

Amendment to the existing February 3, 2005 Memorandum of Understanding between The Department of Natural Resources and The Department of Wildlife and Fisheries for Activities Occurring or Affecting the Louisiana Coastal Zone

WHEREAS Department of Natural Resources (“DNR”) and Department of Wildlife and Fisheries (“DWF”) entered into a Memorandum of Understanding on February 3, 2005 (“existing MOU”), the purpose of which was to meet the mandates of the State and Local Coastal Resources Management Act of 1978 to reduce governmental red tape and delays and ensure predictable decisions on Coastal Use Permit applications, and

WHEREAS DNR and DWF recognize the environmental, ecological, and economic importance of identifying sensitivities to surface activities located within the public oyster areas, the economic, social, and developmental importance of exploration for and production of mineral resources, and that both oysters and minerals are valuable natural resources of this State, and

WHEREAS DNR and DWF recognize that the Louisiana Constitution requires environmental protection insofar as possible and consistent with the health, safety, and welfare of the people. This rule requires an agency or official, before granting approval of proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible, consistently with the public welfare. The Constitution does not establish environmental protection as an exclusive goal, but requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors. Louisiana law further requires encouragement of multiple uses of coastal resources and resolution of conflicts among competing uses within the coastal zone, and

WHEREAS the existing MOU specifies that DWF provide DNR with maps delineating the public oyster areas into two categories: currently unproductive and currently productive, and

WHEREAS DNR and DWF agree that the balancing of coastal resource uses mandated by the Constitution would be better facilitated by further delineating the public oyster areas into a tiered system based on environmental and ecological sensitivity of habitats contained therein, and by agreeing upon appropriate guidelines for permit applications for mineral activities in each tier, and

WHEREAS DNR and DWF agree that the balancing of coastal resource uses mandated by the Constitution would be better facilitated by clarifying and notifying prospective mineral lease bidders of these guidelines, and

WHEREAS DNR and DWF agree that scientifically-derived criteria and decisional matrices should be used where possible to establish the quantity, quality, and location of public oyster areas necessary to sustaining the oyster industry, in order to better balance and encourage multiple coastal resource uses, and

WHEREAS DNR and DWF agree to jointly and fully participate in the development of scientifically-derived criteria and decisional matrices to assist the parties in processing permit applications and to assist the legislature and Wildlife and Fisheries Commission in establishing the quantity, quality, and location of public oyster areas, and

WHEREAS DWF will coordinate with the Louisiana Oyster Task Force on implementation of the MOU.

NOW, THEREFORE BE IT RESOLVED that the parties hereto agree that Paragraph 2 of the existing MOU is hereby amended as follows:

2. DWF will provide to DNR a map (or maps) in acceptable digital format which will delineate the public oyster seed grounds or reservations (“public oyster areas”). This map, updated by DWF when DWF deems appropriate, will divide the public oyster areas into two categories: currently unproductive and currently productive, subdivided as provided herein.
  - a. The public oyster areas shall be further delineated in the following tiered manner as depicted on the attached map dated March 3, 2009:
    - i. Tier I (approximately 37,660 acres) – Portions of the “Currently Productive” public oyster areas that are the most ecologically sensitive, highly productive for oysters and oyster reef habitat, and contain little to no historic oil and gas activity.
    - ii. Tier II (approximately 914,025 acres) – The balance of the “Currently Productive” public oyster areas not included in Tier I that are ecologically sensitive and highly productive for oysters and oyster reef habitat.
    - iii. Tier III (approximately 729,499 acres) – The “Currently Unproductive” public oyster areas.
  - b. The provisions of this paragraph 2 shall apply only to the public oyster areas as designated and tiered on the attached map. Areas may be added, removed, or re-tiered, for purposes of this paragraph by DWF; and such re-tiering shall take place every three years. The DWF shall notify DNR 90 days prior to any addition, removal or re-tiering of these designated areas. If DNR disagrees with the proposed addition, removal or re-tiering, then the DNR secretary shall notify DWF of his concerns. The Governor’s Executive Assistant for Coastal Activities shall resolve any outstanding issues to the proposed changes.

- c. For proposed activities within the geographical boundaries of and affecting Tier I public oyster areas and where there are no feasible and practicable (including economic considerations) alternative locations, methods, or practices that would allow access to these Tier I areas without adversely impacting the water bottoms, drilling pads and an access corridor will be permitted through each of these Tier I public oyster areas pursuant to the following conditions:
- i. The first lessee/applicant in coordination with DWF, in consultation with DNR, will identify one proposed access corridor within the Tier I public oyster area to the desired location. The proposed access corridor will be located in a manner to minimize adverse impacts to water bottoms and oyster habitat. The dredged, usable area of the corridor may be up to one hundred (100) feet in width, with dredged material deposition area(s) up to eighty (80) feet in width immediately adjacent to and along the length of the dredged area.
  - ii. A subsequent lessee/applicant in consultation with DWF may identify a proposed extension of the access corridor on the same Tier I public oyster area either to widen it up to the full allowable width stated above or to extend it. The proposed extension corridor will be located in a manner to minimize adverse impacts to water bottoms and oyster habitat.
  - iii. Other than as provided herein, once established, the corridors will not be enlarged or changed in any manner. The agencies envision that only one complete traversal of each Tier I public oyster area will be permitted, regardless of the total number of applicants, lessees, or permittees. However, to minimize overall adverse impacts to water bottoms and oyster habitat, DWF may authorize an exception to these limitations.
  - iv. Each permittee will be allowed to impact the water bottoms within the corridor, dredged material disposal area(s), or drilling pad only to the extent required to access and/or work their lease.
  - v. Drilling pads shall be located immediately adjacent to the corridor. The size of the drilling pad shall be as small and compact as practicable to conduct the permitted activity. DNR will require use of an existing drilling pad if feasible and practicable.
  - vi. Each permittee will be required to make compensation payments, as provided for in subparagraph 2 (g), for the water bottoms adversely impacted by their activity. A successive permittee will be required to make compensation payments only for the previously-uncompensated water bottoms adversely impacted by their activity.
  - vii. All activities that will adversely impact the water bottoms within the Tier I areas, except dredged material deposition, will be required to be contained within the confines of the corridors and drilling pads and areas immediately adjacent thereto which are necessary to accommodate the mooring or anchoring of vessels associated with the permitted activities and in no case shall these areas exceed eighty (80) feet in width. For purposes of this paragraph, "adverse/adversely impact" means a direct

disturbance to the water bottom or oyster habitat, including dredging, spoil deposition, flow lines and gathering pipelines, and all appurtenant structures and equipment for the permitted activity associated with the specific lease and determined to have a negative impact on oyster production, but excluding noninvasive seismic activity.

- viii. The geologic review will continue to require minimizing the adverse impacts of mineral development on oyster resources.
- ix. DWF may require a bond to secure any obligation for any reasonably expected adverse impact to the public oyster areas and oyster resources located thereon. DWF shall develop rules in accordance with the Louisiana Administrative Procedure Act that implements the agreed upon compensation and bond formula as provided in subparagraph 2 (g).
- d. For proposed activities within the geographical boundaries of and affecting "Currently Productive" (Tier I and Tier II) public oyster areas, DNR will notify the applicant that a water bottom assessment meeting DWF protocol must be submitted to DWF and that a notice of clearance from DWF must be received by DNR before DNR will complete the processing of the application. The DWF notification of clearance may specify recommended modifications to the proposed activity which DWF finds are needed to avoid or minimize adverse impacts to public oyster resources. If DNR proposes to issue the permit without including the recommended modifications specified by DWF in the notification of clearance, or if DWF proposes to deny notice of clearance, then the secretary whose department is proposing to take such action shall notify the other secretary and the Governor's Executive Assistant for Coastal Activities within ten (10) days of deciding to take such proposed action. The Governor's Executive Assistant for Coastal Activities shall then resolve the dispute and make a final decision within fifteen (15) days.
- e. For proposed activities within the geographical boundaries of and affecting Tier III ("Currently Unproductive") public oyster areas, DNR will place a condition in the coastal use permit that the applicant will 1) provide to DWF a water bottom assessment (unless waived by DWF) that meets DWF protocol prior to commencement of the activity, and 2) provide compensation to DWF for adverse impacts to those water bottoms as provided for in subparagraph 2 (g). For proposed activities affecting the approximately 456,614 acres of "Currently Unproductive" public oyster areas east of the Mississippi River as depicted on the attached map dated March 3, 2009, unless re-tiered thereafter, no such pre-project water bottom assessment or compensation will be required, unless the permittee acts with wanton and reckless disregard for the oyster areas and resources thereon.
- f. A permittee may develop and submit to DWF a "no-impact transit plan". The plan shall describe the proposed methods to access and/or work the proposed permitted area without adversely impacting the public oyster areas. The DWF shall review the plan, and may approve the plan to provide for the ingress and egress of vessels to access and/or work the

project area. The permittee shall not be responsible for any damages associated with the implementation of the plan provided that DWF determines that activities taken by the permittee are/were consistent with the approved plan.

- g. i. Compensation due DWF for adverse impacts to the public oyster areas shall be calculated based on the following, or any subsequent formula developed in pursuance of subparagraphs 2 (l) and (g)(ii): 1) the cost of cultch material per cubic yard as established by the DWF Cultch Compensation Rate Schedule of November 4, 2003 for the geographical area the proposed permitted activity is to take place within; 2) the amount of acreage of Type I, Type II, Type III(a) or Type III(b) water bottoms adversely impacted by the permitted project as determined using information contained within the pre-project water bottom assessment and the Coastal Use Permit (CUP) application; and 3) the established value of the different water bottom types in terms of cubic yards of cultch material per acre as established by the DWF Cultch Compensation Rate Schedule of November 4, 2003, which are: 1 yd<sup>3</sup> for Type I, barren non-supportive acreage; 50 yd<sup>3</sup> for Type II, barren supportive acreage; 187 yd<sup>3</sup> for Type III(a), reef without live oysters; and 187 yd<sup>3</sup> for Type III(b) plus the prior three-year average dockside value per sack of live oysters, reef acreage with live oysters.

As such, compensation shall equal [(acreage amount of Type I water bottom adversely impacted x 1 yd<sup>3</sup> x amount of money owed per yd<sup>3</sup> for the cost of cultch material for Type I water bottom) + (acreage amount of Type II water bottom adversely impacted x 50 yd<sup>3</sup> x amount of money owed per yd<sup>3</sup> for the cost of cultch material for Type II water bottom) + (acreage amount of Type III(a) water bottom adversely impacted x 187 yd<sup>3</sup> x amount of money owed per yd<sup>3</sup> for the cost of cultch material for Type III(a) water bottom) + (acreage amount of Type III(b) water bottom adversely impacted x 187 yd<sup>3</sup> x amount of money owed per yd<sup>3</sup> for the cost of cultch material for Type III(b) water bottom + the prior three-year average dockside value per sack of live oysters destroyed during the permitted activity)]. Compensation shall be made within 90 days of the final determination of the permittee's adverse impacts by receipt of the impact assessment from DWF, or upon completion of mediation procedures as provided for in paragraph 15.

A preliminary estimation for the compensation due DWF will be determined utilizing information contained in the CUP application and the pre-project water bottom assessment performed by the permit-holder. Upon completion of the permitted activity, a post-project water bottom assessment may be performed by the permit-holder to calculate the actual adverse impact of the permitted activity and the amount of compensation owed. Also, DWF, with evidence that the permit-holder adversely impacted more water bottom area than for which was permitted, may perform a post-project water bottom assessment to calculate the actual adverse impact of the activity and the amount of compensation owed.

The maximum bond amount needed for Tier 1 areas shall be based upon the amount of compensation that would be due for such permitted activity as determined by the above formula based on the pre-project water bottom assessment and CUP application.

- ii. DWF, in consultation with DNR, shall develop and promulgate an updated compensation and bond formula, and the implementation process thereof, in accordance with the Louisiana Administrative Procedure Act within one year of the signing date of this amendment to the existing MOU.
- h. The existing Louisiana Geological Survey geologic review process will continue to apply to all coastal use permit applications governed by this paragraph, and in particular, will be used to determine:
  - i. Whether there is a feasible and practicable (including economic considerations) alternative location, method, or practice that would allow access to a Tier I public oyster area without impacting the water bottoms in that area;
  - ii. Whether a proposed corridor, corridor expansion, or drilling pad in a Tier I public oyster area is the least damaging feasible (including economic considerations) alternative for such activities, and if not, identification of the least damaging feasible alternative;
  - iii. Whether an exception to the limitation of one access corridor per Tier I public oyster area would minimize overall adverse impacts to existing oyster resources; and
  - iv. Whether access corridors through Tier I public oyster areas to access non-public oyster areas are feasible and practicable, due to geology or other factors, and if so, the minimum extent of such access corridors necessary for this purpose.

DNR will consider the recommendations of the Louisiana Geological Survey pursuant to the geologic review. DNR's consideration and approval, disapproval, or modification of a proposed corridor, corridor expansion, or drilling pad on or through a public oyster area pursuant to the permit process will be subject to the provisions and procedures set forth in this paragraph and paragraphs 6, 8, and 13, below.

- i. DNR will post the following notes within the mineral lease bid documents:
  - i. For activities affecting Tier I Currently Productive public oyster areas, the note will read: *"This tract is located in an area designated by the Louisiana legislature or the Wildlife and Fisheries Commission as a public oyster seed ground or reservation. Surface activity which will result in a direct disturbance to the water bottom or oyster habitat impacts within the boundaries of these designated public oyster seed grounds or reservations will be permitted only in or immediately adjacent to a single access corridor for the public oyster seed ground or reservation containing this tract, and only if there are no feasible and practicable alternative locations, methods, or*

*practices that would allow access to minerals on this tract without impacting the water bottoms or oyster habitat located within the seed public ground or reservation. If an access corridor already exists for the seed ground or reservation, permitted surface activity will be limited to use of the existing corridor and extension of the corridor up to a single complete traversal of the seed ground or reservation. Any such corridor or expansion of the corridor will be placed to minimize impacts to water bottom or oyster habitat. The location of any such corridor or expansion of an existing corridor will be evaluated on a case by case basis. Modifications may be required, and expansion of an existing corridor may be denied. In addition, compensatory mitigation will be required to offset water bottom and oyster habitat impacts.”*

- ii. For activities affecting Tier II Currently Productive and Tier III Currently Unproductive public oyster areas, the note shall read: *“This tract is located in an area designated by the legislature or the Wildlife and Fisheries Commission as a public oyster seed ground or reservation, or an area of Calcasieu or Sabine Lake. Proposed activities on this tract will be evaluated on a case by case basis. Modifications to proposed project features including, but not limited to, access routes, well sites, flowlines, and appurtenant structures may be required. In addition, compensatory mitigation will be required to offset unavoidable habitat impacts.”*
- j. In general no access corridors through Tier I public oyster areas to other non-public oyster areas will be permitted, except to the extent necessary in order to access minerals on the non-public oyster areas due to geology or other factors where no other access route is feasible and practicable. Any such proposed access corridor will be governed by the procedures in subparagraph 2(c), above, except regarding the number and length of such corridors.
- k. DWF, in consultation with appropriate entities, agrees to fully participate in the development of scientifically-derived criteria and decisional matrices to assist the parties in processing permit applications on public oyster areas and to assist the legislature and the Wildlife and Fisheries Commission in determining the quantity, quality, location, and extent of public oyster areas necessary and appropriate to sustain the oyster industry and to better balance and encourage competing coastal resource uses. DWF further agrees to develop these criteria and matrices as expeditiously as possible, and to amend this MOU as necessary and appropriate to incorporate them.
- l. DWF, in consultation with appropriate entities, agrees to develop and promulgate rules and regulations as necessary to implement the provisions and requirements of this MOU only supplanting the compensation and bond formula of subparagraph 2 (g), and the implementation process thereof, as well as adding, before the Type III(a) water bottom, another barren supportive type of water bottom based on scattered shell. The rulemaking process shall be commenced within 90 days and completed within one year of the signing date of this amendment to the existing MOU.

THEREFORE BE IT FURTHER RESOLVED that the parties hereto agree that Paragraph 14 is added to the existing MOU as follows:

14. Upon agreement between DNR and DWF that a material adverse change has occurred to the oysters or the public oyster seed grounds or reservations, then either party may suspend its participation under this MOU until the material adverse change has been alleviated or remediated. If DNR and DWF cannot agree that a material adverse change has occurred, then the Governor's Executive Assistant for Coastal Activities shall make a decision as to whether a material adverse change has taken place. For purposes of this MOU, a "material adverse change" is a substantial transformation (or an event or condition that is reasonably likely to result in a material adverse change) in the biological or environmental surroundings of the public seed oyster grounds or reservations or oyster resources thereon, or is the result of a force majeure which makes the fulfillment of the duties under this MOU of either DNR or DWF impracticable.

THEREFORE BE IT FURTHER RESOLVED that the parties hereto agree that Paragraph 15 is added to the existing MOU as follows:

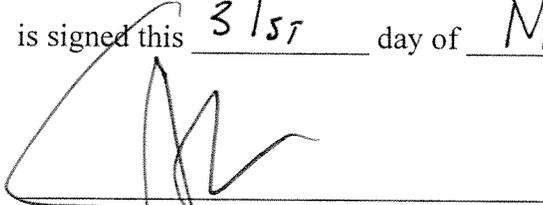
15. i. Mediation Procedure. If the permit-holder and DWF do not agree on the compensation owed, then the party alleging that a different amount is owed shall perform a post-project water bottom assessment of the permitted area if they have not already done so. Upon completion of the post-project water bottom assessment, the party challenging the amount alleged to be owed shall notify the other party as well as the Governor's Executive Assistant for Coastal Activities of the difference between the pre-project and post-project water bottom assessments. If the parties cannot agree on the actual amount owed within fifteen (15) days of the other party receiving the information on the differences between the assessments, then the party challenging the amount allegedly owed shall notify the Governor's Executive Assistant for Coastal Activities of this. The Governor's Executive Assistant for Coastal Activities shall then have thirty (30) days in which to resolve the dispute and make a final determination.
- ii. DWF, in consultation with appropriate entities, agrees to develop and promulgate rules and regulations supplanting this mediation procedure, and specifically adding an appeals process for the final decision of the Governor's Executive Assistant for Coastal Activities up to the 19<sup>th</sup> Judicial District Court. The rulemaking process shall be commenced within 90 days and completed within one year of the signing date of this amendment to the existing MOU.

THEREFORE BE IT FURTHER RESOLVED that all other terms, provisions, and obligations of the existing February 3, 2005 MOU shall remain in full force and effect.

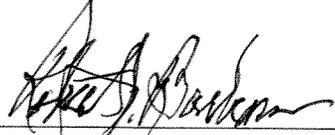
This amendment to the existing

*“Memorandum of Understanding between the Department of Natural Resources and the Department of Wildlife and Fisheries for activities occurring in or affecting the Louisiana coastal zone”* dated February 3, 2005

is signed this 3/5<sup>th</sup> day of MARCH, 2010.



Scott A. Angelle, Secretary  
Department of Natural Resources



Robert J. Barham, Secretary  
Department of Wildlife and Fisheries