

**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**

WHEREAS the State and Local Coastal Resources Management Act of 1978 ("Act") provides it is the policy of the state to: Protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone; Enhance opportunities for the use and enjoyment of the recreational values of the coastal zone; Support and encourage multiple uses of the coastal resources consistent with the maintenance and enhancement of renewable resource management and productivity; and Provide for adequate economic growth and development with the minimization of adverse effects of one resource use upon another (La. R.S. 49:214.22);

WHEREAS a regulatory framework was developed pursuant to those policies and the Department of Natural Resources was given the responsibility to administer the review and permitting of activities occurring in the coastal zone of Louisiana (La. R.S. 49:214.26);

WHEREAS a specific purpose of developing the coastal management process was to reduce governmental red tape and costly delays and ensure more predictable decisions on permit applications (La. R.S. 49:214.27(C)(7));

WHEREAS the Act specifically provides that it shall not abridge the constitutional authority of any department of state government or any agency or office situated within a department of state government, nor shall any provision, except as clearly expressed therein, repeal the statutory authority of any department of state government or of any agency or office situated in a department of state government (La. R.S. 49:214.31);

WHEREAS the Louisiana Constitution provides that the control and supervision of the wildlife of the state, including all aquatic life, is vested in the Louisiana Wildlife and Fisheries Commission ("Commission"), and the laws of Louisiana provide that to protect, conserve, replenish the natural resources of the state, the wildlife of the state, including all aquatic life, is placed under the supervision and exclusive control of the Commission (La. Const. Art. IX, § 7, La. R.S. 56:1).

WHEREAS the laws of Louisiana specifically provide that the Commission shall, in every possible way: Assist in developing the natural resources of the state to their fullest proportions (La. R.S. 56:6(19)); Improve, enlarge, and protect the natural oyster reefs of the state (La. R.S. 56:6(12)); Assist in protecting all lessees of private oyster bedding grounds in the enjoyment of their rights (La. R.S. 56:6(16)); Establish and maintain an adequate and vigilant

watch and control over seed grounds and seed reservations; and See that all oysters, seed oysters, oyster cultch and other material improvements found or placed thereon are efficiently protected from trespass, theft, or injury (La. R.S. 56:434(F));

WHEREAS the Commission has the authority to establish wildlife management areas and wildlife refuges, which become perpetually dedicated to that purpose and no use can be made of such lands inconsistent with or harmful to the purpose of providing a wildlife refuge or wildlife management area (La. R.S. 56:782). The Department of Wildlife and Fisheries is responsible for the conservation and management of all renewable resources and the leasing of non-renewable resources on wildlife management areas and refuges (La. R.S. 36:602(B)). The Department is responsible for performing the functions of the state relating to the administration, maintenance, and operation of wildlife management areas and refuges (La. R.S. 36:609(C));

WHEREAS, the Louisiana Natural Heritage Program within the Department of Wildlife and Fisheries administers the Louisiana Natural Areas Registry and the Threatened and Endangered Species Conservation program, wherein the Department will: Provide for the management and preservation of natural area preserves; Conserve resident species of wildlife, and those species determined to be threatened or endangered by the secretary and the secretary of the Interior of the United States; and Conserve, protect, and enhance for the benefit of our citizens and future generations, unique ecological systems, plant and animal life, geological formations, wildlife habitats, and scenic beauty that are not found in other parts of the United States (La. R.S. 56:1830, 1864(7), 1903(A), and 1921).

WHEREAS, the Department of Wildlife and Fisheries is responsible for administering the Scenic Rivers Act for the purpose of preserving, protecting, developing, reclaiming, and enhancing the wilderness qualities, scenic beauties, and ecological regime of certain free-flowing streams or segments thereof (La. R.S. 56:1841(B)). Furthermore, all local, state, and federal agencies in planning for the use and development of water and water-related land resources, shall give full and equal consideration to potential natural and scenic river areas (La. R.S. 56:1848).

WHEREAS the Department of Wildlife and Fisheries is the state agency responsible for providing comments under the federal Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

WHEREAS the Act provides for interagency agreements between the Department of Natural Resources and other governmental bodies having regulatory jurisdiction or authority over uses of the coastal zone in order to expedite and streamline the processing and issuing of coastal use permits and obtaining all other concurrently required permits for approvals from such other

governmental bodies having separate regulatory jurisdiction or authority over uses of the coastal zone without impinging on the regulatory jurisdiction of authority of those governmental bodies (La. R.S. 49:214.33);

NOW, THEREFORE, BE IT RESOLVED that, in order to meet the mandates of the Act to reduce governmental red tape and delays and ensure predictable decisions on permit applications and without impinging on the regulatory jurisdiction and authority of the Department of Wildlife and Fisheries, the Department of Natural Resources and the Department of Wildlife and Fisheries hereby enter into this Memorandum of Understanding and agree to the following:

1. The Department of Wildlife and Fisheries ("DWF") and the Department of Natural Resources ("DNR") will work together to ensure that the information required by DWF for commenting on Coastal Use Permit ("CUP") applications is included in those applications and/or provided to DWF at the earliest possible time in the process. DWF will advise DNR of their information requirements requested to be included in the applications. DNR will work collaboratively with DWF to determine at what point in the permit process the information should be provided; whether before the permit application is deemed complete, prior to issuance of the permit, or at such other point(s) as is determined appropriate.
2. DWF will provide to DNR a map (or maps) in acceptable digital format which will delineate the 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.
  - a. For proposed activities affecting "Currently Unproductive" public oyster areas, DNR will place a condition in the 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 impacts to those water bottoms.
  - b. For proposed activities affecting "Currently Productive" 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 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, the matter will be subject to the dispute resolution procedures in paragraph 13, below.
3. For proposed activities affecting state water bottoms under lease issued by DWF to private parties for oyster production, DNR will require the applicant to provide notice of the proposed activity to the current holders of those leases located within

the applicable notification zone at time of application. DNR will also place a condition in the permit requiring the applicant to provide to DWF a water bottom assessment (unless waived by DWF) at least ten (10) days prior to commencement of the activity, and will further notify the applicant that he/she may be required, at the request of DWF, to modify the project if the proposed location unnecessarily impacts an oyster reef.

4. When projects require mitigation pursuant to La. R.S. 49:214.41 ( including LAC 43:I.724) and are not located on lands and water bottoms under the jurisdiction of the DWF (i.e., wildlife management areas, wildlife refuges, public oyster areas, within the vicinity of any Louisiana designated Natural Scenic River or Historic and Scenic River, and areas that will have potential impacts to Louisiana Natural Heritage Program tracked species or natural communities):
  - a. DWF will not participate in mitigation plan review for projects which impact five (5) acres or less of vegetated wetlands. DWF may provide comments regarding such plans as part of their comments on the CUP application.
  - b. DNR will seek DWF's active participation in mitigation plan review for projects which impact more than five (5) acres of vegetated wetlands. That review includes participation in meetings and timely review of documents and other information. For each project impacting more than five (5) acres, DWF will provide comments to DNR by the established deadline or notify DNR by that deadline that it does not desire to participate in part or all of the mitigation plan review process.
5. DWF will provide DNR with a licensed copy of the Natural Heritage Database and train appropriate DNR personnel in its use. For proposed activities that will have potential impacts to Louisiana Natural Heritage Program ("LNHP") tracked species or natural communities, DNR will forward CUP applications to DWF for comments regarding species identified in the database. DWF will provide comments within the established deadlines. DNR agrees that the database will remain confidential and will only be used for permit and consistency-related purposes. DNR will sign a data utilization agreement with DWF, LNHP.
6. In recognition of DWF's responsibility under the Louisiana Constitution and statutes, and the federal Fish and Wildlife and Coordination Act, DNR will provide DWF copies of all coastal use permit applications. In addition to any other provisions herein, DWF may provide comments on CUP applications at any time during the public comment period. For activities within the boundaries and buffer zones of public oyster areas, water bottoms leased for oyster production, within the vicinity of any Louisiana designated Natural Scenic River or Historic and Scenic River, that traverse the boundary of DWF owned or managed properties, or that will have potential impacts to Louisiana Natural Heritage Program tracked species or natural communities or other sensitive DWF-trust resources identified by DWF,

including, but not limited to, artificial reefs and other fishing enhancement projects, DNR will consult with DWF before issuing coastal use authorizations [CUPs, approvals under General Permits, determinations of No Direct and Significant Impact (NDSI), and approval of permit modifications or amendments except those involving administrative changes or very minor work changes] and consistency determinations. DWF comments and recommendations will be submitted within the time frames established by DNR. In the event DWF requires further information for their evaluation, DWF will so notify DNR; DNR will allow DWF reasonable time to review the additional information and provide comments on the permit application.

7. DNR will schedule all pre-application meetings and geologic reviews to facilitate active participation by DWF. Likewise, DWF will advise DNR when DWF has been requested to schedule a pre-application meeting, so that DNR may attend if they deem appropriate.
8. DNR will consider all DWF recommendations on CUP applications and other decisions as provided in paragraph 6, and include those recommendations unless they conflict with the Louisiana Coastal Resources Plan (LCRP) guidelines, and/or the Louisiana Coastal Wetlands Conservation Plan requirements (16 U.S.C. 3951 et seq.). DNR will be especially sensitive to DWF recommendations involving public oyster areas and water bottoms leased for oyster production, activities within the vicinity of any Louisiana designated Natural Scenic River or Historic and Scenic River, Louisiana Natural Heritage Program tracked animal species and their designated critical habitat, and projects having extensive impacts on valuable coastal wetlands.
9. Recognizing DWF's constitutional and statutory authority over DWF owned or managed properties (i.e., refuges and wildlife management areas), DWF shall have full authority to conduct all projects it determines are necessary to maintain or enhance management areas or refuges and DWF shall have full authority over any third party projects such as oil and gas activities so as to cause the least disturbance, as determined by DWF, to the wildlife and fishery resources and the public users of the state. DWF will encourage DNR participation in pre-application meetings to discuss proposed projects on DWF owned or managed properties. The DNR and the DWF will work together to achieve the above goal by developing a General Permit, Special Use Permit and/or other process for DWF owned or managed properties; those permitting vehicles and other processes must be consistent with the LCRP and minimize permitting delays. During the interim period, the above goal will be integrated into the existing permit process in the following manner:
  - a. For third party projects, the applicant shall coordinate with DWF prior to submitting a CUP application. The DWF will provide DNR a Letter of Clearance for the proposed project. DNR will issue the CUP or other coastal authorization with the conditions as provided in the Letter of Clearance. Any additional conditions proposed by DNR must be approved by DWF. DWF

shall submit, for DNR review, a determination (to include necessary documentation) that the proposed activity is consistent to the maximum extent practicable with the LCRP. DWF will also determine and document the impacts and mitigation project sufficiency of each proposed project, using DNR's Wetland Value Assessment (WVA) methodology. DWF will provide DNR with the results and associated WVA calculations for the purposes of documenting and determining compliance with the Louisiana Coastal Wetlands Conservation Plan.

b. For projects conducted by DWF, DWF shall be responsible for determining that the proposed activity is consistent to the maximum extent practicable with the LCRP. DWF will determine and document the net impacts on an individual project basis, using DNR's WVA methodology. DWF will provide DNR with the results and all associated WVA calculations for the purposes of documenting and determining compliance with the Louisiana Coastal Wetlands Conservation Plan, and facilitating DNR's consistency determination review.

c. Should DWF and DNR disagree on any condition proposed by DNR or on any other issue, DNR or DWF shall provide notice to the other agency, and the agencies' staffs will work together to resolve the conflict in a collaborative and mutually satisfactory manner. If agreement cannot be reached within ten (10) working days from the date of notice, the disagreement will be elevated to the Departments' Secretaries. If the Secretaries cannot resolve the disagreement within ten (10) working days of the notice of elevation, the permit or other coastal use authorization shall be issued as originally approved/recommended by DWF, unless the DNR Secretary/designee determines that the proposed project is inconsistent with the LCRP and attendant guidelines. In such cases, the DNR Secretary/designee shall condition such permit or other coastal use authorization, in close coordination with the DWF, to allow the proposed action to be consistent with the LCRP in a manner that approximates DWF's recommendations to the greatest extent practicable. In the event that the DWF Secretary/designee is not able to reach agreement with the DNR Secretary/designee's proposed conditioning of the approval to allow it to be consistent with the LCRP, he/she may appeal the matter in accordance with the dispute resolution procedures in paragraph 13.d., below.

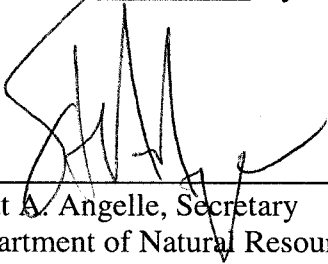
10. DWF and DNR will endeavor to implement a procedure to allow the CUP application to serve as a joint application document for DWF's Scenic Rivers Permit and Dredged Fill Material Permit. DNR and DWF will also endeavor to consolidate the joint notice procedure to include the public notice requirements for the Scenic Streams permit.
11. DNR will provide DWF with copies of all issued coastal use authorizations and consistency determinations.

12. DNR will provide DWF funding, at an amount to be agreed upon by both Secretaries, for one full-time employee to provide support in the permitting process. This funding will be on an annual basis for so long as this agreement remains in effect, or as otherwise agreed upon by both Secretaries.
13. Dispute Resolution: In the event DNR proposes to issue a coastal use authorization or consistency determination as provided in paragraph 6 without including DWF's recommendations, DNR will withhold issuance of the authorization or consistency determination and:
  - a. DNR shall notify DWF that DNR does not intend to incorporate DWF's recommendation(s) and shall provide written justification for such exclusion (e.g., conflicts with LCRP guidelines or with the Louisiana Coastal Wetlands Conservation Plan and the reasons for that conclusion).
  - b. DWF shall review DNR's justification for not including DWF's recommendation (s), and determine whether DWF's recommendation(s) can be modified to address adequately DNR's justification(s). DWF shall respond within fifteen (15) days of receiving DNR's notification and either (1) provide a modified recommendation or justification that DWF believes sufficiently addresses DNR's reasons for non-inclusion of the original recommendation; or (2) request that DNR not issue the authorization or consistency determination; or (3) advise DNR that it will not pursue the matter further. Should DWF request that the authorization or consistency determination not be granted, DWF shall provide written justification that incorporation of DWF's recommendation is preferable to that recommended by DNR for the proper conservation of DWF-trust resources.
  - c. If DNR does not agree with DWF's response, DNR shall notify the two Secretaries. The Secretaries or their designees shall meet within ten (10) days of notice to resolve the conflict in a collaborative and mutually satisfactory manner. Both parties agree that there shall be no ex parte discussions or interactions with the permit applicant(s) or their agent(s) during this time or prior to completion of the remainder of this dispute resolution process.
  - d. If the conflict cannot be resolved by the two Secretaries and involves DWF owned or managed properties (i.e., refuges and wildlife management areas), a productive public oyster area, other distinct shell reefs located on state water bottoms which provide highly valuable habitat for a variety of reef-associated fishery species and which would be substantially damaged by the proposed activity, an activity within the vicinity of any Louisiana designated Natural Scenic River or Historic and Scenic River, or Louisiana Natural Heritage Program-tracked threatened or endangered species, their critical habitat, or active colonial waterbird rookeries, then the DWF Secretary shall have fifteen (15) days to appeal the matter to the Governor's Executive

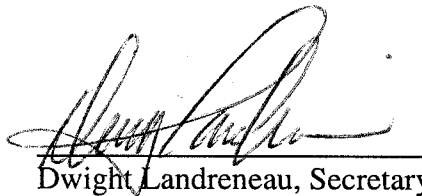
Counsel. Unless the DWF Secretary appeals the matter to the Governor's Executive Counsel during that time, the DNR Secretary shall inform the DNR Assistant Secretary to proceed with final action after notifying the DWF Secretary of the decision. If the matter is appealed to the Governor's Executive Counsel, the DNR Secretary shall take appropriate action based on the outcome of that appeal.

e. If the conflict cannot be resolved and the proposed project is located on any other property within the coastal zone, then the DNR Secretary shall proceed with final action. The DNR Secretary shall immediately notify DWF of the decision.

Signed this 3rd day of February, 2005



Scott A. Angelle, Secretary  
Department of Natural Resources



Dwight Landreneau, Secretary  
Department of Wildlife and Fisheries