

Appendix D

Expanding the Coastal Zone Boundary: Funding Effects

By Seth Bagwell

Overview of the Issue

As a result of Senate Concurrent Resolution 60, the Louisiana Coastal Protection and Restoration Authority authorized the Office of Coastal Restoration and Management (OCRM), a branch of the Department of Natural Resources (DNR), to determine the sufficiency of the State's current coastal zone boundary (CZB) to meet the State's coastal management needs.¹ Several programs allocate money to parishes, or to projects in parishes, on or near the coast for providing for hurricane protection and wetland restoration. One question that has been raised is what effect would an increase in the size of the coastal zone have on the amount of funding received by parishes already in the coastal zone: will the inclusion of more parishes in the coastal zone decrease the amount of money available to parishes already in the coastal zone? This paper will first briefly introduce the reader to the coastal zone boundary. It will then examine some of the most prominent sources of funding available to parishes for coastal protection and restoration and determine what effect a change in the coastal zone boundary would have on the availability of those funds.

Introduction to the Coastal Zone Boundary

With the Coastal Zone Management Act of 1972 (CZMA), Congress gave coastal states the power to establish coastal zone management programs.² Congress found and declared a national policy to protect and restore the Nation's coastal zone, to protect flood-prone areas from loss of life and property damage and to manage coastal development.³ Rather than attempt to achieve these goals through a federal program that would have raised issues with the federal government's authority under the Constitution to undertake local land use planning, Congress passed the CZMA to encourage individual states to create their own programs that would achieve the enumerated goals.⁴

In response to the CZMA, Louisiana passed the State and Local Coastal Resources Management Act (SLCRMA) of 1978.⁵ This act established the Louisiana coastal zone management program titled the Louisiana State and Local Coastal Resources Management Act (SCLRMA) in accordance with the requirements of the CZMA. Its goal is to "protect, develop, and where feasible, restore or enhance the resources of the state's

¹Louisiana Department of Natural Resources, *DNR Begins Work on Coastal Zone Boundary Study* <http://dnr.louisiana.gov/sec/execdiv/pubinfo/newsr/2009/0710crm-boundary.ssi>, July 10, 2009

²Richard J. McLaughlin, Ray Stewart, & Louise Stewart, *The Coastal Zone Management Act and the Procedures it Created*, 4-23A Environmental Law Practice Guide § 23A.01, pg. 1

³ 16 USCS § 1452 (2009)

⁴ 16 USCS § 1452 (2) (2009)

⁵ James G. Wilkins ET AL., *Louisiana Coastal Hazard Mitigation Guidebook*, 37, Louisiana Sea Grant College Program; 2008

coastal zone.”⁶ The coastal zone is defined as “the coastal waters and adjacent shorelands *within* the boundaries of the coastal zone,”⁷ and said boundaries are described in great detail in La. R.S. 49:214.24. The SCLRMA is run by the secretary for the Department of Natural Resources and is specifically housed in the Office of Coastal Management within DNR.⁸ The SCLRMA regulates the “use” of the coastal zone, where use is defined as “any use or activity within the coastal zone which has a direct and significant impact on coastal waters.”⁹ To regulate uses of the coastal zone, SCLRMA employs a coastal use permitting process. Coastal use permits are used to ensure that activities affecting the coastal zone are consistent with the SCLRMA.¹⁰ Although the majority of regulation occurs inside the coastal zone boundary, any federal, state, or local governmental action occurring *outside* the coastal zone that *affects* the coastal zone must be consistent with the SCLRMA; this is normally referred to as the consistency requirement.¹¹

Coastal Funding Programs:

A. State and Local Coastal Resources Management Act

The program with the closest connection to the coastal zone boundary is the program that established it. SCLRMA is funded in large part by a grant from the National Oceanic and Atmospheric Administration, authorized under section 306 of the CZMA.¹² This money must be matched by the state; fees related to permitting and consistency determinations, as well as money from the Coastal Resources Trust Fund (CRTF) are used to match the NOAA grant.¹³ Approximately seventy-five percent of grant funds go towards administering coastal use permitting and consistency determinations and enforcement. The other twenty-five percent goes towards funding local coastal management programs.¹⁴ These local programs are run at the parish level and must be in accord with Louisiana’s program.¹⁵ To date, ten parishes have established approved local coastal management programs and two more are currently seeking approval.¹⁶ Local programs are funded on a cost share approach between Louisiana and the parish.¹⁷

Under the proposed tiered approach, it is possible that some additional parishes, as well as additional portions of parishes already partially included in the current CZB,

⁶ La. R.S. 49:214.22 (2009)

⁷ La. R.S. 49:214.23 *emphasis added*

⁸ DNR, *Office of Coastal Restoration and Management* <http://dnr.louisiana.gov/crm/>.

⁹ La. R.S. 49:214.24 (2009)

¹⁰ Louisiana Department of Natural Resources, *Applying for a Coastal Use Permit (CUP)*, <http://dnr.louisiana.gov/CRM/coastmgt/permitsmitigation/permitsmitigation.asp>, August 26, 2009

¹¹ La. R.S. 49:214.32

¹² Telephone Interview with Terry Howey, Coastal Resources Administrator, Office of Coastal Management, Louisiana Department of Natural Resources (January 5, 2010, 3:20 p.m.)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ La. R.S. 49:214.28

¹⁶ Louisiana Department of Natural Resources, *Local Coastal Programs*, <http://dnr.louisiana.gov/crm/coastmgt/interagencyaff/lcp/lcp.asp>, August 26, 2009

¹⁷ Telephone Interview with Terry Howey

will become subject to coastal use permitting. This increase in regulatory jurisdiction is likely to cause at least some increase in the administrative costs associated with additional permitting.¹⁸ However, the extent of this increase and the degree of service reduction (the amount of time it takes for an application to go through the permit process, for example) to parishes already existing in the coastal zone is hard to predict.¹⁹

An easier threat to predict comes from the possible establishment of local coastal programs by the newly included parishes. It would be hard if not impossible for the State to meet its share of costs for implementing and running local management programs for parishes that may be added to the permitting jurisdiction of the SCLRMA.²⁰ It is possible the State would attempt to meet its share of the costs of establishing the new programs by reducing the amount of money it spends on running existing programs in participating parishes.

One solution is to statutorily provide that no parish included in the coastal zone as a result of the amended boundary can establish a local management program for a certain number of years. This would perhaps allow SCLRMA time to locate other sources of funding or cut costs in other areas in order to meet its share of establishing new local programs. Removing the cap that currently limits Louisiana's portion of NOAA grant money for running SCLRMA to two million dollars is another possible solution.²¹ If the cap were removed, Louisiana would receive an increase in NOAA grant money based on the formula (consisting of factors of population and length of coastline) used to determine how much money coastal states receive under the Coastal Zone Management Act.²²

B. Coastal Impact Assistance Program

The Coastal Impact Assistance Program (CIAP), created in 2005, allocates \$250 million of Outer Continental Shelf (OCS) revenues per year (from 2007 - 2010) to eligible states (AL, AK, CA, LA, MS, TX) based on the proportion of OCS revenues generated off the shores of the individual state.²³ Funds are available not only to the state itself but also directly to its "coastal political subdivision[s]" (CPS), which includes parishes in Louisiana.²⁴ In order to qualify as a CPS the parish must meet two criteria:

1. be included in the coastal zone as of August 8, 2005 (date the act creating the CIAP was enacted) [and]
2. not more than 200 nautical miles from the center of any tract leased on the OCS for oil or gas purposes.²⁵

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ The Department of the Interior Minerals Management Service. *Coastal Impact Assistance Program (CIAP): Program Documents*. <<http://www.mms.gov/offshore/CIAPProgramDocuments.htm>> PDF revised 10/09/08; pg. 1

²⁴ *Id.*

²⁵ *Id.*; 43 U.S.C. 1356a(a)(1)

Therefore, while additional parishes may be added to Louisiana's coastal zone under the proposed tiered approach, the date and distance requirements should effectively prevent CIAP funds from going to these newly included parishes, at least *directly*.

The word "directly" becomes important because it is foreseeable that CIAP funds might be spent by the *state* on a project in a newly added parish. The Minerals Management Service (MMS; in charge of CIAP) opened the door somewhat by stating that not all CIAP projects have to be undertaken "solely within a State's coastal zone, but ***project benefits should flow to the coastal zone.***"²⁶ Thus, expanding the coastal zone would appear to make it easier for the state to spend CIAP funds in a parish that is farther from the coast; a larger coastal zone would mean the benefits have less distance to "flow."

However, limitations are provided in that the only projects eligible for funding are those that will be used for:

1. the conservation, protection, or restoration of coastal areas, including wetlands;
2. mitigation of damage to fish, wildlife, or natural resources;
3. planning and administrative costs of complying with CIAP;
4. implementation of a federally-approved marine, coastal, or comprehensive conservation management plan; and
5. mitigation of the impacts of OCS activities through funding of onshore infrastructure projects and public service needs.²⁷

A change in the coastal zone boundary should have no effect on number 1, since the term "coastal areas" is not tied to the coastal zone and is already given a fairly liberal interpretation to include things like coastal watersheds, which can extend far inland.²⁸ Numbers 2 and 5 are not really of concern since both have a mitigation element, which ties the funds to OCS activities; presumably, the state would find it hard to show that a newly included parish, farther from the coast, suffered damages from activities on the outer continental shelf. Number 3 is not of particular interest either since it involves the use of funds for complying with CIAP requirements.

However number 4 may give the state the opportunity to spend funds in newly added parishes. It allows funds for projects implementing a federally approved conservation management plan, and MMS has specifically listed Coastal Zone Management Plans as one example.²⁹ Thus, it is foreseeable that with the inclusion of more parishes within the coastal zone boundary, the state could seek CIAP funds for projects in those parishes if the project is for implementing the SCLRMA. For example:

Suppose the new tiered coastal zone boundary is implemented, and XYZ Corporation is attempting to dredge that portion of the Mississippi river that lies in Iberville parish. For the purposes of this example, let's say that Iberville parish lies in the Intergovernmental Coordination (IGC)

²⁶ *Id.* at 2 emphasis added

²⁷ *Id.* at 2-3

²⁸ Interview with David Fruge, Office of Coastal Protection and Restoration,

²⁹ *Coastal Impact Assistance Program (CIAP): Program Documents* at 2

management area of the boundary. The proposed dredging would require a 404 permit from the Army Corps of Engineers and would therefore be subject to a consistency review. If the project will involve dredging over 500,000 cubic yards of the river's bottom the SCLRMA requires that the dredged material be used beneficially for "wetland protection, creation, enhancement, or combinations thereof."³⁰ Suppose XYZ will have trouble financing the extra costs associated with pumping the dredged materials to a nearby site for wetland protection. It is foreseeable the state could apply for CIAP funds to help XYZ fulfill its duty under the SCLRMA.

This is an example of how CIAP funds could possibly be used in newly added parishes under number 4 of the authorized uses.

However, use of CIAP funds is further limited by the fact that MMS required states to submit a CIAP plan before granting any funds.³¹³² Louisiana's Coastal Impact Assistance Plan (LCIAP) was approved in November of 2007 and identifies the projects that will be funded through CIAP for the four years funding is available (2007-2010). Only projects included in the plan have access to CIAP funding.³³ Thus, expanding the coastal zone boundary could not result in a sudden increase in CIAP funded projects because those projects would not have been included in the LCIAP. Although the LCIAP could be amended to include new projects, the amendment process is tedious and long, and the deadline for amending the plan is December 31, 2010.³⁴ Therefore, it is unlikely an expansion of the coastal zone boundary will have any effect on the amount of funds parishes already existing in the coastal zone will receive from CIAP related projects.

C. GOMESA

In 2006 Congress passed the Gulf of Mexico Energy Security Act which provides even more OCS revenues to be distributed to the eligible states and their coastal political subdivisions.³⁵ The pertinent regulations under GOMESA related to the coastal zone boundary are essentially the same as under the CIAP discussed above and therefore the arguments made above will not be repeated here.³⁶ However, GOMESA funds are not set to expire in 2010 and states are not required to submit a "plan" to be awarded the funds.

D. CWPPRA

³⁰ La. R.S. 49:214.30

³¹ Coastal Protection and Restoration Authority, *CIAP*, <<http://www.lacpra.org/index.cfm?md=pagebuilder&tmp=home&pid=20>> Copyright 2010

³² Telephone Interview with David Fruge`, Office of Coastal Protection and Restoration (January 4, 2010, 10:30 a.m.)

³³ *Id.*

³⁴ *Id.*; Louisiana Office of Coastal Protection and Restoration, *CIAP December 2009 Program Update*, available via email from David Fruge`, OCPR, (225) 342-7615

³⁵ 43 U.S.C.A. 1331 note: Pub.L. 109-432, Div. C, Title I, §§ 101 to 105, Dec. 20, 2006, 120 Stat. 3000

³⁶ *Id.*

The Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) was enacted in 1990 and is commonly referred to as the “Breux Act”.³⁷ It was created with the goal of restoring and preventing the loss of Louisiana’s coastal wetlands and seeks to achieve this goal through the use of coastal restoration projects and conservation planning.³⁸ On average, Louisiana receives about \$50 million every year for CWPPRA projects.³⁹

The Breux Act required the formation of a restoration plan and a conservation plan, both of which were to include the identification of the “entire coastal area that contains coastal wetlands.”⁴⁰ The boundary chosen to designate this area is referred to as the “conservation plan boundary” and was set at the “interior-most limits of tidal (salt water) influence.”⁴¹ Although there is considerable overlap between the two, the conservation plan boundary is not the same as the coastal zone boundary.⁴² It is contiguous with the coastal zone boundary on the western, eastern, and southern sides of the boundary, but falls both inside and outside the coastal zone boundary on the northern (inland) side of the boundary.⁴³ Therefore, it appears that a change in the coastal zone boundary would have no effect on the amount of CWPPRA money (in terms of restoration projects) parishes already existing within the CZB receive, since CWPPRA is tied to the conservation plan boundary.

E. LCA

Louisiana Coastal Area (LCA) is designed to provide a plan for achieving no net loss of Louisiana’s coastal wetlands.⁴⁴ It is currently developing a comprehensive plan for the long term achievement of this goal and simultaneously implementing the most critical projects necessary to achieve no net loss in the short term (about 10 years). Approximately 15 projects were identified as being the most critical. For most of the projects, a study must be conducted and a project document produced outlining the feasibility, potential gains, costs etc. of the project. This document is then presented to Congress for budget approval. If approval is granted, the necessary funds are allocated to the Corps and construction can begin.⁴⁵

³⁷Louisiana Department of Natural Resources, *Louisiana Coastal Wetlands Conservation Plan*, pg. 1, May 1997

³⁸ *Id.*

³⁹Coastal Protection and Restoration Authority, *Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA)*,

<<http://www.lacpra.org/index.cfm?md=pagebuilder&tmp=home&nid=32&pnid=24&pid=21&fmid=0&catid=0&elid=0>> Copyright 2009

⁴⁰ 16 USCS 3952 (b)(1-2) & 3953(a-c)

⁴¹ Louisiana Department of Natural Resources, *Office of Coastal Management: Frequently Asked Questions (FAQ)*, < <http://dnr.louisiana.gov/CRM/faq.asp#rul1>> updated 12/22/09

⁴² *Id.*

⁴³ *Louisiana Coastal Wetlands Conservation Plan*, pg. 7

⁴⁴ Telephone Interview with Timothy Axtman, Project Manager, U.S. Army Corps of Engineers – New Orleans District (December 17, 2009, 9:52 p.m.)

⁴⁵ *Id.*

Whether or not a project would be located within the coastal zone boundary was not one of the factors considered in identifying the projects deemed most critical, and future congressional approval of funding is also not dependent on that factor. Furthermore, funds are allocated to the Corps on a project specific basis; parishes themselves do not receive monies through LCA, even though an LCA project may be conducted in a particular parish. Thus, it appears that enlargement of the coastal zone will have no effect on the financial resources available to a parish included in the coastal zone, at least not in the short term. However, Mr. Axtman did state in my interview with him that enlargement of the coastal zone might have an effect in the long term, as it relates to the development of the comprehensive plan; that is, the Corps would perhaps be more inclined to look at a bigger area within which to conduct necessary projects. Still, Mr. Axtman did not give any indication that the coastal zone boundary is a factor in deciding which projects will be conducted, and the process for getting a project to the construction phase is rather lengthy and detailed.⁴⁶ Therefore, I would conclude that an enlargement of the coastal zone boundary is also not likely to have an effect on where projects are placed in the long term.

F. CPRA / CPRF/ OCPR

CPRA:

The Coastal Protection and Restoration Authority has only been in existence since 2005, but is charged with representing the position of the state on the protection and restoration of the “coastal area” through the use of “projects and programs.”⁴⁷ In terms of financial resources, CPRA has “discretion to approve all requests for integrated coastal protection programs and projects in the *coastal area*, insofar as such requests are for funds to be appropriated from the Coastal Protection and Restoration Fund.”⁴⁸ Money allocations to some of these “programs” are listed in CPRA’s *Annual Plan* for the year 2010 and include assistance to local levee authorities.⁴⁹ Appendix C of the *Annual Plan* contains an extensive list of projected program and project expenditures for the next 3 years. CPRA also has the authority to enter into agreements with parishes located wholly or partially within the *coastal area* for the construction of “any coastal protection, conservation and restoration, hurricane protection, infrastructure, storm damage reduction, or flood control project.”⁵⁰

CPRF:

The Coastal Protection and Restoration Fund was placed into the state treasury to provide revenues for use in protecting and restoring Louisiana’s *coastal area*.⁵¹ The

⁴⁶ *Id.*

⁴⁷ La. R.S. 49:214.5.1

⁴⁸ La. R.S. 49:214.5.2 (A)(4) emphasis added

⁴⁹ CPRA, *Fiscal Year 2010 Annual Plan*

⁵⁰ La. R.S. 49:214.5.2 (A)(11) emphasis added

⁵¹ La. R.S. 49:214.5.4 (A)

revenues consist of mineral revenues received by the state, including federal mineral revenues from OCS activities.⁵² Money from the fund may only be used for coastal protection and restoration programs and projects, and some examples can be found in Louisiana Revised Statutes 49:214.5.4 (G).

OCPR

The Office of Coastal Protection and Restoration is the “implementation and enforcement arm” of CPRA⁵³ and receives money from the CPRF to carry out this purpose.⁵⁴ Specifically, OCPR implements projects relative to protection and restoration of the *coastal area*.⁵⁵

Coastal Area

The term “coastal area” has been italicized in the preceding three paragraphs to emphasize its importance as the geographic boundary of CPRA, CPRF, and OCPR.⁵⁶ Coastal area is currently defined as “the Louisiana Coastal Zone and contiguous areas subject to storm or tidal surge and the area comprising the Louisiana Coastal Ecosystem.”⁵⁷ The Louisiana Coastal Ecosystem is defined as:

the coastal area of Louisiana from the Sabine River on the west to the Pearl River on the east, including those parts of the Atchafalaya River Basin and the Mississippi River Deltaic Plain below the Old River Control Structure and the Chenier Plain included within the study area of the restoration plan.⁵⁸

“[T]hose parts... included within the study area of the restoration plan” refers to the Louisiana Coastal Area (discussed above) Ecosystem Restoration Study.⁵⁹⁶⁰ The study area comprises 20 parishes (only one more than the CZB) and covers only a slightly larger area than the coastal zone boundary.⁶¹

In sum, CPRA, CPRF, and OCPR are limited to the coastal area, which consists of both the Louisiana coastal zone and the Louisiana coastal ecosystem. It seems,

⁵² La. R.S. 49:214.5.4 (B) & (E)

⁵³ La. R.S. 49:214.6.1 (A)(2)

⁵⁴ La. R.S. 49:214.6.2 (C)(1)

⁵⁵ *Id.* at (B)

⁵⁶ Telephone Interview with Chris Williams, Engineer Manager, Program Management Section, Office of Coastal Protection and Restoration (January 5, 2010, 10:49 a.m.)

⁵⁷ La. R.S. 49:214.2 (3)

⁵⁸ Water Resources Development Act of 2007, 110 Public Law 114: 7001

⁵⁹ Telephone Interview with James Pahl, Coastal Resources Scientist, Office of Coastal Restoration and Protection, (January 4, 2010, 3:00 p.m.)

⁶⁰ US Army Corps of Engineers: New Orleans District, *Louisiana Coastal Area: Ecosystem Restoration Study*, <http://www.lca.gov/final_report.aspx>, Final Study Report, Volume 1 pg. MR 1--5

⁶¹ *Id.* - see maps in document

therefore, that an expansion of the coastal zone, as proposed in the tiered approach, would greatly increase at least the scope of CPRA, CPRF, and OCPR. Whether or not this would result in a significant decrease in the funds available to parishes already existing in the coastal zone is hard to determine.⁶² For starters, funds are not allocated to parishes within the coastal area on any type of pro-rata basis but rather on a project specific basis.⁶³ Expanding the coastal zone (thereby expanding the coastal area) would allow more parishes to propose coastal restoration and protection projects, but not every project is accepted; projects are subject to public comment, evaluation criteria, and must advance the objectives of “protection, conservation, enhancement, and restoration of the coastal area.”⁶⁴ CPRA has also designed a “project benefit scoring procedure to estimate how well projects in the planning and design stages would meet” the objectives of coastal restoration and protection.⁶⁵ Money from the Coastal Protection and Restoration Fund, as stated above, may only be spent on “integrated coastal protection.”⁶⁶ Thus, any funds spent on projects in newly added parishes would be for the over-arching goals of coastal protection and restoration; the statutes governing CPRA, CPRF and OCPR prevent the misuse of available resources. With these types of checks and balances, it seems unlikely that the inclusion of more parishes in the coastal area would cause a significant decrease in the funds available to parishes already in the coastal area; and any decrease that does occur would be for the main goal of saving Louisiana’s coast and protecting its citizens, not for unrelated interests (such as agricultural uses).

⁶² Telephone Interview with James Pahl,

⁶³ CPRA, *Fiscal Year 2010 Annual Plan*, April 27, 2009 pg. 2-4, 15-16; La. R.S. 49:214.2 (1), (10), (13) & (14)

⁶⁴ La. R.S. 49:214.5.3

⁶⁵ *Annual Plan*, pg. 7

⁶⁶ La. R.S. 49:214.5.4