE 105
NEW ORLEANS, LOUISIANA 70113
PHONE: 504-478-1065

COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA
BRETON LANDBRIDGE MARSH CREATION
Bathymetry

FIGURE 4
Table 1. Study Area Acreage

<table>
<thead>
<tr>
<th>Bottom Type</th>
<th>Study Area Acreage</th>
<th>Direct Impact Area Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soft Mud</td>
<td>0.38</td>
<td>0.00</td>
</tr>
<tr>
<td>Moderately Firm Mud</td>
<td>13.43</td>
<td>0.00</td>
</tr>
<tr>
<td>Firm Mud / Sand</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Buried Shell</td>
<td>1.96</td>
<td>0.00</td>
</tr>
<tr>
<td>Exposed Shell / Reef</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>15.77</strong></td>
<td><strong>0.00</strong></td>
</tr>
</tbody>
</table>

OYSTER ASSESSMENT

Live or recently dead oysters were not observed or collected in the two dredge samples. Past dead oyster shell was observed in Dredge Sample 1 but not in Dredge Sample 2. *Rangia spp.* shells were numerous in both samples (Figures 5-8).

There was no exposed shell or reef bottom type area identified during the bottom type assessment, therefore, no quantitative dive sampling was conducted. There were no marketable or potentially marketable oysters located or observed within the project area, therefore no sack count calculations were conducted.
Figure 5. Lease 3375509 Dredge 1. Immediately after completion of dredge tow (Staff Photo April 21, 2020)

Figure 6: Lease 3375509 Dredge 1. Sample located in container for processing. (Staff Photo April 21, 2020)
Figure 7: Lease 3375509 Dredge 2. Immediately after completion of Dredge Tow. (Staff Photo April 21, 2020)

Figure 8: Lease 3375509 Dredge 2. Sample located in container for processing. (Staff Photo April 21, 2020)
Table 2. Organisms in Dredge Samples and Shell Coloration.

<table>
<thead>
<tr>
<th>Organism</th>
<th>Sample 1</th>
<th>Sample 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mud Crab*</td>
<td>Light</td>
<td>None</td>
</tr>
<tr>
<td>Hooked Mussel*</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Acorn Barnacle*</td>
<td>Light</td>
<td>Light</td>
</tr>
<tr>
<td>Oyster Drill (<em>Stramonita. haemostoma</em>)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gulf Toadfish (<em>Opsanus beta</em>)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Shell Coloration (Percent black)</td>
<td>90% Brown</td>
<td>95% Brown</td>
</tr>
<tr>
<td></td>
<td>10% Black</td>
<td>5% Black</td>
</tr>
</tbody>
</table>

*Actual number of individuals was not counted

WATER QUALITY

Surface and bottom salinity was 0.3 ppt in all measurements. Surface temperature ranged from 23.8 to 25.6 °C and averaged 24.7 °C. Bottom temperature ranged from 23.5 to 23.8 °C and averaged 23.6 °C.
APPENDIX A

OYSTER LEASE HOLDER INFORMATION
April 1, 2020

Return Receipt Requested
Anita Cognevich, Maja Thompson
and Matthew Farac, Ill
102 Sherwood Dr.
Belle Chasse, LA 70037

Re: Notice of Survey for oyster lease number 3375509

To Whom It May Concern,

The State of Louisiana Coastal Protection and Restoration Authority (CPRA) has determined that oyster lease number 3375509 may, in whole or in part, be located within the direct impact area of a coastal protection, conservation or restoration project. You have been identified as the owner or interest holder of the potentially affected lease or lease acreage through records maintained by the Department of Wildlife and Fisheries. A map of the project, including project features and potentially impacted leases, is included.

The Breton Landbridge Marsh Creation Project, BS-0038 is located in Plaquemines Parish, on the western bank of Lake John and south of Petit Lake. CPRA believes that the proposed project is consistent with the State’s overall coastal protection, conservation and restoration efforts. As such, we believe that any oyster leases impacted by this project may be subject to acquisition under the Oyster Lease Acquisition and Compensation Program (OLACP) created under that act.

An oyster resource survey of the potentially affected leases or lease acreage will be conducted, consistent with the guidelines set forth in LAC 43:VII:307, beginning on April 15, 2020 and continuing through May 15, 2020 between the hours of 9 A.M. and 4 P.M. by the following person:

David Buzan.
Project Manager
Freese and Nichols, Inc.
10431 Morado Circle
Austin, TX 78759
(512) 617-3164

You or your designee may accompany the person conducting the oyster resource survey during the process. If you wish to be notified of the date and time when this lease will be surveyed and/or sampled, please provide a contact number to the above referenced individual. Should the aforementioned dates or time for conducting the oyster resource survey change, you will be notified by appropriate and reasonable means.

Subsequent to conducting the oyster resource survey, CPRA may acquire the potentially affected lease or lease acreage pursuant to the Oyster Lease Acquisition and Compensation Program (OLACP) as set forth in LSA-R.S. 56:432.1. As the leaseholder, you will be compensated consistent with guidelines set forth in LSA-R.S. 56:432.1 in the event your lease or lease acreage is acquired by CPRA. Accordingly,
you may provide CPRA, through the contact person listed below, 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. Failure to provide such data or information within the specified period may preclude consideration of such data by CPRA, the person conducting the oyster resource survey, or the appointed appraiser.

However, pursuant to LSA-R.S. 56:424(I), “the state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee of any of these entities, shall not be subject to any obligation, responsibility, or liability in relation to or resulting from 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 in R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.”

Any questions or concerns regarding the project and the potentially affected lease or lease acreage should be directed to the following CPRA representative:

Chuck Sawyer
CPRA Land Specialist
150 Terrace Avenue
Baton Rouge, LA, 70802-4027
(225) 342-7329

We have attached all referenced statutes and regulations for your convenience.

Thank you in advance for your cooperation in this regard.

Sincerely,

Chuck Sawyer
CPRA Land Specialist
OLACP

Cc: David Buzan, F & N
Nina Reins, F & N
Marc Maniscalco, LDWF
The area shaded on the western side of Lease # 3375509 will have an Oyster Assessment conducted. This area falls within the 1,500' buffer area. There will not be any need for any type of acquisition.
Oyster Bedding Ground Lease

- OF -

ESTATE OF M. J. FARAC, JR.
102 SHERWOOD DRIVE
BELLE CHASSE, LA 70037

Parish of PLAQUEMINES Lease Register No 132 Folio 163 this 29th of December 2008

Application No 20080614 Taken up by Application No

Transferred Date: 1/3/07 Name: Andrae Thompson Matthew, Exec
Address: 102 Thompson Dr. Belle Chase, LA 70037

Transferred Date: 1/3/07 Name: Andrae Thompson, Exec
Address: 102 Thompson Dr. Belle Chase, LA 70037

Transferred Date: / / __ Name: __________
Address: __________

Cancelled / / / Reinstated / / / Cancelled / / / Reinstated / / /
Cancelled / / / Reinstated / / / Cancelled / / / Reinstated / / /
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Recorded in C.O.B. 1205 Folio 551
Entry Number 2007-000 2507
Parish of PLAQUEMINES on the 15th day of June 2007

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

ESTATE OF M. J. FARAC, JR.
of BELLE CHASSE , Parish of PLAQUEMINES , hereinafter referred to as "Lesse," qualified to lease water bottoms for oyster purposes in this State,
in accordance with Application No. 20080164 , registered on the 29th day of December 2008 , the oyster bedding ground surveyed by Raymond C. Impastato, Surveyor, on the 28th day of June 1999 , and the plans of survey filed with this Department on the 29th day of December 2008 , located in the Parish of PLAQUEMINES and described as follows, to wit:

Fifty (50.00) acre(s) in PETIT LAKE

CONDITIONS

Future Litigation

Lessor hereby acknowledges that pending or future litigation may affect his rights in this lease; and Lessor 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 Lessee 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, cutch, 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 stranding, 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. Resurvey and plan are required and will be made subsequent to the beginning date of any renewal of this lease.

This lease shall begin on the date hereof and shall expire on January 1st, 2024. 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 Hundred and no/100 Dollars ($100.00) 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.

STATE OF LOUISIANA
DEPARTMENT OF WILDLIFE
AND FISHERIES OF LOUISIANA

[Signature]
Lease

[Signature]
Chief Surveyor

Thus done and signed in quadruplicate at

Baton Rouge, Louisiana, this 29th day of December, 2008.

[Signature]
Biologist Program Manager
Dept. of Wildlife and Fisheries of Louisiana
II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed rule changes as a result of Acts 70 and 280 of the 2017 Regular Session may likely result in an indeterminable increase in SGR as a result of offenders being released into parole supervision. For each offender that is released to parole at a date earlier than that allowed by previous law, the DPS&C could collect up to $63 per month from each offender under parole supervision. The maximum amount paid per month is $63. The offender’s ability to pay is determined by the committee on parole. While the number of individuals under parole supervision is likely to increase in the short term, the Louisiana Justice Reinvestment Task Force Report dated March 26, 2017, estimates material reductions by 2027, which predicts a decrease in revenues at some unspecified point in the future.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is likely an economic benefit for released offenders as they reenter the workforce and earn wages. This assumes individuals who are released have adequate skills and are able to obtain and maintain gainful employment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes should result in an increase in the number of former offenders being granted the capacity to reenter the workforce and earn wages. The capacity of these individuals to secure gainful employment and the capacity of the labor market to absorb the potential extra workforce is unknown.

NOTICE OF INTENT
Office of the Governor
Coastal Protection and Restoration Authority
Oyster Lease Acquisition and Compensation Program (LAC 43:1.851)

Pursuant to R.S. 56:432.1, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Director of the Louisiana Coastal Protection and Restoration Authority gives notice that rulemaking procedures have been initiated to amend the below Chapter to clarify provisions of the Oyster Lease Acquisition Compensation Program ("OLACP"). The purpose of this amendment is to clarify language and add a definition regarding the "harvest efficiency ratio", which is used pursuant to the directive in R.S. 56:432.1 for the Coastal Protection and Restoration Authority ("CPRRA") to determine the amount of compensation for oyster leases acquired by the State of Louisiana for coastal protection and restoration projects. The amendment also seeks to make editorial changes that accurately reflect the agency responsible for administering the OLACP, which has changed from the Louisiana Department of Natural Resources to the CPRRA pursuant to Acts 2009, No. 523.

Neither purpose of the amendment will change any current policies, practices or methods of such lease acquisition compensation or of the OLACP. This program will continue to benefit coastal restoration efforts in Louisiana while sufficiently paying oyster lease holders for the acquisition of any oyster lease acquired through the program.

Title 43
NATURAL RESOURCES
Part VII. Coastal Protection, Conservation, and Restoration
Chapter 3. Oyster Lease Acquisition and Compensation Program

§301. Purpose and Authority
[Formerly LAC 43:1.851]
A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the authority when necessary for purposes of coastal protection, conservation, or restoration. The authority 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 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 authority under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006), promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 41:2610 (December 2015), amended LR 44:

§303. Construction and Usage
[Formerly LAC 43:1.853]
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
to R.S. 39:1551, 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
donducting oyster lease surveys and studying oyster crop
analyses.
b. Samples should be taken at a minimum within the
area of a potentially affected lease delineated by the
executive director as the potential impact area of the project
for which the oyster resource survey is being conducted.
c. - d.
.f. An original copy of the written assessment shall
be provided to and retained by the authority, which may use
it in accordance with the appraisal and valuation procedures
set forth in these regulations. A copy will be provided to the
lessee upon written request by the lessee to the
authority.

AUTHORITY NOTE: Promulgated in accordance with R.S.
HISTORICAL NOTE: Promulgated by the Department of
Natural Resources, Office of the Secretary, LR 32:2091 (November
2006), reprinted by the Office of the Governor, Coastal
Protection and Restoration Authority LR 41:2611 (December
2015), amended LR 44.
§311. Determination of Compensation
[Formerly LAC 43:1.861]
A. The executive director shall determine the
compensation for any affected acreage to be acquired as
follows.
1. If the authority provides a time period of one year or
more between issuance of a notice of acquisition pursuant
to §313 of this Part 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 executive director in accordance with §309 of this Part.
2. If the authority provides a time period of less than
one year between issuance of a notice of acquisition pursuant
to §313 of this Part 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 executive director in accordance with §309 of this Part plus
the value of the harvestable marketable oysters on the
affected acreage, if any, as determined by the authority based upon
the harvest efficiency ratio and other reasonably
confirmable data. The number of harvestable marketable
oysters on affected acreage shall be calculated by
multiplying the harvest efficiency ratio by the number of
marketable oysters on the affected acreage as determined in
the oyster resource survey conducted in accordance with
§307 of this Part. The number of marketable oysters on the
affected acreage shall be determined taking into account the
number of sacks of marketable oysters per acre, suitable
acreage, and natural mortality. The compensation to be paid
for harvestable marketable oysters on affected acreage shall be
the number of harvestable marketable oysters on the
affected acreage multiplied by the current statewide average
market price, and subtracting the harvest cost.
3. Data for estimation of the value of harvestable
marketable oysters shall be determined from the written
assessment derived from the oyster resource survey
conducted in accordance with §307 of this Part. The
authority may also take into consideration any reasonably
confirmable data or information supplied timely by any
person in accordance with §307 of this Part.
4. The appraiser and the authority shall consider any
reasonably confirmable data or other information supplied to
the authority by the lessee following the oyster
resource survey conducted in accordance with §307 of this
Part. The authority or the appraiser may disregard any
information or data not submitted timely pursuant to §307 of
this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S.
HISTORICAL NOTE: Promulgated by the Department of
Natural Resources, Office of the Secretary, LR 32:2091 (November
2006), reprinted by the Office of the Governor, Coastal
Protection and Restoration Authority LR 41:2611 (December
2015), amended LR 44.
§309. Appraisal
[Formerly LAC 43:1.859]
A. The executive director 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 executive director 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 executive director
shall obtain an appraisal of the affected lease or affected
acreage.
C. When the executive director 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. the appraiser shall be selected from a list of
    qualified appraisers maintained by the authority;
2. the appraiser shall be experienced in the field of
    appraisal 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 of professional experience
conducting real property appraisals.
D. ... 
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
authority, which may use them pursuant to the procedures set
forth in these regulations. A copy will be provided to the
lessee upon written request by the lessee to the
authority.
E. If the authority attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §313.C of this Part, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the authority 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 authority 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 authority 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 authority, upon request of the leaseholder 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 executive director.

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 authority 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. 

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 executive director of CPRA 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 the executive director of CPRA, the secretary of DWF, 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 executive director of CPRA, 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 executive director to engage in or perform any project or other action for coastal protection, conservation, or restoration or any oyster resource survey, appraisal, or valuation.


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), amended LR 44:

§315. Administrative Review
[Formerly LAC 43:1.865]

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 authority.

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 authority 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 authority 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 authority at the following address: Coastal Protection and Restoration Authority, Executive Director, P.O. Box 44027, Baton Rouge, LA 70804-4027.

1. A written request for adjudication under this Section must be received by the authority 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 authority 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 of this Part, 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

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§319. Reimbursement of Costs of Acquisition
[Formerly LAC 43:1.869]

A. The authority may acquire any acreage under this Subchapter in relation to any 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 authority acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the authority, such entity shall compensate the authority for all costs incurred by the authority, 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 authority personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The executive director may choose, at his sole discretion, to waive any part or all of the compensation that would otherwise be required under this Section. No person or entity shall have any right to such waiver, and the executive director 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.


HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006), promulgated by the Office of the Governor, Coastal Protection and Restoration Authority LR 41:2616 (December 2015), amended LR 44.

Family Impact Statement
The proposed amendment has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement
The proposed amendment has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis
The proposed amendment will have no adverse impact on small businesses as described in R.S. 49:965.5.

Provider Impact Statement
The proposed amendment has no known impact on providers as described in HCR 170 of 2014.

Public Comments
All interested persons are invited to submit written comments on the proposed amendment. Persons commenting should reference the proposed Rule by using the term Oyster Lease Acquisition Compensation Program. Such comments must be received no later than December 11, 2017, at 4:30 p.m., and should be sent to the Louisiana Coastal Protection and Restoration Authority, TBD.

Michael Ellis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Oyster Lease Acquisition
and Compensation Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in costs or savings to state or local governmental units. The proposed rule change seeks to clarify and codify existing practice and certain terms concerning the determination of compensation for the acquisition of oyster lease acreage. The change maintains the same level of compensation that has been paid for more than a decade for the acquisition of state-issued oyster lease acreage for coastal protection and restoration projects.

The proposed rule change adds a definition regarding the “harvest efficiency ratio”, which is used pursuant to the directive in La. R.S. 56:432.1 for the Coastal Protection and Restoration Authority (“CPRA”) to determine the amount of compensation for oyster leases acquired by the State of Louisiana for coastal protection and restoration projects.

The proposed rule change makes clarifying changes that accurately reflect the agency responsible for administering the Oyster Lease Acquisition Compensation Program (OLACP). Pursuant to Act 523 of 2005, responsibility for the OLACP changed from the Louisiana Department of Natural Resources to CPRA. The proposed rule change does not change any current policies, practices, or methods of such lease acquisition compensation or of the OLACP. This program will continue to benefit coastal restoration efforts in Louisiana while sufficiently paying oyster lease holders for the acquisition of any oyster lease acquired through the program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change. The proposed rule change more precisely defines the methodology already in use to compensate oyster lease-holders by defining the harvest efficiency ratio. This ratio is used to determine the value of compensable marketable oysters on an oyster lease, which is limited to those capable of being harvested, when less than one year’s notice of acquisition of the lease pursuant to La. R.S. 56:432.1 is provided. The proposed rule change sets the harvest efficiency ratio at 70 percent of the compensable marketable oysters on an acquired lease. This methodology and ratio amount have been applied and calculated in this manner since the inception of the program; therefore, there is no anticipated increase or decrease in costs or benefits to the oyster lessors.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no effect on competition and employment because this proposed rule change clarifies certain terms concerning the determination of compensation for the acquisition of oyster leases. The agency intends to maintain the same level of compensation it has always paid and accrued for the acquisition of oyster leases as required and authorized by La. R.S 56:432.1.

Michael Ellis
Executive Director
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Evan Brascaux
Staff Director
Legislative Fiscal Office

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Louisiana Register Vol. 43, No. 11 November 20, 2017
§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 lesseeholder 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 lesseeholder. 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 lesseeholder. 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 lesseeholder 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 lesseeholder 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 lesseeholder 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 lesseeholder 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 lesseeholder 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 lesseeholder 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 lesseeholder 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.

RS 56:424

§424. Taking of oysters

A.(1) No person shall take oysters from any of the waters of the state or have such oysters in possession except in accordance with rules and regulations promulgated by the commission. For the purpose of this Subpart, all oysters in possession of any person in the state shall be deemed to be oysters taken from the waters of the state. Except as otherwise provided herein, the taking of oysters is prohibited in the water bottoms of the state of Louisiana.

(2) No person, except a Louisiana resident sixteen years of age or under, and except the spouse of a vessel's owner while on that vessel, shall harvest oysters unless he possesses a valid oyster harvesting license.

B. An oyster lessee may work on his private oyster lease, or he may designate an agent to harvest oysters on his lease with written permission, which shall be carried on the boat and subject to inspection. Such written permission shall specify a starting date and a termination date during which period the written permission will be valid.

C. Recreational oyster fishermen may harvest oysters in leased areas with the written permission from the lease holder, in personal leased areas, and in areas open to the public for the harvesting of oysters, but shall be limited to two sacks per person per day.

D. Except as otherwise provided herein, violation of any of the provisions of this Section constitutes a class four violation. Any person, common carrier, or any agent or officer thereof, who violates any of the provisions of this Section shall at the time of arrest surrender all permits or licenses held by the vessel. The captain, person, agent, officer, crew, or members thereof by whom or under whose direction the vessel was used in the illegal taking of oysters may be charged with a violation and may be ordered to pay all costs of prosecution.

E.(1) No person shall harvest, possess, sell, barter, trade, purchase, or exchange or attempt to sell, barter, trade, or exchange oysters in the state of Louisiana or in interstate commerce unless such oysters are taken from areas approved by the state health officer in accordance with R.S. 40:5.3. Unless otherwise permitted by the Department of Wildlife and Fisheries, when any vessel is found to be harvesting within an unapproved or closed area, all oysters on board the vessel shall be deemed to have been taken from unapproved or closed waters and shall be deemed to constitute a hazard to the safety, health, and welfare of the citizens of the state. In addition, no oysters taken from sources outside of Louisiana shall be sold in Louisiana, unless taken from areas approved by the state authorities having jurisdiction, and unless secured from oyster dealers whose state certifications have been endorsed by the United States Food and Drug Administration Public Health Services for interstate shipment. All oysters found in violation of this Paragraph shall be seized and ordered returned to the water. Any violation of this Paragraph shall constitute a class six violation under the provisions of R.S. 56:36.

(2)(a) In addition to all other penalties provided in this Section, for the first violation of this Subsection the oyster harvester's license under which the violation occurred shall be revoked by the department and no new such license shall be issued for one year from the date of the conviction. In addition, the violator shall be sentenced to perform no less than forty hours of community service. If available, the hours shall be served in a litter abatement community service program. During the period in which the violator is prohibited from possession of an oyster harvester license for a first offense, the violator may be present on a vessel harvesting or processing oysters only if that vessel is equipped with and is actively using a vessel monitoring system as prescribed in R.S. 56:424.1.

(b) For a second violation of this Subsection, the violator's oyster harvester license shall be revoked, and no new such license shall be issued for three years from the date of conviction. In
addition, the violator shall be sentenced to perform no less than ninety hours of community service. If available, the hours shall be served in a litter abatement community service program. During the period in which the violator is prohibited from possession of an oyster harvester license for a second violation, the violator shall not be present on a vessel harvesting or processing oysters.

  (c) For a third or subsequent violation of this Subsection, the violator's oyster harvester license shall be revoked, and no new such license shall be issued for ten years from the date of the third or subsequent conviction. In addition, the violator shall be sentenced to perform no less than one hundred twenty hours of community service. If available, the hours shall be served in a litter abatement community service program. During the period in which the violator is prohibited from possession of an oyster harvester license for a third or subsequent violation, the violator shall not be present on a vessel harvesting or processing oysters.

  F.(1) The act of culling oysters, which is the act of discarding undersized oysters or dead shell, shall be performed only on the open state designated public grounds or leases on which the fisherman is authorized to take oysters. At no time will the act of culling oysters be permitted in areas closed to harvesting oysters.

  (2) The provisions of Paragraph (1) of this Subsection notwithstanding, the secretary may grant permits for culling and oyster harvesting to those individuals involved in molluscan deputation operations and container relaying operations on a case-by-case basis, provided that the individuals conducting such operations have fully complied with the rules and regulations of the office of public health and have been issued a permit by that office to conduct such operations.

  (3) Violation of any of the provisions of this Subsection constitutes a class three violation.

  G.(1) Except as otherwise provided in this Subpart, all oysters taken from the reefs of this state either for sale or consumption shall be landed in Louisiana, properly sacked or containerized and tagged in accordance with the provisions of R.S. 56:449, and the severance tax levied in R.S. 56:446 paid thereon; however, a lessee legally harvesting oysters which have been properly tagged from his own lease may land those oysters outside the state under a permit issued pursuant to rules and regulations promulgated by the department. Any fees proposed in said rules shall not exceed one hundred dollars.

  (2) Any person who obtains a permit to land oysters outside the state under the provisions of this Subsection shall be required to install and use a vessel monitoring system on each vessel that will be used to transport oysters taken in Louisiana waters to another state for landing. Access to the monitoring system shall be granted to the Department of Wildlife and Fisheries. The department shall promulgate rules and regulations necessary to implement the provisions of this Paragraph.

  H. Notwithstanding the provisions of this Section, employees or assigns of the Coastal Protection and Restoration Authority may survey or remove, as a sample, oysters from an oyster lease on state water bottoms in order to make determinations in matters of integrated coastal protection. In order to make such surveys or take such samples, the employees or assigns of the Coastal Protection and Restoration Authority shall first notify the leaseholder in writing of the date and time of the survey or sample at least fifteen days prior to the survey or sampling date. This notification shall be sent by certified mail to the leaseholder at the address on file with the Department of Wildlife and Fisheries. The leaseholder may accompany the person conducting the survey or taking the sample during the survey or sampling or may authorize another person to accompany the person conducting the survey or taking the sample. Such surveys shall be conducted in the manner provided in procedures promulgated by the Coastal Protection and Restoration Authority after consideration of recommendations by the Louisiana Oyster Task Force.

  I. The state of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee of any of these entities, shall not be 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 lessee 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 in R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.