
An Oyster Fisherman's Guide to ... Louisiana's Oyster Lease Relocation Program



Each year Louisiana loses between 20,000 and 25,000 acres of coastal wetlands, which account for more than 80% of all wetlands lost in the entire United States. The continued loss of Louisiana's coastal wetlands could prove disastrous to Louisiana's environment and economy. About 95% of all the commercial species caught in the Gulf of Mexico depend on the coastal wetlands for some portion of their life. As the wetlands disappear those species will follow. This impact would not be limited to commercial fishing, but would also affect agriculture, tourism, recreational hunting and fishing and almost every other aspect of our economy.

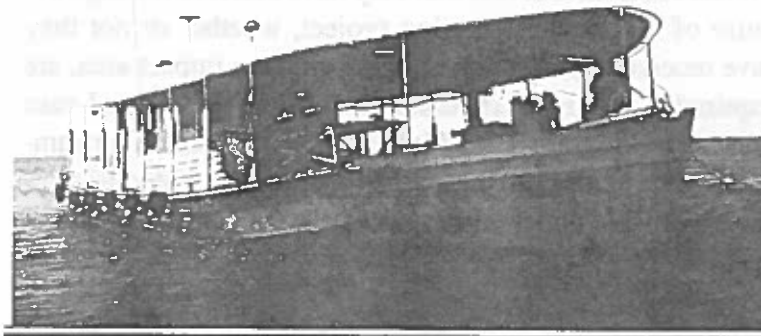
Most of the wetlands loss can be traced to the construction of levees along Louisiana's major rivers. Levees restrict water flow and interrupt a river's natural flood cycle, which replenishes coastal wetlands and creates a natural balance between erosion and sediment buildup. The Mississippi River alone would normally deposit about 144 million tons of sediment annually into Louisiana's wetlands, if it were not restricted by levees.

To stop the loss of Louisiana's coastal wetlands, restoration projects designed to stabilize and restore Louisiana's coast are being implemented. One commonly utilized method of coastal restoration is freshwater diversion, which diverts a

portion of the Mississippi River's waters into the coastal wetlands. The diversion projects are designed to mimic the river's natural flood cycle and allow sediments and nutrients from the river to settle out of the water and restore the coastal zone. The influx of freshwater also helps combat saltwater intrusion and works towards restoring wetlands to their original chemical and biological composition. The change in salinity will cause many of the saltwater species to move to other areas and allow freshwater and brackish water species to return.

Species, such as oysters and other shellfish, that are not able to move with the changing level of salinity may undergo short term difficulties. Oyster beds located in some areas may experience a temporary reduction in the production of marketable oysters, but the overall effect of the freshwater diversion projects will increase Louisiana's oyster harvest.

However, Louisiana and the U.S. Congress recognize that even a short term displacement of oyster production will affect those who harvest and sell oysters. Many oyster fishermen have leased the bottoms of coastal wetlands and have established and harvested oysters from the leases over the past decades. To protect the affected leaseholders from problems created by coastal restoration programs the state has



created the Oyster Lease Relocation Program and has allocated \$7.5 million to fund the program.

Oyster Lease Relocation Program

(LRS 56:432.1 *et seq.*)

The law requires the Louisiana Department of Natural Resources (DNR) to "develop a program to reduce and offset the potential adverse impact of the coastal restoration efforts on oyster leases." DNR must identify the areas likely to be impacted (a current lease which has been identified as being located in a Coastal Restoration Project Area) by coastal restoration projects and notify all oyster leaseholders within the area.

DNR's notification must include a description of the coastal restoration project, a map of the affected area and a copy of the regulations concerning the Oyster Lease Relocation Program. DNR must inform the leaseholder that they have 30 days to respond to DNR if they wish to participate in the program. Since money to fund the program is limited, participating leaseholders will be helped on a first come first served basis. If DNR receives multiple responses on the same day the availability of funds will be determined by drawing lots. The relocation program allows leaseholders to choose from four options:

- Retention
- Exchange
- Relocation
- Purchase

Retention (LRS 56:432.1(3))

The leaseholder may choose to keep the lease without com-

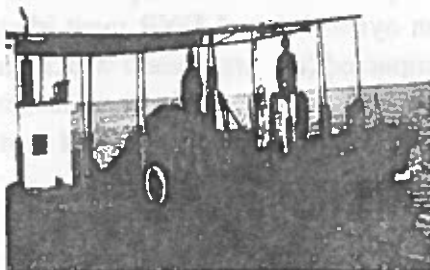
pensation. A clause will be added to their lease that stipulates that the lease is subject to disturbance by all coastal restoration projects and that the leaseholder accepts all risks of operating in the affected area. However, choosing retention does not preclude the leaseholder from selecting another option at a later date and DNR must make every reasonable effort to accommodate the leaseholder's request.

Exchange (LRS 56:432.1(1))

The leaseholder may exchange their lease for a lease located in another area. The exchange of leases will be "in kind" (an equivalent exchange) and the terms of the original lease will apply to the new lease, however the lease term will start over. DNR must assess the current value of the lease and the level of oyster productivity of both the old lease and the new lease. DNR will pay the cost of the assessment, subject to the availability of funds. DNR can, under special circumstances, make the exchange option available for specific leases, even after funding for the program has been exhausted.

Relocation (LRS 56:432.1(2))

When a leaseholder chooses to relocate his or her lease to another site or sites outside of the impact area, the State will assess the bottom substrate found at the affected lease and determine the costs associated with the relocation of the lease. Once a suitable location for the new lease is agreed to, cultch will be placed on its water bottom and planted with seed oys-



ters. The State will reimburse the leaseholder for all reasonable expenses associated with the relocation of the oyster bed.

Purchase (LRS 56:432.1(4))

A leaseholder can also request that the State purchase the lease, along with any improvements made to the lease, rather than relocate the lease. (Price to be determined by state assessment.) The State is not required to purchase the affected lease, but has an option to purchase if it is more cost effective than relocation of the lease. If the State purchases the lease, the leaseholder has until December 31 of that year to, at his own cost, remove any living oysters from the leased area.

Appealing a Decision (LAC 43:1,Ch.8 §858)

If the leaseholder seeks to appeal a decision made by DNR, then he must make a request for an appeal within 30 days of the decision. The request must include a description of the basis for the appeal and a written report that includes technical information supporting any alleged inaccuracies of DNR's decision. DNR must reply to the leaseholder within 45 days of receipt of the request.

Relief for Damages

All leaseholders that feel that they have suffered damage because of a coastal restoration project, whether or not they have received notification of being within a impact area, are required to seek relief for damages through the Oyster Lease Relocation Program (LRS 56:432.1(4)(c)). No claim for damages can be made until the leaseholder has exhausted all remedies available under the Oyster Lease Relocation Program.

However, the statute of limitations determining when leaseholders can bring legal action will be suspended until all remedies under the Program are exhausted.

It is important to recognize that funds available for the Oyster Lease Relocation Program are limited. The costs of exchange, relocation and purchase will be considered as a part of the coastal restoration project affecting the lease and will be funded as part of that restoration project. Therefore, any relief must come from funds available within the particular coastal restoration project and will be distributed to affected leaseholders on a first come first served basis.

This document has been prepared by Louisiana Sea Grant Legal Program as part of a grant from the National Sea Grant College Program.

This is a summary of current Louisiana law. It is not intended to serve as a legal authority. For the full text of the applicable law, please refer to:

LRS 56:432.1 *et. seq.*, LAC 43:1,Chapter 8 §850
Copies of the law and regulations can be obtained from the LA Sea Grant Legal Program.