

COMPENSATION FOR DAMAGES
TO PUBLIC OYSTER GROUNDS

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES



PERFORMANCE AUDIT SERVICES
ISSUED MAY 13, 2015

**LOUISIANA LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

ASSISTANT LEGISLATIVE AUDITOR
FOR STATE AUDIT SERVICES
NICOLE B. EDMONSON, CIA, CGAP, MPA

DIRECTOR OF PERFORMANCE AUDIT SERVICES
KAREN LEBLANC, CIA, CGAP, MSW

**FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT
GINA BROWN, PERFORMANCE AUDIT MANAGER,
AT 225-339-3800.**

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report is available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Twelve copies of this public document were produced at an approximate cost of \$11.40. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at www.la.gov. When contacting the office, you may refer to Agency ID No. 9726 or Report ID No. 40140004 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Elizabeth Coxe, Chief Administrative Officer, at 225-339-3800.



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

May 13, 2015

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Louisiana Department of Wildlife and Fisheries (LDWF). The purpose of the audit was to determine if LDWF has established an effective process for assessing compensation for damages caused to public oyster grounds by Coastal Use Permit holders.

The report contains our findings, conclusions, and recommendations. Appendix A contains LDWF's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of LDWF for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

LDWFOYSTERCOMP

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE

Compensation for Damages to Public Oyster Grounds Louisiana Department of Wildlife and Fisheries

May 2015



Audit Control # 40140004

Introduction

The Louisiana Wildlife and Fisheries Commission (LWFC) and state law designate what specific areas are public oyster grounds.¹ Louisiana currently has approximately 1.68 million acres of public oyster grounds as shown in Figure 1. Licensed fishermen use these grounds to gather oysters for their private oyster leases² or to sell on the open market. This audit focused on the Louisiana Department of Wildlife and Fisheries' (LDWF) process for assessing compensation to the state for damages caused to public oyster grounds by Coastal Use Permit³ holders (permit holders).

Louisiana Revised Statute (R.S.) 56:434(F) requires LDWF to "establish and maintain an adequate and vigilant watch and control" over public oyster grounds and protect these grounds from trespass, theft, or injury. To satisfy this requirement, LDWF requires permit holders, who are primarily oil and gas companies, to compensate the state for any damages to public oyster grounds caused by their permit work (i.e., damages from drilling a well, laying pipelines, etc.). Permit holders can compensate the state for damages to public grounds by planting cultch⁴ and paying LDWF the replacement value of a sack of oysters, or by making payments to the Public Oyster Seed Ground Development Account. During fiscal years 2010 through 2014, LDWF collected a total of \$2.7 million⁵ from permit holders for damages to public oyster grounds.

Figure 1
Public Oyster Grounds in Louisiana
Approximately 1.68 million acres



Source: Prepared by legislative auditor's staff using information obtained from LDWF.

¹ These grounds include oyster seed grounds designated by LWFC for the propagation and growth of seed oysters, as well as oyster seed reservations and oyster areas designated in state law for the best interests of the oyster industry.

² Licensed fishermen are allowed to take oysters from public oyster grounds to plant on their oyster leases during the open oyster season to increase overall oyster production.

³ A Coastal Use Permit is issued by the Louisiana Department of Natural Resources and authorizes private individuals and corporations to perform certain projects within the state coastal zone that cause damages to or loss of wetlands and aquatic resources. Mitigation is required for any permanent damage or loss of wetlands or other aquatic resources.

⁴ Cultch (i.e. oyster shell, limestone, and crushed concrete) provides oyster seed larvae a firm attachment site on which to settle and grow into oyster seed and marketable-size oysters.

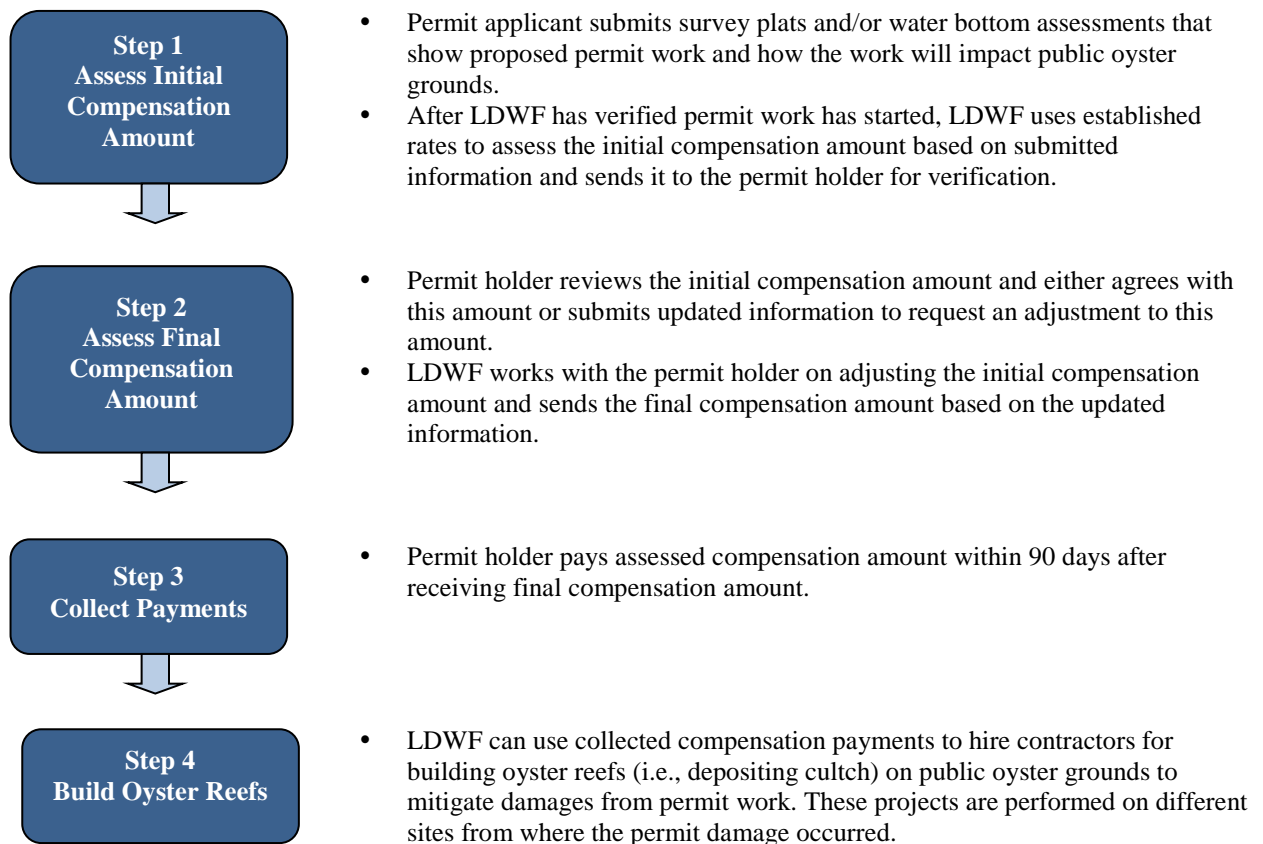
⁵ This amount includes compensation payments, pre-payments, overcharges, and settlement amounts for damages to public oyster grounds.

Our objective was:

Has LDWF established an effective process for assessing compensation for damages caused to public oyster grounds by permit holders?

Overall, we found that LDWF needs to improve its process for assessing compensation for damages to public oyster grounds. Specifically, LDWF needs to increase its compensation rates to cover the cost of replacing cultch and the current value of a sack of oysters, develop timeframes for assessing damages, consider requiring that permit holders secure a bond upfront to cover estimated damages, consistently reassess compensation based on actual damages following completion of permit work, and promulgate regulations outlining when the amounts charged to permit holders for damages can be reduced. Figure 2 summarizes LDWF’s process for mitigating damages to public oyster grounds.

**Figure 2
LDWF’s Process for Mitigation of Damages to Public Oyster Grounds**



Source: Prepared by legislative auditor’s staff using information obtained from LDWF.

Appendix A contains LDWF’s response to this report, and Appendix B details our scope and methodology.

Objective: Has LDWF established an effective process for assessing compensation for damages caused to public oyster grounds by permit holders?

Overall, we found that LDWF needs to improve its process for assessing compensation for damages caused to public oyster grounds by permit holders in the following areas:

- **LDWF needs to increase compensation rates to cover the cost of planting cultch and replacing the current value of a sack of oysters.** The current compensation rates LDWF uses were developed in 2003 and are no longer sufficient to cover the actual cost of planting cultch and replacing the current value of a sack of oysters. If LDWF charged permit holders the actual cost of planting cultch and the updated value of oysters, it would have assessed an additional \$867,164 in final compensation during fiscal years 2010 through 2014.
- **LDWF needs to develop timeframes for assessing compensation amounts for damages to public oyster grounds.** LDWF procedures do not require that companies respond to initial compensation estimates within a certain timeframe. It took LDWF an average of 4.2 years to assess final compensation for 109 permits from fiscal years 2010 to 2014. In addition, as of October 2014, LDWF had not assessed final compensation for 378 (92%) of 411 permits for which permit work started during fiscal years 2010 to 2014. As a result, the state has yet to finalize and collect up to \$3.5 million in compensation to mitigate damages to public oyster grounds that could be used to build oyster reefs.
- **LDWF needs to consider requiring that permit holders secure a bond for estimated damages to public oyster grounds.** Although LDWF stated that it has required some companies to obtain bonds, requiring that all companies secure bonds would provide assurance that the state receives funds for damages to public oyster grounds.
- **LDWF needs to consider consistently reassessing compensation based on actual damages once permit work on public oyster grounds is completed.** Currently, LDWF procedures require that it assess initial compensation amounts to permit holders once it verifies that permit work has been initiated. Although these procedures give LDWF the option to assess compensation based on proposed damages specified in the permit or actual damages documented on the as-built plats, our review indicated that the department did not always reassess compensation based on actual damages.
- **LDWF needs to develop regulations that outline when the amounts charged to permit holders for damages to public oyster grounds can be reduced.** LDWF reduced compensation amounts by \$1.1 million for two permit holders with 56 permits without defining its justification during fiscal years 2010 through 2014.

LDWF needs to increase compensation rates to cover the cost of planting cultch and replacing the current value of a sack of oysters.

R.S. 56:434.1(B) authorizes LDWF to accept and receive funds or materials as compensation for damages associated with activities occurring on public oyster grounds. Permit holders have two options for compensating the state for damages to public oyster grounds:

Option 1: Make payments for cultch and damaged oysters directly to the Public Oyster Seed Ground Development Account that LDWF uses to build oyster reefs.

Option 2: Plant cultch under the direct supervision of LDWF and pay LDWF for the replacement value of a sack of oysters.

In 2003, LDWF established compensation rates for cultch⁶ and for replacing the value of a sack of oysters. LDWF uses these rates to

determine the amount of compensation a permit holder owes the state for the damages. During fiscal years 2010 through 2014, permit holders chose to pay compensation (Option 1) instead of planting cultch for 107 of 109 permits. According to LDWF, most permit holders opted to pay the state directly for damages because it is less expensive than planting cultch themselves. Using these 2003 compensation rates, LDWF assessed a total of \$2.5 million in final compensation for damages to public oyster grounds for these permits during fiscal years 2010 through 2014.

LDWF also accepted in-kind compensation in the form of Side-Scan Sonar Data⁷ from permit holders for 2 of the 109 permits. As mentioned above, R.S. 56:434.1(B) authorizes LDWF to accept and receive funds or materials as compensation for damages to public oyster grounds. In addition, LDWF procedures and permit conditions state that compensation for damages can be in the form of the planting of cultch (Option 2). However, state law does not specifically define what materials LDWF can accept as compensation for damages.

LDWF spends more per cubic yard of cultch to build an oyster reef than what it charges permit holders for damages they caused to public oyster grounds. LDWF uses funds from the Public Oyster Seed Ground Development account to build oyster reefs in different areas from where the permit work occurred. According to LDWF, it is more cost-effective to combine compensation payments from multiple permit holders to build an oyster reef instead of restoring each damaged area separately. Using LDWF data for oyster reef projects built during fiscal years 2010 through 2014, we found that LDWF spent more per cubic yard of

Figure 3
LDWF Supervises Planting Cultch



Source: Provided by LDWF.

⁶ Compensation rates for cultch cover only costs for purchase, delivery, and deposition of cultch by three areas, one east and two west of the Mississippi River.

⁷ This data is obtained through transmitting sound waves to produce a visual image of objects in the water and water bottoms to determine water depth.

cultch to build an oyster reef than what it charged permit holders for damages they caused to public oyster grounds. For example, it cost \$50 per cubic acre to plant cultch east of the Mississippi River. However, LDWF only charged \$40 per acre when assessing damages in this area. In addition, we found that LDWF charged permit holders a lesser value for oysters that are damaged than the average value of a sack of oysters from 2010 to 2014. Specifically, LDWF assessed damages using \$13.72 for a sack of oysters even though the average value from 2010 to 2014 was \$25.34, a difference of \$11.62 per sack. Exhibit 1 compares the 2003 compensation rates the state charged permit holders to the actual costs during fiscal years 2010 through 2014.

Exhibit 1 Established 2003 Compensation Rates vs. Actual Costs Incurred During Fiscal Years 2010 through 2014		
Area	Current 2003 Compensation Rate	Actual Costs Incurred During FY 2010-2014
Cost of replacing one cubic yard of cultch by area		
East of Mississippi (Breton Sound)	\$40	\$50
West of Mississippi (Terrebonne Basin and Barataria Basin)	\$51	\$60
West of Mississippi (Vermilion and Atchafalaya Bays and Calcasieu Lake)	\$57	\$95
The average value of a sack of oysters		
Sack of Oysters	\$13.72	\$25.34
Source: Prepared by legislative auditor’s staff using information provided by LDWF.		

If LDWF charged permit holders the actual cost of planting a cubic yard of cultch and updated the value of oysters, it would have assessed an additional \$867,164 during fiscal years 2010 through 2014. Furthermore, as discussed in the next section, LDWF has not assessed final compensation for 378 permits. As result, the financial impact to the state may be even more significant. According to LDWF, it considered updating the compensation rates in 2008 but decided against it because cultch and oyster prices were inflated because of Hurricane Katrina.

Matter for Legislative Consideration: The legislature may wish to clarify what materials LDWF is authorized to accept as compensation for damages to public oyster grounds.

Recommendation 1: LDWF should update the compensation rates it uses in assessing compensation for damages to public oyster grounds.

Summary of Management’s Response: LDWF agrees with this recommendation and is in the process of evaluating alternatives to address this issue. LDWF is currently gathering data to establish an annual 5-year rolling average of the cost of replacing cultch material. This will be used to establish an updated compensation rate. See Appendix A for LDWF’s full response.

LDWF needs to develop timeframes for assessing compensation amounts for damages to public oyster grounds.

It took LDWF an average of 4.2 years to assess final compensation amounts for 109 permits during fiscal years 2010 through 2014. LDWF procedures require that LDWF staff calculate initial compensation for damages to public oyster grounds when it verifies that permit work has started. To verify that permit work has started, LDWF selects a sample of permit holders and contacts them to ask if permit work has started. However, a more efficient way to verify whether permit work has started would be to use the Louisiana Department of Natural Resources' (LDNR) Strategic Online Natural Resources Information System (SONRIS)⁸ to look up when work started on the project. We used SONRIS to identify the starting date for these 109 permits and determined that it took LDWF an average of 4.2 years to assess final compensation amounts for these permits during fiscal years 2010 through 2014. LDWF's process of identifying when projects start could have contributed to this delay.

In addition, LDWF does not require that companies respond to initial compensation estimates within a certain timeframe, which also contributed to delays in assessing final compensation. LDWF procedures require that staff assess initial compensation for damages and send it to permit holders for verification. The permit holder reviews the initial compensation and either agrees with it or submits updated information (i.e., as-built plats and/or water bottom assessment) to request an adjustment to the initial amount. Without verification of the initial compensation amount, LDWF cannot send the final compensation invoice. However, LDWF has not developed a timeframe for the permit holder to respond.

A **water bottom assessment** is an assessment showing the oyster resources present within the area of the proposed work.

An **as-built plat** is a map, drawn to scale, showing the actual area of impact after work is finished.

As of October 1, 2014, LDWF has not assessed final compensation for 378 (92%) of 411 permits for which permit work started during fiscal years 2010 through 2014. As a result, the state has yet to finalize and collect up to \$3.5 million in compensation to mitigate damages to public oyster grounds. Using LDNR's SONRIS data, we identified 411 permits for which work started on public oyster grounds during fiscal years 2010 through 2014. While LDWF assessed final compensation for 33 (8%) of 411 of these permits as of October 1, 2014, it has yet to assess final compensation and collect up to \$3.5 million for 378 (92%) of 411 permits, as shown in Exhibit 2.

⁸ SONRIS is used to track and store documentation related to Coastal Use Permits.

Exhibit 2 Number of Permits and Assessed Damages For Which Work Started in Fiscal Years 2010 through 2014*			
Compensation for Damages	Number of Permits**	Percent of Permits	Amounts Assessed
Final Compensation Assessed	31	7.5%	\$310,621
	2	0.5%	In-Kind
<i>Total Finalized</i>	<i>33</i>	<i>8%</i>	
Initial Compensation Assessed	313	76.0%	\$3,467,329
Compensation Not Yet Assessed	65	16.0%	To Be Determined
<i>Total Not Finalized</i>	<i>378</i>	<i>92%</i>	
Total	411	100%	
*Information provided as of October 1, 2014. **Number of permits includes only permits for which permit holders reported that work had started to LDNR and, as a result, compensation for damages should have been assessed by LDWF. Source: Prepared by legislative auditor’s staff using information provided by LDWF and LDNR.			

According to LDWF management, another reason for the delay is that it stopped sending initial compensation estimates in 2012 due to litigation with one of the permit holders who challenged LDWF’s authority for assessing compensation for damages. This lawsuit was settled in May 2014, and LDWF resumed sending out initial compensation invoices. According to LDWF management, it had to settle with two permit holders because their permits were outstanding for years, as discussed on page 9 of this report. As a result, not assessing compensation timely increases the risk that LDWF may have difficulty collecting compensation for the 378 permits that have yet to be assessed final compensation amounts.

Recommendation 2: LDWF should develop a more efficient process to identify when permit work begins. For example, LDWF could use LDNR’s SONRIS system to obtain when the work started on the project to help ensure it assesses compensation for damages to public oyster grounds.

Summary of Management’s Response: LDWF disagrees with this recommendation. LDWF recognizes that a more efficient process could be established to determine the commencement of work, but doing so will not necessarily enhance the efficiency or efficacy of the program since compensation can be based either upon specification of the permit or upon actual damages and could be assessed and invoiced upon completion of the work, not commencement. For this reason, LDWF believes that the LLA’s determination that an average assessment takes 4.2 years is inaccurate. LLA inappropriately and arbitrarily starts the clock when the permittee commences work rather than when LDWF has provided a final invoice for damage incurred. See Appendix A for LDWF’s full response.

LLA Additional Comments: We reviewed how long it took for LDWF to assess and finalize compensation, not collect compensation. Therefore, the 4.2 years we calculated is indicative of how long the entire compensation process takes due in part to how LDWF

determines a permit's commencement date and that LDWF has not established a timeframe for permit holders to respond to initial compensation amounts, as discussed on page 6 of this report.

Recommendation 3: LDWF should develop a timeframe for permit holders to respond to initial compensation amounts to help ensure it assesses compensation for damages to public oyster grounds.

Summary of Management's Response: LDWF agrees with the recommendation and will develop written procedures establishing timeframes for permittees to respond. See Appendix A for LDWF's full response.

LDWF needs to consider requiring that permit holders secure a bond for estimated damages to public oyster grounds.

According to a Memorandum of Understanding between LDWF and LDNR, LDWF may require a bond to secure any obligation for expected damages to public oyster grounds. While LDWF stated that it has required permit holders to secure bonds for permit work in very sensitive areas of public oyster grounds (i.e., reefs with live oysters present), it does not currently require bonds for all permits. Requiring that permit holders secure a bond upfront to cover the initial estimated cost of damage would provide assurance that the state receives funds for damages to public oyster grounds.

Recommendation 4: LDWF should consider requiring permit holders to secure a bond for all expected damages to public oyster grounds.

Summary of Management's Response: LDWF agrees with this recommendation and believes that a bond requirement would result in more efficient full and final compensation in most instances. A bond requirement would need to be established through the Department of Natural Resources' (DNR) Coastal Use Permit process, but LDWF will attempt to address this recommendation through an amendment to the existing MOU between LDWF and DNR. See Appendix A for LDWF's full response.

LDWF needs to consider consistently reassessing compensation based on actual damages once permit work on public oyster grounds is complete.

Currently, LDWF procedures require that it assess initial compensation amounts to permit holders once it verifies that permit work has been initiated. According to LDWF's standard operating procedures "compensation amounts are calculated using information submitted with the permit application and/or as built drawings as well as the bottom type data

submitted in the assessment.” Although these procedures give LDWF the option to assess compensation based on proposed damages specified in the permit or actual damages documented on the as-built plats, our review indicated that LDWF did not always reassess compensation based on actual damages. In addition, LDWF stated that it assesses compensation at the beginning of projects because at that point the permit holder knows and agrees that damage will be done to the public oyster ground within their permitted work area. However, once permit work is completed, the actual damages caused by the permit work may be greater than what has already been assessed and current procedures do not require that staff reassess the compensation after the project is complete. Therefore, LDWF should consider reassessing compensation based on actual damages following the completion of permit work on public oyster grounds.

Consistently reassessing compensation based on as-built plats may help LDWF ensure that it assesses the most accurate compensation amount for damages to public oyster grounds. Reassessing compensation after the project is completed is similar to what the Oyster Lease Damage Evaluation Board⁹ (Board) does when compensation amounts for damages to private oyster leases by permit holders are disputed. The Board requires a permit holder to submit one water bottom assessment before the permit work is started and a second water bottom assessment (that includes as-built plats) after the permit work is finished. This allows the Board to determine the actual damages to the oyster lease as a result of permit work.

Currently, each permit has a standard LDWF provision that requires permit holders to provide a letter of completion and as-built plats to LDWF no later than 60 days following completion of the permit work. Therefore, once this information is received, LDWF could review the as-built plats to determine if any additional damage occurred. According to LDWF, it does not receive these documents directly but can obtain this information from the SONRIS database. However, LDNR stated that it does not typically collect these documents for all permits. Therefore, LDWF should begin to collect this information if it decides to reassess permit holders for actual damages.

Recommendation 5: LDWF should consider consistently reassessing compensation based on actual damages shown in as-built plats and/or water bottom assessments following completion of permit work on public oyster grounds.

Summary of Management’s Response: LDWF agrees with this recommendation and states that its procedures already include steps for calculating compensation amounts based upon the actual damage incurred. LDWF will seek to clarify this when revising the program's procedures. See Appendix A for LDWF’s full response.

Recommendation 6: LDWF should ensure that it collects letters of completion and as-built plats from permit holders as required by their permit.

Summary of Management’s Response: LDWF agrees with this recommendation and will continue to make every effort to collect letters of completion

⁹ The Oyster Lease Damage Evaluation Board is an arbitration board for disputes between permit holders and oyster lease holders concerning the damages done to oyster leases as a result of permit work.

and as-built plats from permit holders. The Department will develop written procedures which will include collecting letters of completion and as-built plats. See Appendix A for LDWF’s full response.

LDWF needs to develop regulations that outline when the amounts charged to permit holders for damages to public oyster grounds can be reduced.

According to a Memorandum of Understanding between LDWF and LDNR, LDWF is to develop and promulgate rules and regulations for situations when the permit holder and LDWF do not agree on the compensation owed. We found that LDWF has not yet developed these rules and regulations. However, the department did reduce the final compensation amounts by \$1.1 million for 56 permits held by two permit holders during fiscal years 2010 through 2014 without defining its justification. While LDWF has the authority to reduce compensation amounts for damages to public oyster grounds, specific rules and regulations would help ensure that the department treats all permit holders consistently. Exhibit 3 shows the amounts that were reduced for the two permit holders.

Exhibit 3 Reduced Final Compensation Amounts Fiscal Years 2010 through 2014					
Permit Holder	Number of Permits	Final Assessed Amounts	Reduced Amounts	Amount Change	Percent Decrease
Permit Holder 1	16	\$973,411	\$651,602	\$321,809	33.1%
Permit Holder 2	40	1,012,439	194,611	817,828	80.8%
Total	56	\$1,985,850	\$846,213	\$1,139,637	
Source: Prepared by legislative auditor’s staff using information provided by LDWF.					

According to LDWF management, the department inherited a long list of non-paying permit holders with permits that had been outstanding for years. LDWF stated that some of these permit holders already completed permit work and exhausted their project budgets, which made it difficult for LDWF to collect compensation for damages. Therefore, LDWF management sought to remedy this situation by settling with non-payers. However, LDWF should promulgate rules and regulations to proactively address future disagreements on compensation amounts.

Recommendation 7: LDWF should promulgate rules and regulations stating when to reduce compensation amounts to permit holders for damages to public oyster grounds.

Summary of Management’s Response: LDWF agrees with this recommendation. The Attorney General has stated that the Department has the authority to negotiate compensation amounts for damages to public oyster grounds. However, LDWF agrees that establishing written rules and regulations memorializing when compensation can be altered or adjusted would be beneficial. See Appendix A for LDWF’s full response.

APPENDIX A: MANAGEMENT'S RESPONSE



BOBBY JINDAL
GOVERNOR

State of Louisiana
DEPARTMENT OF WILDLIFE AND FISHERIES
OFFICE OF SECRETARY

ROBERT J. BARHAM
SECRETARY

April 27, 2015

Daryl G. Purpera, CPA, CFE
Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804

RE: Audit Report – Compensation for Damages to Public Oyster Grounds

Mr. Purpera,

Thank you for your in-depth review of LDWF's processes for receiving compensation for damages to public oyster grounds. LDWF appreciates the input from your office and will use it to improve the program. Please find our responses to your specific recommendations below.

LDWF should update the compensation rates it uses in assessing compensation for damages to public oyster grounds.

LDWF agrees with this recommendation and is in the process of evaluating alternatives to address this issue. LDWF is currently gathering data to establish an annual 5-year rolling average of the cost of replacing cultch material. This will be used to establish an updated compensation rate.

LDWF should develop a more efficient process to identify when permit work begins. For example, LDWF could use LDNR's SONRIS system to obtain when the work started on the project to help ensure it assesses compensation for damages to public oyster grounds.

LDWF recognizes that a more efficient process could be established to determine the commencement of work, but doing so will not necessarily enhance the efficiency or efficacy of the program since compensation can be based either upon specification of the permit or upon actual damages and could be assessed and invoiced upon completion of the work, not commencement. For this reason, LDWF believes that the LLA's determination that an average assessment takes 4.2 years is inaccurate. LLA inappropriately and arbitrarily "starts the clock" when the permittee commences work rather than when LDWF has provided a final invoice for damage incurred. Any "preliminary" correspondence is to provide estimates to inform the permittee of the potential compensation owed. Commencement of work and those initial communications are not the appropriate metric to assess the timeliness of the program.

LDWF should develop a time frame for permit holders to respond to initial compensation amounts to help ensure it assesses compensation for damages to public oyster grounds.

LDWF agrees with the recommendation and will develop written procedures establishing timeframes for permittees to respond.

LDWF should consider requiring permit holders to secure a bond for expected damages to public oyster grounds.

LDWF agrees with this recommendation and believes that a bond requirement would result in more efficient full and final compensation in most instances. A bond requirement would need to be established through the Department of Natural Resources' (DNR) Coastal Use Permit process, but LDWF will attempt to address this recommendation through an amendment to the existing MOU between LDWF and DNR.

LDWF should consider reassessing compensation based on actual damages shown in as-built plats and/or water bottom assessments following completion of permit work on public oyster grounds.

LDWF's procedures already include steps for calculating compensation amounts based upon the actual damage incurred. As-built drawings are used when available on SONRIS and each permittee is asked to provide a statement for the record regarding work that was completed for each project. Post project side-scan sonar has also been used to determine actual damage incurred and to assess compensation owed. LDWF will seek to clarify this when revising the program's procedures.

LDWF should ensure that it collects letters of completion and as-built plats from permit holders as required by their permit.

LDWF agrees with this recommendation and will continue to make every effort to collect letters of completion and as-built plats from permit holders. The Department will develop written procedures which will include collecting letters of completion and as-built plats.

LDWF promulgate rules and regulations stating when to reduce compensation amounts to permit holders for damages to public oyster grounds.

The Attorney General has stated that the Department has the authority to negotiate compensation amounts for damages to public oyster grounds. However, LDWF agrees that establishing written rules and regulations memorializing when compensation can be altered or adjusted would be beneficial.

Sincerely,



Robert Barham
Secretary

APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. The purpose of the audit was to determine if the Louisiana Department of Wildlife and Fisheries (LDWF) established an effective process for assessing compensation for damages caused to public oyster grounds by permit holders and covered the time period from fiscal year 2010 to fiscal year 2014. The audit objective was:

Has LDWF established an effective process for assessing compensation for damages caused to public oyster grounds by permit holders?

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objectives and performed the following audit steps:

- Researched and reviewed relevant provisions in the Louisiana Constitution, Revised Statutes, Administrative Code, as well as the Memorandum of Understanding between LDWF and the Louisiana Department of Natural Resources (LDNR) to understand LDWF's legal authority, responsibilities, mission, goals, and procedures.
- Interviewed LDWF, LDNR, the Oyster Lease Damage Evaluation Board, and the Louisiana Oil and Gas Association staff.
- Obtained LDWF data and assessment documents for all permits for which compensation for damages was assessed in fiscal years 2010 through 2014. We received documentation for 599 permits. We removed 276 of 599 permits from our analysis because they belonged to a permit holder who settled compensation amounts with LDWF through litigation. For the remaining 323 permits, we determined that LDWF charged 107 permits a compensation amount, accepted in-kind compensation for 2 permits, assessed initial compensation for 4 permits, and did not charge 210 permits because their permit work fell under exceptions established by LDWF management (i.e., located in the Atchafalaya Delta Wildlife Management Area, maintenance of ship channel, work on private land, etc.).
- Obtained LDNR's Strategic Online Natural Resources Information System (SONRIS) data and permit documents for all coastal use permits within public oyster grounds issued between July 1, 2000, and June 30, 2014. This data included the kind of work being permitted, the date the work started, and geographic coordinates of the project area in Geographic Information Systems

(GIS) format, along with the boundaries of the public oyster areas and wildlife management areas. Based on the obtained data, we identified records for 904 permits that were issued during fiscal years 2010 through 2014, with 350 permits that had no work start date reported (excluded from our analysis) and 554 that did have a work start date reported (included in our analysis). We added 32 permits that were issued prior to fiscal year 2010, but permit work started during fiscal years 2010 through 2014, resulting in total of 586 permit records included in our analysis.

- Conducted logic testing by comparing our analysis of LDNR's SONRIS data to compensation amounts assessed by LDWF to understand how LDWF determines that a permit is exempt from paying compensation. Based on our analysis, we determined that:
 - 411 of the 586 permits should have been assessed compensation for damages to public oyster grounds;
 - 32 of the 586 permits belonged to a permit holder who settled compensation amounts with LDWF through litigation and were excluded from our analysis; and
 - 143 of 586 permits should not have charged compensation for damages because their permit work fell under exceptions established by LDWF management (i.e., located in the Atchafalaya Delta Wildlife Management Area, maintenance of ship channel, work on private land, etc.).
- Reviewed settlement documents between LDWF and two permit holders who negotiated compensation amounts.
- Obtained data from the State Land Office for the boundaries of state-claimed water bottoms in GIS format and compared these with SONRIS data to exclude permits on private water bottoms.
- Obtained data from the U.S. Census Bureau showing the boundaries of bodies of water and corresponding names.
- Reviewed LDWF data for oyster reef projects that occurred on public oyster grounds during fiscal years 2010 through 2014 and determined the cost per cubic yard of cultch for three areas, one east and two west of the Mississippi River. These oyster reef projects were supervised by LDWF staff and used state and private sources of funding.
- Obtained data from LDWF for oyster landings for fiscal years 2010 through 2014. Using LDWF methodology described in the established 2003 Compensation Rates, we determined a five-year average dockside value per sack of oysters.

- Requested a sample of water bottom assessments for 77 permits from LDWF. LDWF was only able to provide requested information for 19 permits or 25%. Therefore, no reliability testing of water bottom assessments was performed to verify the impact on the water bottoms and oyster resources as a result of permit work. However, despite of this limitation, we determined that in total there is sufficient, appropriate evidence to support the findings and conclusions in this report.
- Reviewed all transactions charged to the Public Oyster Seed Ground Development Account to determine whether all expenditures satisfied the requirements of R.S. 56:434.1.
- Reviewed accounting records for collections deposited into Public Oyster Seed Ground Development Account to ensure that LDWF timely collected the amounts assessed in finalized impact statements sent to permit holders.
- Attended the Louisiana Wildlife and Fisheries Committee and Louisiana Oyster Task Force meetings.