

**SETTLEMENT AGREEMENT FOR
GRAND BAY OIL SPILL (LA#2019_0401_1830) AMONG: THE LOUISIANA
OIL SPILL COORDINATOR'S OFFICE, DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS; LOUISIANA COASTAL PROTECTION AND
RESTORATION AUTHORITY; LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY; LOUISIANA DEPARTMENT OF NATURAL
RESOURCES; LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES;
AND LOBO OPERATING, INC.**

I. INTRODUCTION

- A. The State of Louisiana, appearing through the Louisiana Oil Spill Coordinator's Office, Department of Public Safety ("LOSCO"), the Louisiana Coastal Protection and Restoration Authority ("CPRA"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Natural Resources ("LDNR"), and the Louisiana Department of Wildlife and Fisheries ("LDWF") (collectively referred to as the "Trustees") and Lobo Operating, Inc. ("Lobo") (each a "Party" and collectively, the "Parties") enter into this Settlement Agreement to resolve, without litigation, the State's natural resource damage claims under the Oil Pollution Act ("OPA"), 33 U.S.C. §§ 2701 *et seq.*, and the Oil Spill Prevention and Response Act ("OSPRA"), La. R.S. 30:2451 *et seq.*, resulting from an unauthorized discharge of crude oil from a pipeline owned and operated by Lobo (hereinafter "the Incident" as defined in Section II.E of this Agreement).
- B. The Trustees are authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702, and Section 2480 of OSPRA, La. R.S. 30:2480.

Now, therefore, the Parties enter into this Settlement Agreement, and mutually agree as follows:

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Settlement Agreement shall have the same definition given to them in OPA, OSPRA, and the Natural Resource Damage Assessment ("NRDA") regulations promulgated under OPA and OSPRA (15 CFR Part 990 and LAC 43:XXIX.Chapter 1, respectively). In the event of a conflict between the definitions in this Settlement Agreement and the definitions in OPA, OSPRA, and the NRDA regulations, the definitions in this Settlement Agreement shall govern.

- A. "Agreement" shall mean this Settlement Agreement.
- B. "Effective Date" for purposes of this Agreement shall mean the date of the last signature of this Agreement.

- C. “Future Restoration Project Planning and Implementation Costs” shall mean those costs incurred by the Trustees after the Effective Date of this Agreement for the planning, selection, design, implementation, permitting (as necessary), monitoring, and oversight of restoration project(s) and for the costs of complying with the requirements of the law to conduct restoration planning and implementation. The Trustees will use the funds to restore, rehabilitate, replace or acquire the equivalent of any natural resource and natural resource services injured, lost, or destroyed as a result of the Incident and for the oversight of the selected restoration project(s).
- D. “Lobo Operating, Inc.” or “Lobo” shall mean Lobo and its successors, assigns, employees, directors, officers, agents, guarantors, and underwriters, or other entities or persons otherwise bound by law. Any change in ownership or corporate status of Lobo including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Lobo’s rights or responsibilities under this Agreement.
- E. “Incident” shall mean the discharge of an estimated 20 barrels of crude oil into Grand Bay and the surrounding marsh in Plaquemines Parish, Louisiana on or about April 1, 2019 from a pipeline owned and operated by Lobo.
- F. “Outstanding Past Assessment Costs” shall mean the reasonable costs, including but not limited to direct and indirect costs, incurred by the Trustees in assessing the natural resource damages and in restoration planning for the Incident that have not been paid as of the Effective Date of this Agreement.
- G. “Settlement Amount” means the dollar amount to be paid by Lobo to the State, through LOSCO, to resolve the State’s claims for natural resource damages under OPA and OSPRA that resulted from the Incident. This dollar amount includes all Outstanding Past Assessment Costs and Future Restoration Project Planning and Implementation Costs.

III. FACTUAL BACKGROUND

- A. On April 1, 2019, the State was notified of an unauthorized discharge of crude oil from a pipeline owned and operated by Lobo near Grand Bay in Plaquemines Parish, Louisiana. An estimated 20 barrels of crude oil was released into the adjacent waterway and surrounding marsh.
- B. Lobo and its oil spill response contractor(s) initiated, conducted, and participated in response actions to contain and remove the discharged crude oil.
- C. Natural resources within the area that provide services to the public, including surrounding coastal herbaceous wetland habitat, were adversely impacted by the discharged oil and response actions.
- D. Response actions implemented by Lobo and other entities mitigated the effects of the

discharge, but provided no compensation for the natural resources and their services that were injured, lost, or destroyed as a result of the spill.

- E. On April 10, 2019, pursuant to 15 C.F.R. 990.14(c), La. R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited Lobo to participate in the preassessment phase of the NRDA for the Incident, as well as any subsequent NRDA phases. On May 7, 2019, Lobo accepted the Trustees' invitation.
- F. On November 20, 2019, the Trustees published their Notice of Intent to Conduct Restoration Planning for the Incident in the Louisiana Register. LR 45:1696 (November 2019).
- G. The Trustees assessed natural resource injuries associated with the Incident utilizing the schedule found at LAC 43:XXIX.121.H.4. Additional details regarding the Trustees' damage assessment and quantification are attached as Attachment A.
- H. The Trustees will incur Future Restoration Project Planning and Implementation Costs in the amount of \$25,683.00.
- I. The Trustees have expended time, funds, and resources in assessing natural resource injuries and losses that may have resulted from the Incident. The unpaid balance for the Outstanding Past Assessment Costs is \$20,929.09.
- J. This Settlement Agreement has been negotiated by the parties in good faith, is intended to avoid litigation among the Parties and expedite natural resource restoration actions to be performed by the Trustees, and is fair, reasonable, and in the public interest.

IV. PAYMENTS

- A. Within thirty (30) days of the Effective Date of this Agreement, Lobo shall pay the Settlement Amount of \$46,612.09 in lieu of performing a restoration project in accordance with LAC 43:XXIX.131. The Settlement Amount shall be paid to LOSCO, on behalf of the State, in accordance with payment instructions provided to Lobo by LOSCO in advance of the Effective Date of this Agreement. The payment shall reference "Grand Bay LA2019_0401_1830".
- B. In the event that payment required by Paragraph IV.A is not made within thirty (30) days of the Effective Date of this Agreement, interest on the unpaid balance shall begin to accrue on the thirty-first (31st) day, and continue to accrue through the date of full payment. Interest will be calculated pursuant to La. R.S. 13:4202.

V. TRUSTEE-IMPLEMENTED NATURAL RESOURCE RESTORATION

- A. As further discussed in Attachment A, the Settlement Amount reflects Outstanding Past Assessment Costs as well as the Trustees' estimate of Future Restoration Project

Planning and Implementation Costs for a portion of a restoration project for the Incident. The Trustees' preferred restoration project will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be provided, as required under OPA and OSPRA. Once the public review process has been completed, the Trustees will implement the Restoration Plan with any revisions the Trustees may deem appropriate after considering any public comments.

- B. Decisions regarding any use or expenditure of the Settlement Amount shall be made by the Trustees. Lobo shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of the Settlement Amount or restoration efforts pursuant to this Agreement.

VI. RELEASE, COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

- A. Subject to and in consideration of Lobo's complete payment of the Settlement Amount and any interest owed according to Section IV of this Agreement, the Trustees hereby agree to release and not to file suit or take enforcement or other administrative actions against Lobo for natural resource damages for the Incident pursuant to OPA and OSPRA. This release and covenant not to sue is conditioned upon receipt by LOSCO of all payments required by this Agreement. This release and covenant not to sue extends only to Lobo and does not extend to any other person.
- B. Lobo hereby covenants not to sue and agrees not to assert any claims or causes of action against the State for any claims arising from or relating to the Incident, pursuant to any federal, state, or common law, including, but not limited to any claims based on the Trustees' selection and implementation of a restoration project for the purposes of compensating the public for injuries to natural resources resulting from the Incident; and/or approval of plans for any such activities. Nothing herein shall be construed to constitute a waiver by the Trustees of Sovereign Immunity of the State of Louisiana.
- C. Nothing in this Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:
 - 1. Failure of Lobo to meet a requirement of this Settlement Agreement;
 - 2. Any other past releases, future releases, discharges, or spills;
 - 3. Any and all criminal liability;
 - 4. Enforcement of Coastal Use Permit No. P20190449 subject to Part VII of this Settlement Agreement; or
 - 5. Any other matter not expressly included in the release from liability for natural resource damages for this Incident set forth in Section VI.A.

VII. CREDIT TOWARDS ANY LIABILITY UNDER THE STATE AND LOCAL COASTAL RESOURCES MANAGEMENT ACT OF 1978

- A. In accordance with the State and Local Coastal Resources Management Act of 1978, La. R.S. 49:214.21 *et seq.* (“SLCRMA”), Lobo applied for and was granted Coastal Use Permit No. P20190449 (“Permit”) for certain activities implemented by Lobo to respond to and mitigate the effects of this Incident (“Permitted Activity”).
- B. Under the terms and conditions of that Permit and pursuant to authority granted to it by SLCRMA, should LDNR determine in its sole discretion that compensatory mitigation is required by Lobo as a result of the Permitted Activity, and subject to and in consideration of Lobo’s complete payment of the Settlement Amount and any interest owed according to Section IV of this Agreement, LDNR hereby agrees to offset and grant Lobo credit towards any liability under the SLCRMA in the amount of \$25,683.00.

VIII. NO ADMISSION OF LIABILITY

By entering into this Agreement, Lobo shall not be deemed as admitting any liability arising out of or relating to the Incident. Lobo neither admits nor denies the facts cited in this Agreement and agrees to pay the Settlement Amount set forth in this Agreement.

IX. AMENDMENT

This Agreement may be amended by mutual consent of the Trustees and Lobo. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all of the Parties to this Agreement.

X. SEVERABILITY

Invalidation of any one of the provisions contained herein shall in no way affect any other provision, which shall remain in full force and effect.

XI. EXECUTION

This Agreement may be executed in one or more counterparts. All counterpart signature pages shall be considered part of the original document. Each party signing below covenants that he or she is fully authorized to enter into the terms and conditions of this Agreement and duly authorized to bind the party for whom he or she is signing.

XII. VENUE

Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

IN WITNESS WHEREOF, this Agreement is executed by each of the Parties as of the dates written below.

[Signatures on following pages]

FOR LOBO OPERATING, INC.:

Name _____
Title _____

Date

FOR THE STATE OF LOUISIANA:

Samuel E. Jones
Coordinator
Louisiana Oil Spill Coordinator's Office

Date

FOR THE STATE OF LOUISIANA:

Thomas F. Harris
Secretary, Louisiana Department of Natural Resources

Date

FOR THE STATE OF LOUISIANA:

Chuck Carr Brown, PhD.
Secretary, Louisiana Department of Environmental Quality

Date

FOR THE STATE OF LOUISIANA:

Jack Montoucet
Secretary, Louisiana Department of Wildlife and Fisheries

Date

FOR THE STATE OF LOUISIANA:

Kyle R. “Chip” Kline, Jr.
Chairman, Coastal Protection and Restoration Authority

Date

ATTACHMENT A
Trustees' Damage Assessment and Quantification

Summary of Injury Assessment Procedures and Findings

The Trustees utilized drone imagery, overflights, and/or on-the-ground observations and photos acquired during the response and preassessment phases to determine that natural resources and services were injured as a result of this Incident and that response actions were not expected to fully address the injuries. The Trustees determined the injured habitat to be Coastal Herbaceous Wetlands (CHW), specifically “fresh marsh, Phragmites-dominated” and “fresh marsh excluding Phragmites-dominated.” Utilizing all available information, the Trustees developed the map in Figure 1, representing acreages of the relevant CHW habitat and oiling conditions and/or response activities. The Trustees then utilized the schedule found at LAC 43:XXIX.121.H.4 to determine the injury (expressed in Discounted Service Acre Years (DSAYs)) for the relevant CHW habitat and oiling condition and/or response activity. The results are presented in Figure 1 and totaled 10.74 DSAYs.

Restoration Approach

The Trustees' restoration approach involved 1) identifying restoration types with a strong nexus to the injured natural resources and services caused by the Incident, 2) selecting a preferred restoration type that most appropriately restores for the injured natural resources and services caused by the Incident, 3) developing a cash settlement amount based on a restoration technique commonly implemented for the preferred restoration type, and 4) selecting a preferred restoration project type available in the Regional Restoration Planning (RRP) Program¹ coastal regions for implementation in the future.

As described in Section 4.2.4.1.5, *Restoration Type Selection Criteria*, of the Louisiana RRP Program FPEIS (NOAA et al., 2007), trustees use restoration type selection criteria to assist in determining which of the various restoration types with a strong nexus to the injured trust resources and services is most appropriate to restore injured trust resources and services. Based on the CHW habitat injured as noted in Table 1, the Trustees determined a suite of restoration types appropriate for restoring for injured CHW caused by the Incident (*See* Table 1).

Although several restoration types are appropriate to restore for CHW habitat, the Trustees selected Creation/Enhancement of Coastal Herbaceous Wetlands (C/E CHW) as the preferred restoration type for this Incident for the following reasons. First, under the RRP Program, C/E CHW has a strong nexus to the injured resources (i.e., resource to resource or one to one). Second, C/E CHW is a proven, cost-effective, and successful restoration type for providing the same amount and quality of natural resources and habitat that were injured as a result of the Incident. Third, C/E CHW restoration projects are available. Furthermore, the Trustees have a method for estimating costs based on a restoration technique commonly

¹ Louisiana's RRP Program identifies a statewide restoration planning program structure, defines trust resources and services in Louisiana that are likely to be or are anticipated to be injured (i.e., at risk) by oil spill incidents, establishes a decision-making process, and sets forth criteria that are used to select restoration project(s) that may be implemented to restore the trust resources and services injured by a given spill. The RRP Program's Final Programmatic Environmental Impact Statement (FPEIS) may be viewed in its entirety at <http://www.losco.state.la.us/LOSCUploads/RRPAR/la2395.pdf>.

implemented for the C/E CHW restoration type for CHW injuries and can therefore develop a cash settlement dollar amount based on such a project.

The Trustees determined that restoration of 1.34 acres of CHW - fresh marsh habitat, via a crevasse-splay project, would be required to compensate for injuries to trust natural resources and interim losses of ecological services resulting from the Incident. The Settlement Amount reflects Outstanding Past Assessment Costs as well as the Trustees' estimate of Future Restoration Project Planning and Implementation Costs for a portion of a restoration project for the Incident. Identification of a specific preferred restoration project to compensate the public for injuries to trust natural resources and interim losses of ecological services resulting from the Incident will be provided for public review in the future.

Administrative Record

The Trustees have maintained an Administrative Record (AR) for this Incident, which is available to the public at <https://data.losco.org> under "Search Administrative Records" and at the address listed below. Additional information and documents, including any public comments received, are part of the AR.

Louisiana Oil Spill Coordinator's Office
Department of Public Safety & Corrections
Gina Muhs Saizan
gina.saizan@la.gov
(225) 925-6606
7979 Independence Blvd.
Baton Rouge, Louisiana 70806
Mon.-Fri. 8:00am to 4:30pm Central Time Zone

FIGURE 1. HABITAT INJURED AND REPRESENTATIVE PHOTOS DOCUMENTING OILING CONDITIONS AND/OR RESPONSE ACTIVITIES

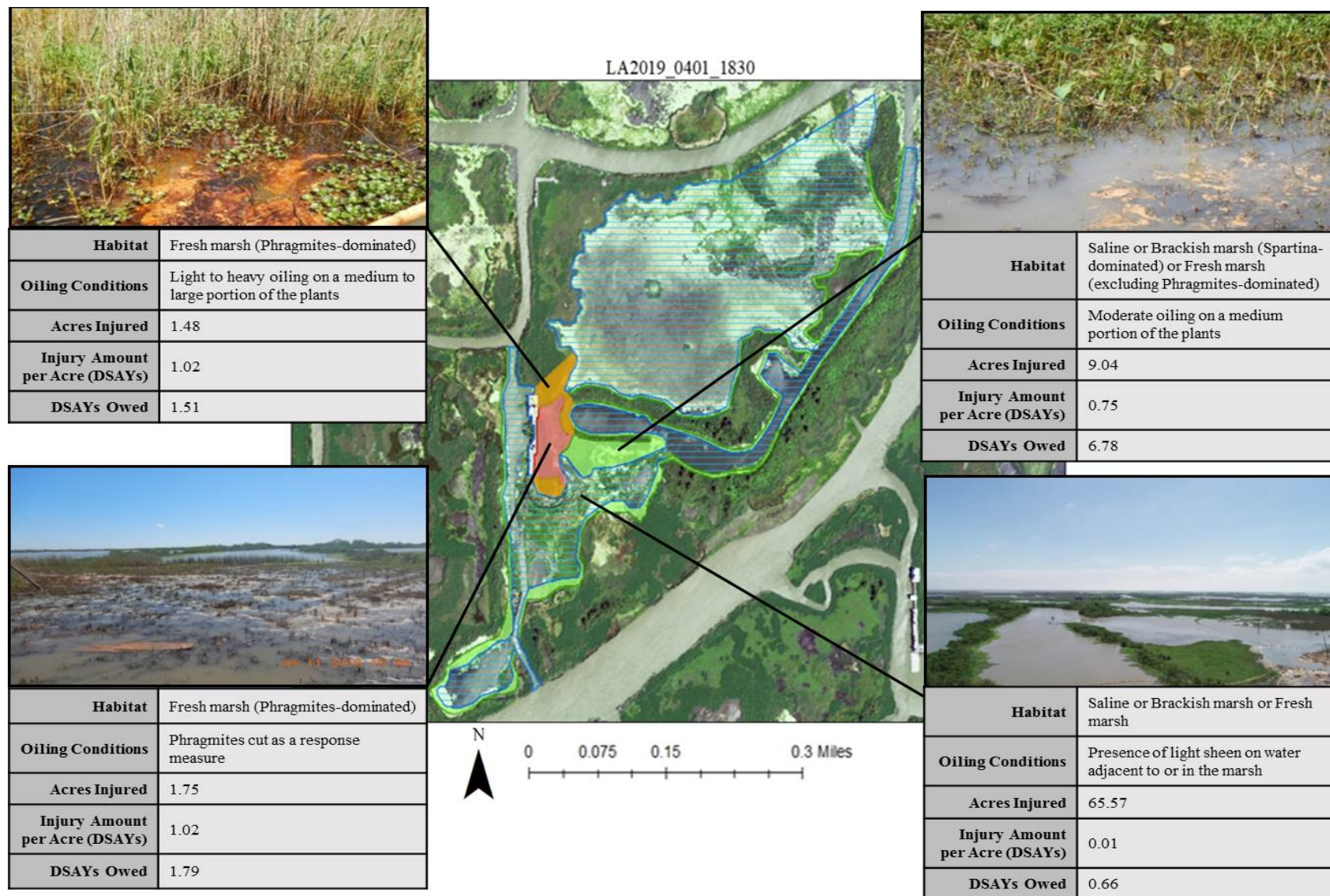


TABLE 1: MATRIX OF COASTAL RESTORATION TYPES FOR POTENTIALLY INJURED RESOURCES

The following matrix conceptually demonstrates those restoration types that are found to be reasonable for restoring each of the “potentially injured trust resources and services.” Checked boxes in this figure indicates that a restoration type is an appropriate restoration alternative for the corresponding “potentially injured trust resource or service.” A summary of the analysis that the Trustees used to define appropriate restoration types for each of the “potentially injured trust resources and services” is provided in Sections 4.2.4 through 4.2.4.1.5 of the Louisiana RRP Program Final Programmatic Environmental Impact Statement (NOAA et al., 2007).

| COASTAL | | | POTENTIALLY INJURED RESOURCES/SERVICES | | | | | | | | | |
|------------------------------------|----------------------|-----------------------------------|---|-------------------|-------------------------------|------------------------|-------------------|-------|----------|--------------|----------|---|
| | | | Herbaceous Wetlands | Forested Wetlands | Beach/Shoreline/ Streambed | Oyster Reefs (& other) | Water Column Org. | Birds | Wildlife | Recreational | Cultural | |
| RESTORATION TYPES | C/E ⁽¹⁾ | Coastal Herbaceous Wetlands | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Forested Wetlands | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Beach/Shoreline/Streambed | | | ✓ | | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Oyster Reefs (& other) | | | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Artificial Reefs | | | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal SAV | ✓ | | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | PP ⁽²⁾ | Coastal Herbaceous Wetlands | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Forested Wetlands | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Beach/Shoreline/Streambed | | | ✓ | | ✓ | ✓ | ✓ | ✓ | | |
| | Ac/LP ⁽³⁾ | Coastal Herbaceous Wetlands | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Forested Wetlands | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Beach/Shoreline/Streambed | | | ✓ | | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal Oyster Reefs (& other) | | | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| | | Coastal SAV | ✓ | | | | ✓ | ✓ | ✓ | ✓ | | |
| | S ⁽⁴⁾ | Coastal Water Column Org. | | | | | ✓ | | | | ✓ | |
| | | Coastal Oyster Reefs (& other) | | | | ✓ | ✓ | | | | ✓ | |
| | | Birds | | | | | | ✓ | | | ✓ | |
| | | Wildlife | | | | | | | ✓ | | ✓ | |
| | PF ⁽⁵⁾ | Birds | | | | | | ✓ | | | ✓ | |
| | | Wildlife | | | | | | | | ✓ | ✓ | |
| | | | Recreation | | | | | | | | ✓ | |
| | | | Cultural | | | | | | | | | ✓ |
| (1) Creation/Enhancement | | | | | | | | | | | | |
| (2) Physical Protection of Habitat | | | | | | | | | | | | |
| (3) Acquisition/Legal Protection | | | | | | | | | | | | |
| (4) Stocking of Fauna | | | | | | | | | | | | |
| (5) Physical Protection of Fauna | | | | | | | | | | | | |