

LOUISIANA COASTAL LAW

LCL 97, JUNE 2016



BP MACONDO SETTLEMENT: THE POTENTIAL FOR ENVIRONMENTAL CHANGE

BY STEPHANIE LOTT & JOBY RICHARD

On July 2, 2015, the U.S. Department of Justice announced that there was a forthcoming settlement between the parties in the *Deepwater Horizon* Oil Spill Disaster litigation. The details of the settlement were released on October 5, 2015, and the public comment period closed on December 4, 2015. The consent decree was entered on April 4, 2016. The settlement totals approximately \$20.8 billion and contains several components, each of which will be distributed in different ways to affected states, parishes and counties, local governments, and federal offices. The four components that will be covered in this article are:

- A. Clean Water Act Civil Penalties: \$5.5 billion;
- B. Economic Damages: \$5.9 billion;
- C. Natural Resource Damages: \$8.1 billion, with up to an additional \$700 million to address unknown conditions and adaptive management and an additional \$350 million for assessment and data management costs; and
- D. Response and removal reimbursement and other costs: \$250 million.

A. Clean Water Act Civil Penalties and the RESTORE Act

The U.S. Congress passed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) on June 29, 2012, and President Obama signed the Act into law on July 6, 2012.¹ The RESTORE Act provides for the allocation of all civil penalties for violations of the Clean Water Act, which the Gulf Coast Restoration Trust Fund (Restoration Trust Fund) will administer.² The civil penalties amount to \$5.5 billion.³ Twenty percent of the penalties will go into the Oil Spill Liability Trust Fund

(OSLTF), which was set up in 1990 under the Oil Pollution Act.⁴ The Restoration Trust Fund will receive the remaining 80% (approximately \$4.4 billion).⁵ The Restoration Trust Fund will be invested and generate interest.⁶ The money from the Restoration Trust Fund will be allocated to states, parishes, counties, and grant programs aimed at ecological and economic restoration of the Gulf Coast through five allocation components:⁷

- 1) The Direct Component, which will provide funds directly to the affected states, counties, and parishes;
- 2) The Comprehensive Plan Component, which will provide funding for projects aimed at restoring and protecting the natural resources of the Gulf Coast;
- 3) The Spill Impact Component, which will provide funds “for projects, programs, and activities that will improve the ecosystems and economy of the Gulf Coast region;”
- 4) The National Oceanic and Atmospheric Administration (NOAA) RESTORE Act Science Program, which will use funds to conduct research and monitoring of the ecosystems and the recreational, commercial, and charter fishing industry in the Gulf of Mexico; and
- 5) The Centers of Excellence, which will provide grants to nongovernmental entities to study and

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monitor the ecosystems, sustainability, and restoration of the Gulf Coast.⁸

1) Direct Component

The Direct Component will be administered by the U.S. Treasury Department and may be used by the states, counties, and parishes to restore and mitigate damage to natural resources, ecosystems, and wildlife; develop the workforce; fund infrastructure projects benefitting economic resources; improve coastal flood protection; and promote tourism.⁹ Thirty-five percent of the monies in the Restoration Trust Fund will finance the Direct Component.¹⁰ Each state – Florida, Alabama, Mississippi, Louisiana, and Texas – will receive seven percent of the money available.¹¹ The amounts distributed to Florida and Louisiana will be allocated even further.¹² The eight Florida counties that were disproportionately affected by the spill will get 75% of the Florida Direct Component funds, and the 15 non-disproportionately affected counties will receive 25% of those funds.¹³

The Louisiana allocation is even more detailed. Louisiana will award 70% of the Direct Component funds it receives to the Coastal Protection and Restoration Authority of Louisiana (CPRA).¹⁴ The remaining 30% of the Louisiana Direct Component funds will go to the affected coastal zone parishes.¹⁵ The amount each parish receives is determined by a formula based on the weighted average of miles of the parish shoreline oiled (40%), the weighted average of the population of the parish (40%), and the weighted average of the land mass of the parish (20%).¹⁶ The CPRA has estimated that the total amount Louisiana will receive in Direct Component funds from the BP settlement and the previous Transocean settlement will be approximately \$364 million, \$254.8 million of which will go to the State, and \$109.2 million of which will go to the affected parishes.¹⁷ The CPRA has approved the first implementation plan for state and parish projects, funded in part by Direct Component Funds, including the Houma Navigation Canal Lock and the Calcasieu Ship Channel Salinity Control Measures.¹⁸

2) Comprehensive Plan Component

The RESTORE Act created the Gulf Coast Ecosystem Restoration Council (Restoration Council) to oversee the Comprehensive Plan Component (natural resource restoration) and the Spill Impact Component (ecosystems and economies, discussed below).¹⁹ The Restoration Council will be made up of federal members, including different federal cabinet secretaries and agency heads, and the governors of the five affected states.²⁰

The Restoration Council will administer the

Comprehensive Plan Component, using 30% of the Restoration Trust Fund monies plus 50% of the interest the Trust Fund generates.²¹ The Council will develop a Comprehensive Plan to restore and protect natural resources.²² The Council may award grants to projects and programs that target restoration and protection.²³ The CPRA estimates that Louisiana will receive \$1.56 billion under this portion of the settlement from the BP settlement and the prior Transocean settlement.²⁴ The CPRA has submitted project plans to restore West Grand Terre Beach in Jefferson Parish and the Biloxi Marsh in St. Bernard Parish, among other proposed plans.²⁵

3) Gulf RESTORE Program: Spill Impact Component

The Restoration Council will administer the 30% of the Restoration Trust Fund that is allocated to the Spill Impact Component.²⁶ Each Gulf Coast state will submit a State Expenditure Plan to the Restoration Council detailing the activities that will receive funding.²⁷ The Spill Impact Component projects and programs must be designed to improve the economy and ecosystems of the affected states' coastlines.²⁸ The funds will be disbursed according to the Council's weighted formula based on shoreline oiled, the inverse proportion of the average distance of the *Deepwater Horizon* rig to the nearest and farthest points of shoreline oiled, and the average population of coastal counties or parishes.²⁹ Each state will receive at least five percent of the Spill Impact Component funds made available each fiscal year.³⁰ The CPRA will administer the Restoration Trust Fund monies Louisiana receives, which the agency estimates will be \$539.6 million from this component of the BP settlement and the Transocean settlement.³¹

4) NOAA RESTORE Act Science Program

The NOAA Science Program will receive 2.5% of the funds in the Restoration Trust Fund and 25% of the interest earned by the Fund's investments.³² The function of the Science Program is "to carry out research, observation, and monitoring to support ... the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational,

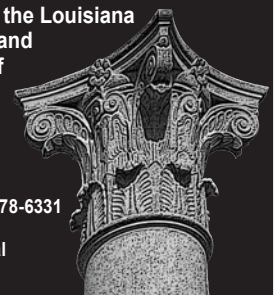
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commercial, and charter fishing industries in the Gulf of Mexico.”³³

5) Centers for Excellence Research Grants

The Gulf States will receive 2.5% of the Restoration Trust Fund monies plus 25% of the Trust Fund interest in equal shares for the purpose of establishing Centers of Excellence for conducting research on the Gulf Coast Region.³⁴ The Water Institute of the Gulf was selected to serve as Louisiana’s Center for Excellence.³⁵ As of October 1, 2015, Louisiana had received \$4,111,715 for the Center for Excellence.³⁶

B. Economic Damages

A total of \$5.9 billion will be awarded to settle claims by state and local governments for economic damages to the environment and tourism and fishing industries across all five Gulf States.

1) Florida: \$2 billion

Florida received \$2 billion for economic damages, the largest amount among all Gulf States.³⁷ Seventy-five percent of the economic damages will go to the nonprofit corporation Triumph Gulf Coast, Inc., which was set up by the Legislature in 2013. The corporation will distribute the economic damages award over a 30-year period. The remaining 25% will be distributed by the Legislature.³⁸

2) Mississippi: \$750 million

Mississippi received \$750 million for economic damages. This amount will be paid to the state over 17 years, with the first payment of \$150 million in 2016. After the first payment, the remainder will be divided into \$40 million payments from 2019-2033. The Mississippi Legislature will appropriate the funds.³⁹

3) Texas: \$150 million

Texas made several claims related to tourist spending, citing reduced hotel occupancy and fewer sales, impacting tax collection.⁴⁰ Texas also made several claims related to natural habitat impacts, including reduced revenues at state parks and impacts to habitats and wildlife.⁴¹ Texas was awarded \$150 million, the least amount for economic damages in the settlement.

4) Alabama: \$1 billion

Alabama received \$1 billion for economic damages, which will be paid in installments averaging \$55.5 million per year over 18 years.⁴² These payments will be available

to the state’s general fund.⁴³

5) Louisiana: \$1 billion

Louisiana’s \$1 billion dollar settlement will be paid out over 16 years.⁴⁴ In 2014, the Louisiana Legislature passed Act 646, which established the Deepwater Horizon Economic Damages Collection Fund as a special permanent trust fund for deposits of proceeds of the settlement for the state’s economic damages.⁴⁵ The State Treasury shall operate the trust fund.⁴⁶ The Act mandates that within 30 days of the receipt of economic damage proceeds from the Deepwater Horizon litigation, the treasurer is required to make the following deposits: (1) 45% to the Budget Stabilization Fund until the fund reaches 4% of the previous fiscal year’s state revenue receipts; (2) 45% to the Medicaid Trust Fund for the Elderly until \$700 million has been deposited in the fund; and (3) 10% to the Health Trust Fund until \$30 million has been deposited in the fund.⁴⁷

In 2015, the Legislature amended Act 646 with Act 396, which provides that the interest earned on the investment of monies in the fund shall be credited to the fund.⁴⁸ Interest earnings shall then be appropriated to the Board of Regents, which will distribute these funds to state public postsecondary institutions in accordance with the equitable distribution formula in the State Constitution.⁴⁹ At the time of writing, a bill was pending House Appropriations that would allow a portion of the economic damages to be deposited into the state general fund.⁵⁰

6) Local Government Agencies ≤ \$1 billion

BP has paid approximately \$687.4 million for economic damages to 383 local government entities.⁵¹ While some of this portion of the settlement was paid to communities not located on the coast, the majority of the money is going to city and county or parish governments along the coast.⁵² These portions of the settlement are to be paid in lump sums and can be spent on anything.

Local governments in Louisiana received \$371 million. Local governments in Florida are receiving \$210 million, while those in Texas are getting \$39.9 million. Local governments in Mississippi and Alabama were given the two lowest amounts, receiving \$37.3 million and \$28.8 million, respectively.⁵³ Funds are also allocated for public school districts (\$157 million), law enforcement agencies (\$21 million), airports (\$15 million), and hospitals (\$6 million).⁵⁴

C. Natural Resources Damages

The BP settlement includes \$8.1 billion in natural resource damages, which will go toward coastal restoration

and improvement projects as designated by the federal and state natural resource damage trustees.⁵⁵ In April 2011, BP committed up to \$1 billion to begin restoration, before damage assessments and planning were complete.⁵⁶ The additional \$7.1 million will be paid over the next 15 years. To date, almost \$698 million has been allocated in three phases for Early Restoration, and the Trustees proposed a fourth phase of \$134 million in May 2015.⁵⁷

The consent decree states that these funds should be used

for restoration, rehabilitation, replacement, or acquisition of the equivalent of injured or lost Natural Resources or natural resource services as provided in one or more restoration plans adopted by the Trustees consistent with 15 C.F.R. Part 990; for monitoring, information management, oversight, coordination, public education, and administrative activities related to the restoration plans and programs; and for addressing unknown conditions and undertaking adaptive management.⁵⁸

Each Gulf State will receive a portion of the money, discussed below. Additionally, money will be set aside for region-wide and open ocean work, as well as adaptive management and unknown conditions. These eight groups are known as Restoration Areas under the plan, and each Restoration Area is to have a Trustee Implementation Group to administer the money in that area. Each Trustee Implementation Group can develop procedures for how projects will be developed, selected, and implemented.⁵⁹ Details for the selection procedure are set out in Appendix 2 of the Consent Decree.

1) Florida: \$680 million total

Florida has been allocated a total of \$680 million for natural resource damages. Under Early Restoration Funding, the state has been allocated \$144 million.⁶⁰ The state has an overall remaining unallocated balance of \$536 million to be paid over 15 years. Additionally, National Fish and Wildlife Foundation payments of \$356 million were allocated under early funding to be paid over five years, of which \$54.5 million has been awarded.⁶¹ In Phases I-III, which includes initial response payments and early restoration projects, Florida spent a majority of its money on offsets for recreational use projects.⁶² The allocation for Phase IV appears to be proposed for habitat offset.⁶³

2) Mississippi: \$296 million total

Under Early Restoration Funding, the state has been allocated \$112.5 million.⁶⁴ The state has an overall

remaining unallocated balance of \$183 million to be paid over 15 years.⁶⁵ Additionally, National Fish and Wildlife Foundation payments of \$356 million were allocated under early funding to be paid over five years, of which \$40 million has been awarded.⁶⁶ In Phases I-III, which includes initial response payments and early restoration projects, Mississippi divided its offsets evenly between recreational use, resource restoration, and habitat restoration.⁶⁷ The allocation for Phase IV is also fairly evenly distributed, although with a lesser portion allotted to recreational use.⁶⁸

3) Texas: \$238 million total

Under Early Restoration Funding, the state has been allocated \$59 million.⁶⁹ The state has an overall remaining unallocated balance of \$179 million to be paid over 15 years. Additionally, National Fish and Wildlife Foundation payments of \$203 million were allocated under early funding to be paid over five years, of which \$56.5 million has been awarded.⁷⁰ In Phases I-III, which includes initial response payments and early restoration projects, Texas spent all of its money on offsets for recreational use projects.⁷¹ The allocation for Phase IV is proposed for resource offsets.⁷²

4) Alabama: \$296 million total

Under Early Restoration Funding, the state has been allocated \$117 million. The state has an overall remaining unallocated balance of \$178.5 million to be paid over 15 years.⁷³ Additionally, National Fish and Wildlife Foundation payments of \$356 million were allocated under early funding to be paid over five years, of which \$22.8 million has been awarded.⁷⁴ In Phases I-III, which includes initial response payments and early restoration projects, Alabama, like Florida, spent a majority of its money on offsets for recreational use projects.⁷⁵ The allocation for Phase IV is to be divided between resource and habitat offsets.⁷⁶

5) Louisiana: \$5 billion total

Louisiana has been awarded the largest amount of damages for natural resources by far. Under Early Restoration Funding, the state has been allocated \$368 million.⁷⁷ The state has an overall remaining unallocated balance of approximately \$4.6 billion to be paid over 15 years. Additionally, National Fish and Wildlife Foundation payments of \$1.272 billion, the largest amount among the Gulf States, were allocated under early funding to be paid over five years, of which \$221.2 million has been awarded.⁷⁸

In Phases I-III, which includes initial response payments and early restoration projects, Louisiana, unlike most other states, spent a majority of its money on offsets for habitats and resources.⁷⁹ These Phase I projects include

the Lake Hermitage Marsh Creation Project (\$13.9 million) for marsh projects in Plaquemines Parish and the Oyster Cultch Project (\$15 million), which placed cultch material onto 850 acres of public oyster seed grounds throughout the coast, including Three Mile Bay, Lake Fortuna, Hackberry Bay, and Sister Lake.⁸⁰ Additionally, Phase III⁸¹ projects include the Louisiana Outer Coast Restoration Project (\$320 million), which involves the restoration of beaches, dunes, and back-barrier marsh habitats at the four barrier islands, and the Louisiana Marine Fisheries Enhancement, Research, and Science Center (\$22 million), which includes two sites in Calcasieu and Plaquemines parishes.⁸²

6) Region-wide (\$350 million) and Open Ocean (\$1.24 billion) Projects

In Phase IV, approximately \$105.8 million of the region-wide funding has been allocated to projects involving resource offsets.⁸³ The first projects to be implemented Gulf-wide include the Sea Turtle Early Restoration Project and the Pelagic Longline Bycatch Reduction Project.⁸⁴ The proposed Sea Turtle Restoration Project would help restore sea turtles by addressing threats to nesting beaches and marine environments for Kemp's ridley, green, and loggerhead sea turtles, which are all protected under the Endangered Species Act.⁸⁵ Project oversight is to be implemented through Department of Interior, National Oceanic and Atmospheric Administration, and Texas Trustees over 10 years with total costs estimated to be \$45 million.⁸⁶

The proposed Pelagic Longline Bycatch Reduction Project aims to restore pelagic (open-ocean) fish that were likely exposed to oil and dispersants during the spill.⁸⁷ In the Gulf, pelagic fish are an important target of commercial fishermen who use longline fishing gear, which can be miles in length. These lines are often set near the surface to target sustainable stocks of yellowfin tuna and swordfish.⁸⁸ However, longline gear also unintentionally catches other fish species, as well as target species that are too small to harvest, which is known as "bycatch." The strategy to reduce bycatch is either to compensate fishers in the Gulf for voluntarily refraining from pelagic longline fishing for six months each year, known as a repose period, or to offer alternative gear for those fishing during the repose period. Estimated total cost of this project is \$20 million.⁸⁹ The settlement also allocates \$1.24 billion for Open Ocean Projects.⁹⁰ However, it is unclear at this time how "open ocean" will be defined, or who will make decisions regarding spending of the open ocean allocations.⁹¹

7) Unknown Conditions and Adaptive Management Funds

The consent decree allows for some additional payments into the future, allocating up to \$700 million for any damages that were unknown as of July 2, 2015, and for any adaptive management strategies that need to be implemented "to adapt, enhance, supplement, or replace restoration projects or approaches initially selected by the Trustees."⁹²

8) Assessment and Data Management Costs

BP was ordered to pay \$350 million to cover expenses related to the Natural Resource Damage Assessment.⁹³ Thirty-seven million dollars of the \$350 million will be used by NOAA "to establish, populate, manage, and maintain a Gulf-wide environmental data management system that shall be readily accessible to all Trustees and the public."⁹⁴

Response and Removal Reimbursement and Other Costs

The consent decree also orders that BP pay the United States \$250 million to cover response and removal costs and unpaid claims under the False Claims Act and the Federal Oil and Gas Royalty Management Act.⁹⁵ The first payment will be due in 2016, with yearly installments until 2023.

Additional Resources

For further information on the breakdown of damages and the status of the settlement order, please visit <http://www.treasury.gov/services/restore-act/Pages/default.aspx> for a visual breakdown of damages awarded under the RESTORE Act. To view actual settlement documents and damage assessment and restoration plans, please visit <http://www.justice.gov/enrd/deepwater-horizon>. For a concise summary of all damages awarded by category and by state, please visit <http://www.oceanconservancy.org/places/gulf-of-mexico/bp-settlement-fact-sheet.pdf>. Finally, the Gulf of Mexico Alliance provides a Deepwater Horizon Project Tracker, which is a centralized directory of projects funded under the settlement and can be accessed at <http://www.gulfofmexicoalliance.org/learn-more/gulf-restoration/>.

Endnotes:

¹ RESTORE Act, Pub. L. No. 112-141, §§ 1601-1608 (2012) (codified at 33 U.S.C. § 1321).

² RESTORE Act, Pub. L. No. 112-141, § 1602.

³ Consent Decree, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico* (E.D. La., 4/4/2016), at 18.

- ⁴ 26 U.S.C. § 9509(b) (2012).
- ⁵ RESTORE Act, Pub. L. No. 112-141, § 1602.
- ⁶ 31 C.F.R. §§ 34.101-103 (2015).
- ⁷ *Id.*
- ⁸ RESTORE Act, Pub. L. No. 112-141, §§ 1601-1608.
- ⁹ 31 C.F.R. § 34.201.
- ¹⁰ *Id.* at § 34.103.
- ¹¹ *Id.* at § 34.302.
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ 33 U.S.C. §1321(t)(1)(D)(i)(II).
- ¹⁷ Presentation by Kyle Graham, Coastal Protection and Restoration Authority of Louisiana, *Oil Spill Restoration Planning* (August 2015), available at <https://assets.documentcloud.org/documents/2289542/oil-spill-restoration-planning-august-2015-final.pdf>.
- ¹⁸ *Id.*
- ¹⁹ U.S.C. §1321(t)(2)(C).
- ²⁰ U.S.C. §1321(t)(2)(C)(ii).
- ²¹ 31 C.F.R. § 34.103.
- ²² *Id.* at § 34.202.
- ²³ *Id.* at § 34.401.
- ²⁴ Kyle Graham, *supra* note 17.
- ²⁵ *Id.*
- ²⁶ 31 C.F.R. §§ 34.203, 34.501.
- ²⁷ *Id.* at § 34.503.
- ²⁸ RESTORE Act, Pub. L. No. 112-141, § 1603.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ 31 C.F.R. § 34.503.
- ³² *Id.* at § 34.103.
- ³³ *Id.* at § 34.600.
- ³⁴ *Id.* at § 34.103.
- ³⁵ Kyle Graham, *supra* note 17.
- ³⁶ Treasury Department, *RESTORE Act Frequently Asked Questions (FAQs) Relating to the Centers of Excellence Research Grant Program*, available at <https://www.treasury.gov/services/restore-act/Documents/FAQs/Centers%20of%20Excellence%20FAQs.pdf>
- ³⁷ Kevin Spear, *Florida nets \$3.25B in BP oil-spill settlement*, ORLANDO SENTINEL, July 2, 2015, available at <http://www.orlandosentinel.com/news/politics/os-bp-oil-spill-settlement-florida-20150702-story.html>.
- ³⁸ *Id.*
- ³⁹ Renee Johnson, *Mississippi receiving \$2.2 billion in BP settlement*, WLOX, July 2, 2015, available at <http://www.wlox.com/story/29460742/mississippi-receiving-22-billion-in-bp-settlement>.
- ⁴⁰ Ross Reily, *How 5 Gulf Coast states will divide BP oil spill settlement*, MISSISSIPPI BUSINESS JOURNAL, July 2, 2015, available at <http://msbusiness.com/2015/07/how-5-gulf-coast-states-will-divide-bp-oil-spill-settlement/>.
- ⁴¹ *Id.*
- ⁴² Dennis Pillion, *Where is the BP oil spill settlement money going?*, AL.COM, July 2, 2015, http://www.al.com/news/index.ssf/2015/07/where_is_the_bp_oil_spill_sett.html.
- ⁴³ *Id.*
- ⁴⁴ Email from Dennis Pillion, Reporter II, AL.COM, to Joby Richard, Legal Intern, Louisiana Sea Grant (Sept. 10, 2015, 02:05 CST) (on file with author).
- ⁴⁵ Act 646, 2014 Reg. Sess. (La. 2014).
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ Act 396, 2015 Reg. Sess. (La. 2015).
- ⁴⁹ *Id.*
- ⁵⁰ SB 101, Reg. Sess. (2016).
- ⁵¹ Michael Kunzelman, *BP pays \$687.4 million in settlements following 2010 Gulf Coast oil spill*, SARATOGIAN BUSINESS, August 20, 2015, <http://www.saratogian.com/business/20150820/bp-pays-6874-million-in-settlements-following-2010-gulf-coast-oil-spill>.
- ⁵² *Id.*
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ Consent Decree, *supra* note 3, at 20.
- ⁵⁶ *Ocean Conservancy's Analysis of the Settlement Agreement with BP*, (Ocean Conservancy, New Orleans, La.) October 2015.
- ⁵⁷ *Id.*
- ⁵⁸ Consent Decree, *supra* note 3, at 22.
- ⁵⁹ Appendix 2, Consent Decree, In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico (E.D. La., 4/4/2016) at 2-5.
- ⁶⁰ Ocean Conservancy, *supra* note 56.
- ⁶¹ *Id.*
- ⁶² *NRDA Early Restoration Breakdown*, (Environmental Law Institute/Gulf of Mexico Restoration and Recovery Team, Wash., D.C.) July 2, 2015, <http://eli-ocean.org/gulf/nrdabreakdown/>.
- ⁶³ *Id.*
- ⁶⁴ Ocean Conservancy, *supra* note 56.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ Environmental Law Institute, *supra* note 62.
- ⁶⁸ *Id.*
- ⁶⁹ Ocean Conservancy, *supra* note 56.
- ⁷⁰ *Id.*
- ⁷¹ Environmental Law Institute, *supra* note 62.
- ⁷² *Id.*
- ⁷³ Ocean Conservancy, *supra* note 56.
- ⁷⁴ *Id.*
- ⁷⁵ Environmental Law Institute, *supra* note 62.

⁷⁶ *Id.*

⁷⁷ Ocean Conservancy, *supra* note 56.

⁷⁸ *Id.*

⁷⁹ Environmental Law Institute, *supra* note 62.

⁸⁰ *Presentation to Senate Committee on 7/27/15*, (LA. ATT'Y GEN., Baton Rouge, La.) July 24, 2015, at 9.

⁸¹ Louisiana proposed no projects in Phase II. *Id.* at 8.

⁸² *Id.* at 9.

⁸³ Environmental Law Institute, *supra* note 62.

⁸⁴ *Id.*

⁸⁵ *Sea Turtle Early Restoration*, (NOAA, Wash., D.C.) Spring 2015, at 1.

⁸⁶ *Id.* at 1-2.

⁸⁷ *Pelagic Longline Bycatch Reduction* (NOAA, Wash., D.C.) Spring 2015, at 1.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Ocean Conservancy, *supra* note 56.

⁹¹ *Id.* at 9

⁹² Consent Decree, *supra* note 3, at 23.

⁹³ Consent Decree, *supra* note 3, at 24.

⁹⁴ Consent Decree, *supra* note 3, at 27.

⁹⁵ Consent Decree, *supra* note 3, at 27-28.



BILLS PASSED IN THE 2015 REGULAR LEGISLATIVE SESSION OF THE LOUISIANA LEGISLATURE AFFECTING COAST RESOURCE USE AND CONSERVATION

BY: JOBY RICHARD

Please note: These updates are from the 2015 Legislative Session. The 2016 Legislative Sessions will be printed this fall.

Fish, Fisheries, Oysters

HCR 34 Louisiana Crawfish Awareness Month
Representative Lorusso

Recognizes April as Louisiana Crawfish Awareness Month.

HCR 176 Oyster recycling
Representative Garofalo

Commends the Coalition to Restore Coastal Louisiana (CRCL) on the success of its oyster shell recycling program. CRCL bags recycled shells and deploys them along eroding shorelines. This program helps protect the shoreline and facilitates oyster reef aquaculture research. CRCL plans to continue to expand the program through contact with more restaurants and seafood processors.

SCR 66 Illegal fishing
Senator Chabert

Memorialize Congress to take action against illegal, unreported, or unregulated fishing in Louisiana waters by passing HR 774. The Louisiana Legislature commits itself to the elimination of illegal fishing and to long-term conservation of Louisiana marine resources. Commends the U.S. Coast Guard for apprehending and investigating foreign vessels engaged in illegal activity along the U.S.-Mexico border.

SCR 83 Sicily Island Hills Wildlife Management Area
Senator Thompson

Requests Louisiana Wildlife and Fisheries to change the name of the Sicily Island Hills Wildlife Management Area to the J.C. "Sonny" Gilbert Wildlife Management Area. Gilbert made many contributions to the Sicily Island area's economy as a public servant, rice and cotton farmer, rancher, and founding director of Jonesville Bank and Trust.

ACT 205 Fishing management
HB 303

Representative Gisclair

(Amends R.S. 56:325.4(D)). Requires the Department of Wildlife and Fisheries (DWF) to monitor and evaluate health of black drum, sheepshead, and flounder in Louisiana waters and to establish management targets to ensure sustainable populations. Also requires that DWF submit a stock assessment report every five years to the legislature. The report must address the "status of each stock and an evaluation of management measures." Removes "close season" requirement if targets are not met. Instead, DWF submits management options to the commission to ensure species meet stock level targets in the future.

ACT 209 Crab licenses
HB 332

Representative Billiot

(Amends R.S. 56:305.6(B)). Allows wholesale and retail seafood dealer's license holders who can document crab landings during any two years between 2011 and 2014 the ability to apply for commercial crab gear licenses.

ACT 211 Oyster theft

HB 341

Representatives Garofalo and Harrison

(Amends R.S. 56:431(D)). Provides additional penalties for illegal taking of oysters from leased acreage, which does not bar criminal additional prosecution. A first offense, requires revocation of the offender's oyster harvest license and imposes no less than 40 hours of community service. First offenders may be present on oyster harvesting or processing vessels only if the vessel is equipped with and is actively using a vessel monitoring system as prescribed in R.S. 56:424.1; this is not allowed for second/subsequent offenses. For second offenses, the license revocation period is three years and 90 hours of community service are required; for third/subsequent offenses, the revocation period is 10 years and no less than 120 hours of community service are required.

ACT 303 Crab licenses

HB 198

Representative St. Germain

(Amends R.S. 56:305(B)(2) and 56:305(C)(1)). Increases the commercial gear license fee for crab traps to \$50 with \$10 dedications to both the Derelict Crab Trap Removal Program Account (DCTRPA) and the Crab Promotion and Marketing Account (CPMA). Provides exemptions for commercial senior fishing license holders toward gear fees, but not buoy tag fees. Increases non-resident commercial gear fees to \$200/year with dedication increases of \$40 to both DCTRPA and CPMA. Removes authorization for a buoy tagging system for identification of the crab trap owners.

ACT 343 Oyster lease rates

HB 579

Representative Garofalo

(Amended R.S. 56:428(C)). Increases rental rate for oyster leases to \$3 per acre per year beginning January 1, 2016. Revenues generated shall be credited to Public Oyster Seed Ground Development Fund, R.S. 56:434.1.

ACT 416 State TED enforcement

HB 668

Representative Hill

(Repealed R.S. 56:57.2). Allows the enforcement of federal regulations, specifically the use of "turtle excluder devices" (devices) in shrimp trawls. Requires all wildlife agents to wear a body camera from August 1, 2015, to August 1, 2016, at all times while enforcing device requirements. Requires the Louisiana Shrimp Task Force to submit a report to the House Committee on

Natural Resources and the Environment and the Senate Committee on Natural Resources by September 1, 2018, with recommendations on whether the devices should be enforced in state waters and rules and regulations under which such devices should be enforced. Any seafood retailer found to be boycotting Louisiana shrimp will be ineligible for tax credits, rebates, or any other state incentives.

Hunting**ACT 273** Carrying firearms while bowhunting

SB 212

Senator Ward

(Amends R.S. 56:116.1(E)). Allows a bow hunter to carry any caliber firearm on their person while hunting. DWF shall not be limited in their ability to enforce hunting regulations in wildlife management areas.

Water, Waterways, Drainage**HCR 66** Comite River Diversion Canal

Representative Hodges

Continues the Comite River Diversion Canal Project Task Force to study and recommend legislative actions necessary to complete the Comite River Diversion Canal. The project was continued due to the potential catastrophic damage that Comite River flooding could cause East Baton Rouge, Livingston, and Ascension Parishes. Provides that the Task Force submit a final report to appropriate legislative committees, as necessary. Provides that the Task Force be staffed by the House Committee on Transportation, Highways, and Public Works and outlines membership details.

HCR 230 False River Watershed Council

Representative Thibaut

Extends the existence of the False River Watershed Council until June 30, 2016. The council is charged with meeting to identify and evaluate management strategies to facilitate improving the aquatic habitat of False River and to provide recommendations for optimal management and protection of watershed resources.

SCR 46 Clean Water Act

Senator Long

Expresses the right of the State of Louisiana to manage its water resources where the broadened scope

of the Clean Water Act could threaten to undermine the federal-state partnership and erode Louisiana's authority over its resources, including ditches, man-made ponds, flood plains, riparian areas, and seasonally wet areas. Cites the failure of both the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to fully consult with Louisiana, thereby undermining the cooperative federalism intended under the Clean Water Act.

SCR 115 Lake Providence Watershed Council

Senator Thompson

Establishes the Lake Providence Watershed Council, located at a bend in the Mississippi River in East Carroll Parish. Aquatic habitat has been in a state of decline due to runoff from surrounding land, shoreline modifications, and sediment and nutrient runoff from agriculture developments. Requires the Council to conduct a study to develop a solution to the deterioration of water quality. Requires collaboration between state and local governments, as well as non-government stakeholder organizations. Outlines membership details. Members shall not be compensated for their service. Requires the Council to contact listed federal agencies to solicit their views. The Council may meet as often as necessary and shall submit a report to House Committee of Natural Resources and the Environment and Senate Committee on Environmental Quality no later than May 1, 2016, unless the Council is extended by the Legislature.

ACT 28 Statewide Flood Control Program

SB 71

Senator Erdey

(Enact R.S. 38:90.4(A)(1)(j)). Applications for funding of any flood-control projects under the Statewide Flood Control Program may be submitted to any municipal or parish governing authority. Applications shall be made to the office of engineering by October 1 each year and in accordance with R.S. 39:101. Sponsoring authorities representing populations of 50,000 or more shall be responsible for their own application preparation; the office of engineering shall prepare applications for populations of less than 50,000. Included in the applications shall be any negative or positive impact on adjacent parishes both upstream and downstream due to the project.

ACT 30 Mississippi River ferries

SB 159

Senator Heitmeir

(Amends R.S. 48:250.2(A); adds R.S. 38:2225.2.5, R.S. 48:232.1 and 250.2(D)). Authorizes any regional transit authority to let a single contract combine the design and construction phases for any ferry project on the Mississippi River. Defines "design-builder" as a person or entity contractually obligated to deliver the design and construction of a new Mississippi River ferry. Requires the authority to adopt a resolution establishing the design-build program for any new ferry. Establishes procedures and limitation for design-build contracts. Requires that legal challenges to the choice of a design-builder be filed within 7 days of the award of contract. Provides that once the design-builder has been chosen, a contract for the stipulated maximum total cost may be executed. Authorizes increases or decreases in final costs to account for inflation, scope of work, or other conditions. Supersedes conflicting provisions relative to bidding of public contracts. Authorizes the Department of Transportation and Development (DOTD) to give priority to construction as expeditiously as possible for any bridge project that replaces a tunnel. Authorizes the use of any source of funds for such projects, and use of any contract as provided by law.

ACT 34 Bayou Lafourche Fresh Water District

SB220

Senator Chabert

(Amends R.S. 38:3086.21 and 3086.24). The Bayou Lafourche Fresh Water District (District) may be sued, but this ability does not constitute a waiver of governmental immunity. The District may acquire by purchase, donation, or lease any property or interest necessary for carrying out the purposes of the district. Enumerates additional powers bestowed upon the District. The District may create a "no wake zone" or limit the size of vessels during declared emergencies. Prohibits the District from making and enforcing rules and regulations that impair rights and obligations in Louisiana Civil Code Art. 655-56. Rules and regulations of the District will be enforceable by any local law enforcement agency.

ACT 156 Port construction

SB 66

Senator Smith

(Amends R.S. 34:3523(A)(2) and (J)). Extends the time for any port to use the design-build method on certain port construction projects for five more years until December 31, 2020.

ACT 246 New Orleans Sewerage and Water Board refunds
SB 49

Senator Murray

(Amends R.S. 33:4083.1). Requires the Sewerage and Water Board of New Orleans to notify customers of an unclaimed credit balance within 90 days after termination of services, by certified mail, electronic mail, or regular postage. The funds will be deposited in a special fund "Water Help Program Fund" if not claimed within 18 months.

ACT 445 New Orleans Sewerage and Water Board
SB 50

Senator Murray

(Enacts R.S. 33:4071(F)). Provides for the Sewerage and Water Board of New Orleans to adopt rules and procedures adjusting, releasing, or extinguishing any indebtedness from a customer's sewerage and water bill.

Minerals, Oil & Gas

HCR 167 Offshore mineral revenue sharing
Representative Garofalo

Memorializes equitable revenue sharing of Louisiana mineral and gas production, such that a rate of compensation is agreed upon in Congress that is at least the same rate as interior states for Louisiana's production of oil, gas, and coal.

SCR 89 Oil and gas well regulation
Senators Allain and Walsworth

Establishes a task force to study the Office of Conservation's performance on the regulation of oil and gas wells and orphaned wells to determine whether the agency regulates them effectively. Composed of 11 members.

SCR 94 Crude oil exports
Senator Chabert

Memorializes and urges Congress to eliminate the national ban on crude oil exports due to the benefits Louisiana would receive from oil exploration, production, and transportation.

SCR 105 Mineral rights
Senator Gallot

Requests the Louisiana State Law Institute to study whether the Louisiana Constitution should be amended to include the following provision: Private purchasers of

land belonging to the state, school boards, or levee districts should have the ability to acquire mineral interest in land upon prescription of non-use.

ACT 253 Drilling units
SB 88

Senator Adley

(Amends R.S. 30:9(B); adds R.S. 30:9.2). Changes the definition of "drilling unit" to the maximum area which may be efficiently and economically drained by any well(s) designated to serve the drilling unit as the unit well, substitute unit well or alternate unit well. Defines "cross-unit well" and authorizes the commissioner to grant drilling permits, except where the proposal has less than 500 feet of perforated lateral in any unit if one of the provided procedural objections occur.

ACT 257 Budget Stabilization Fund
SB 122

Senator Adley

(Amends R.S. 39:94(A)(2)(a)). Increases to \$950 million the base amount of mineral revenues resulting from recurring mineral revenue over which any additional revenue received must be deposited into the Budget Stabilization Fund after required allocations have been made. This base may be increased every 10 years by a two-thirds vote of elected members of each house.

Coast

HCR 1 Annual Coastal Protection and Restoration Plan
Representative Dove

Proposes that the Legislature approve the annual integrated coastal protection and restoration plan for 2015-16 fiscal year as adopted by Coastal Restoration and Protection Authority (CRPA). Upon approval, a copy of the resolution shall be sent to the CRPA chairman.

HCR 21 Coastal Day
Representative Leger

Recognizes April 14, 2015, as Coastal Day at the Louisiana Legislature.

ACT 26 Capital Outlays
HB 2

Representative Robideaux

Provides for the funding of capital outlays for coastal protection and restoration projects from the specified sources of monies in specified amounts, including \$291,308,763 set aside for Coastal Protection Projects,

Planning, and Construction; \$1,615,000 for the Westbank Hurricane Protection Project, Planning, Construction, Right of Way, and Utilities; \$78,510,000 for the Morganza to the Gulf of Mexico Flood Control Feasibility Study and other needs; \$8,000,000 for the Lafitte Area Tidal Protection, Planning, and Construction; and \$100,000 for the Donaldsonville to the Gulf of Mexico Flood Study (with more in match).

ACT 72 Mineral right transfer for coastal protection projects
HB 352

Representative Leger

(Amends R.S. 41:1702(C), (D) and (1), (2)(a)(i), (ii), (dd), (b), (d), and (f), (G)(1) and (2), (H), and (I)). Uses the term “integrated coastal protection project” to cover all possible land acquisition projects, and changes the approval authority for such acquisitions to the executive director of the Coastal Protection and Restoration Authority (CPRA). Allows for applications to the State Land Office for reclamation or recovery of land lost through erosion, compaction, subsidence, or sea level rise. Authorizes the executive director of CPRA to enter into agreements, after consultation with the Department of Natural Resources, with landowners adjacent to state-owned water bottoms who have a right to reclaim land that allows transferring the ownership of mineral rights to the landowner to facilitate coastal restoration projects. Adds CPRA to the list of objecting authorities for reclamation claims by riparian landowners. Adds CPRA to the list of agencies for which any aggrieved person may seek judicial review of agency actions by filing a petition in 19th Judicial District Court within 30 days after mailing of notice of final decision.

Boards, Commissions, Districts

HCR 5 Atchafalaya Basin Annual Plan

Representative St. Germain

Proposes that the Legislature approve the Atchafalaya Basin Annual Plan for the 2015-16 fiscal year. A copy of the resolution shall be sent to the Secretary of the Department of Natural Resources and Atchafalaya Basin Research and Promotion Board. An advisory group has been appointed to review all water management or quality projects proposed for inclusion in the Atchafalaya Basin Annual Plan. Both the Coastal Protection and Restoration Authority and the Atchafalaya Basin Research and Promotion Board must approve the Plan.

ACT 57 Land transfer in Terrebonne Parish

HB 178

Representative Dove

(Amends R.S. 38:291(U)(1)). Requires the Atchafalaya Basin Levee District to execute an act showing the previously mandated transfer of land, including mineral rights, in Terrebonne Parish to the Terrebonne Levee and Conservation District actually occurred.

ACT 69 Coastal protection project mitigation

HB 339

Representative Dove

(Amends R.S. 49:214.5.2(F)). Changes wording by granting the authority of state or political subdivision thereof, to use its own “resources” (previously employees or equipment) for satisfying mitigation requirements resulting from or related to integrated coastal protection projects, upon approval by the Coastal Protection and Restoration Authority.

ACT 313 Advertising on DWF property

HB 283

Representative Leopold

(Amends R.S. 56:13). Grants the Wildlife and Fisheries Commission authority to allow placement, erection, and maintenance of advertisement and sponsorship signs on immovables, improvements on immovables, vehicles, vessels, and assets of the department. Requires the Commission to make rules and regulations in accordance with the Administrative Procedure Act to implement this law.

ACT 401 Abolition of natural resource-related boards

HB 451

Representative Schexnayder

(Amends R.S. 25:380.75 and 380.76 and R.S. 36:744(U) and 851(A); Repeals R.S. 25:380.72, 380.73, and 1311-1316, R.S. 36:509(R) and (T), and 801.14, R.S. 38:3087.171- 3087.185, and 3087.241-3087.255). Provides for the abolition of certain boards, commissions, authorities, and like entities. Abolishes the Allen and West Ouachita Parish Reservoir Districts and their five-member board of commissioners. Abolishes the Jean Lafitte Marine Fisheries Museum Governing Board, removes all references, and provides its duties be under the administration of the Secretary of State. Repeals provisions related to the South Louisiana Wetlands Discovery Center being a tourist center and abolishes its board of commissioners. Property and funds of entities, not properly transferred, become property of the state and state treasurer.



ANNOUNCEMENTS

LSGLPP Welcomes Paula Ouder

The Law & Policy Program would like to welcome Paula Ouder as our new Research Counsel. Paula has been with the Louisiana Sea Grant Communications department since 2003 and has begun working for the Law & Policy Program part time. Paula has a B.A. in Mass Communications from Tulane and received her J.D. from Southern University Law Center in 2014.

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LCL E-mail Update Service

The Louisiana Sea Grant Law & Policy Program disseminates an e-mail/web-based update to our biannual newsletter four times a year. These updates cover environmental law news relevant to the LCL's audience, summaries of recently introduced environmental legislation and regulations and recent court decisions. To subscribe to the LCL E-mail Update Service, send an e-mail to mtrosc2@lsu.edu.

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