

Presentation for the Louisiana Oil & Gas
Overview of the Louisiana Coastal Zone Management Program



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Authorizing Legislation

CZMA - Coastal Zone Management Act (16 USC 1451 et seq, 1972)
Amended in 1976 (P.L. 94-370)

Federal legislation creating the US Coastal Zone Management program. Provides guidelines that States can use to promulgate regulations

SLCRMA - State and Local Coastal Resources Management Act (R.S. 49:214:21 et seq Act 1978, No. 361)

State legislation creating the Louisiana Coastal Resources Program (LCRP). Established policy, defined the coastal zone and created regulatory process.

LAC Title 43 – rules (Section 701 et seq) promulgated August 1980 LR 6:493

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FEDERAL CZMA

- Enacted on October 27, 1972
 - Overall Purpose
 - The CZMA recognizes a national interest in the resources of the coastal zone and the importance of balancing the competing uses of those resources
 - Participation by coastal states is voluntary
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SLCRMA

- Enacted in 1978
 - Overall Objectives
 - Balance Economic Growth and Development with Conservation and Protection of Coastal Resources
 - Balance Conflicting Uses of Coastal Resources within the Coastal Zone
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Coastal Zone – Jurisdictional Boundary for the CZMP

- CZMA Sec. 1453(1):
coastal waters (including the lands therein and thereunder) and the adjacent shorelands including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelands of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. ...The zone extends inland from the shorelines only to the extent necessary to shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."
- State definition of "Coastal Zone" in R.S. 49:214.23(2)
"...the coastal waters and adjacent shorelands within the boundaries of the coastal zone established by R. S. 49:214.23, which are strongly influenced by each other, and in proximity to the shorelines, and uses of which have a direct and significant impact on coastal waters."

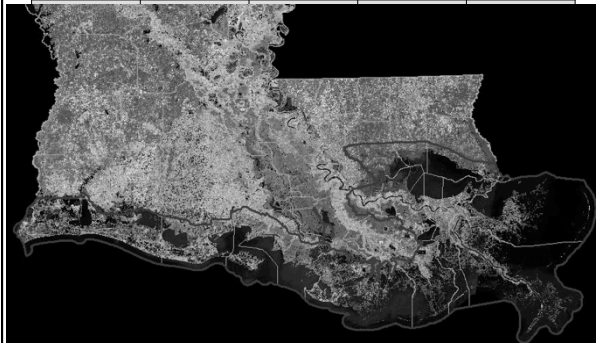
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"Coastal Waters" in Louisiana Law

- The state coastal management act defines "coastal waters" at R.S. 49:214.23(4) as ***"..bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).***
- This definition is essentially the same as that which is in the CZMA at §1453 for "coastal waters".

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Jurisdictional Boundary of the CZMP is the Coastal Zone---The Louisiana Coastal Zone Prior to Act 588 of 2012 Legislative Session

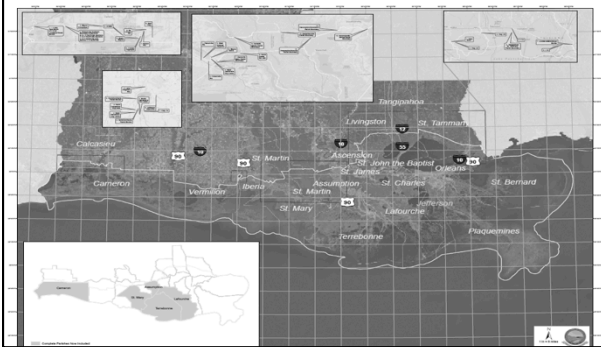


The Louisiana Coastal Zone Prior to Act 588 of 2012 Legislative Session

- The original Coastal Zone boundary was established by state law in 1978, and modified by the Louisiana Legislature in 1979 and 1980.
- In 2009, Louisiana Senate Concurrent Resolution 60 directed the Coastal Protection and Restoration Authority (CPRA) to conduct a science-based evaluation of the Coastal Zone boundary. At the CPRA's direction, the Department of Natural Resources (DNR)-Office of Coastal Management (OCM) in cooperation with private contractors and the Louisiana Sea Grant Law and Policy Program, performed that study from July 2009-May 2011 with input from numerous stakeholders.

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The Louisiana Coastal Zone as of 2012



Principal Regulatory Agencies Related to CZMP

- Department of Natural Resources, Office of Coastal Management
 - Only in the State's Coastal Zone
 - Regulates impacts to coastal waters (LCRP)
- U.S. Army Corps of Engineers
 - Filling of waters of the US (Section 404 of the Clean Water Act)
 - Impacts to navigable waters (Section 10 of the Rivers and Harbors Act)
- Department of Environmental Quality
 - Statewide Water Quality Certifications
 - Regulates discharges into state waters (Section 404 of the Clean Water Act)

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PRIMARY COMPONENTS OF LCRP

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- Program
- Coastal Non-Point Pollution Control Program

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COASTAL USE PERMIT PROGRAM

OBJECTIVES

- enhance the resources of the state's coastal zone
- Ensure the proper management, multiple uses and maximum public benefit of the state's coastal resources
- Regulate activities that may increase the loss of coastal resources including wetlands
- Reduce conflicts between coastal resource user groups

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COASTAL USE PERMITS

- La. R.S. 49:214.30 prohibits any person from commencing a “use” of local or state concern without first applying for and receiving a CUP.
- The rules and regulations governing Coastal Use Permits are found in the Louisiana Administrative code under Title 43, Part 1, Chapter 7 §723.

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COASTAL USE PERMIT PROGRAM

CUP applies to Uses within the Coastal Zone that directly and significantly affect coastal waters

- R.S. 49:214.23 as “...use or activity within the coastal zone which has a direct and significant impact on coastal waters.

Uses subject to coastal use permitting program are of two types (See La.R.S. 49:214.25)

- 1.Uses of State Concern
- 2.Uses of Local Concern

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COASTAL USE PERMIT PROGRAM

- Uses of State Concern are----those uses which directly and significantly affect coastal waters and which are in need of coastal management and which have impacts greater than local significance or which significantly affect interests of regional, state, or national concern.

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COASTAL USE PERMIT PROGRAM

Uses of State Concern—include but are not limited to:

- (a) Any dredge or fill activity which intersects with more than one water body.
- (b) Projects involving use of state owned lands or water bottoms.
- (c) State publicly funded projects.
- (d) National interest projects.
- (e) Projects occurring in more than one parish
- (f) All mineral activities, including exploration for, and production of, oil, gas, and other minerals, all dredge and fill uses associated therewith, and all other associated uses.
- (g) All pipelines for the gathering, transportation or transmission of oil, gas and other minerals.
- (h) Energy facility siting and development.
- (i) Uses of local concern which may significantly affect interests of regional, state or national concern.

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COASTAL USE PERMIT PROGRAM

- **Uses of Local Concern**—are those uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program

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COASTAL USE PERMIT PROGRAM

Uses of Local Concern—include but are not limited to:

- Privately funded projects which are not uses of state concern.
- Publicly funded projects which are not uses of state concern.
- Maintenance of uses of local concern.
- Jetties or breakwaters.
- Dredge or fill projects not intersecting more than one water body.
- Bulkheads.
- Piers.
- Camps and cattlewalks.
- Maintenance dredging.
- Private water control structures of less than \$15,000 in cost.
- Uses on cheniers, salt domes, or similar land forms.

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COASTAL USE PERMIT PROGRAM

Uses Exempt from Coastal Use Permitting

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- MSL
- "Fastlands"
- Hunting, fishing, trapping
- Individual homes and camps
- Normal maintenance and repair
- Navigational aids, such as channel markers
- Agriculture and forestry
- About 10% of applications are for exempt activities

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COASTAL USE PERMIT PROGRAM

Other Uses Not Requiring a CUP

See La. R.S. 49:214.39—Coastal Use Permit Program shall not commence until 30 days after the adoption of the guidelines required by section 214.27.

» Guidelines promulgated August 20, 1980 (Louisiana Register 6:493)

Also see La. R.S. 49:214.34(B)(2)—“Individual specific uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit.”

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COASTAL USE PERMIT PROGRAM

CUP Decisions (La. R.S. 43:214.30)

- Secretary---concerning uses of state and local concern
 - Local Government (Parish) with approved local CMP---concerning uses of local concern
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COASTAL USE PERMIT PROGRAM

CUP Decision Process

- Coastal Use Guidelines serve as the criteria for the granting, conditioning, denying, revoking, or modifying CUP's (La. R.S. 49:214..27(B)(2) Guidelines are promulgated (LAC 43:I.Chapter 7, Subchapter B)
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COASTAL USE PERMIT PROGRAM

CUP Decision Process

Summary of Substantive Standard Applying the Coastal Use Guidelines

- Provides for a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use, and a balancing of their relative significance.
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COASTAL USE PERMIT PROGRAM

Summary of Substantive Standard Applying the Coastal Use Guidelines (continued)

- **must be met:**
 - 1) the **benefits** resulting from the use would clearly **outweigh the adverse impacts** (Cost/Benefit Analysis)
 - 2) there are **no feasible and practical alternative locations, methods, or practices** for the use that avoid or minimize the impacts (Alternatives analysis)
 - 3) the use meets one of the following criteria:
 - a. Significant **public benefits** will result from the use
 - b. The use would serve important **regional, state, or national interest**, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program;
 - c. The use is **coastal water dependent**
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COASTAL USE PERMIT PROGRAM

Summary of Procedural Process

- **Application Process**----Also provides a joint application for Corp permits, and DEQ water quality certification
 1. Online applications
 2. Requires certain information concerning the applicant, the location of the project, the nature of the project, impacts from the project and other information to assess the compliance with coastal use guideline. Also requires certain maps, drawing, and plats.
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COASTAL USE PERMIT PROGRAM

Summary of Procedural Process(continued)

- **Public Notice and Comment Period**----
 1. CUP's---Joint Public Notice with USACE and LDEQ available
 - 25 day public comment period for CUP's
 - Comments solicited from Parishes, Levee Boards, DEQ, LDWF, USACE, DHH, NOAA Fisheries, CPRA, CRT, USFWS, EPA
 2. Applicant required to provide notice to landowner where use is to occur concurrently at time of filing application
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COASTAL USE PERMIT PROGRAM

General Permits

- Authorize similar types of activities that occur frequently and have minor impact
 - Expedited review: no Public Notice required; interagency review period of 5 to 15 days may be required at DNR discretion
 - About 40% of permit applications are issued as GP
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Coastal Use Permit Program

- **1,500 to 2,000 applications reviewed annually**
 - **About 60-65% of applications are O&G activities**
 - **Joint Public Notice with USACE & LDEQ**
 - **No Net Development-Related Loss of Wetlands**
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Local Coastal Programs

Funded from NOAA 306, 309, 310, CPRTF, CRTF
10 parishes have approved LCP's

- Cameron
- Calcasieu
- Jefferson
- Lafourche
- Orleans
- Plaquemines
- St. Bernard
- St. James
- St. Tammany
- Terrebonne

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Local Coastal Programs

La. R.S. 49:214.28 and LAC 43:I.725 provides for:

- the development,
- approval,
- modification, and
- periodic review of Local Coastal Management Programs

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Local Coastal Programs

- No local program shall become effective until it has been approved by the secretary.
- Once a Local Program is Approved--Uses of local concern are subject to coastal use permitting by the local government.

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Local Concerns

Uses of local concern:

Those uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program. Uses of local concern shall include, but not be limited to:

- (a) Privately funded projects which are not uses of state concern.
- (b) Publicly funded projects which are not uses of state concern.
- (c) Maintenance of uses of local concern.
- (d) Jetties or breakwaters.
- (e) Dredge or fill projects not intersecting more than one water body.
- (f) Bulkheads.
- (g) Piers.
- (h) Camps and cattlewalks.
- (i) Maintenance dredging.
- (j) Private water control structures of less than \$15,000 in cost.
- (k) Uses on cheniers, salt domes, or similar land forms.

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ENFORCEMENT

La. R.S. 49:214.36 provides for enforcement of State and Local Coastal Use Programs

- Requires the secretary and each approved local program to initiate a field surveillance program,
 - Authorizes:
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- Maximum \$12,000) and costs.

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ENFORCEMENT

La. R.S. 49:214.36(D) provides:

attorney general, an appropriate district attorney, or a local government with an approved program may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.

La. R.S. 49:214.36(E) provides authority for a court to impose civil liability and assess damages; order, where feasible and practical, the payment of restoration costs; require, where feasible and practical, actual restoration of areas disturbed; or otherwise impose reasonable and proper sanctions

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ENFORCEMENT

Act 544 of the 2014 Regular Session of the Legislature amended La. R.S. 49:214.36 by adding subsection O:

- Limits any rights or causes of action arising from any activity subject to coastal use permitting;
- Requires any received monies in any civil suits for violations of CUP's, Corps of Engineers's permit issued pursuant to Section 404 of CWA or Section 10 Rivers and Harbor Act be used for integrated coastal protection and restoration.

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Federal Consistency

- **Applicable to federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.**
- **Federal Actions**
 - 1. Federal agency activities—activities and projects performed by a Federal agency or its contractors;**
 - 2. Federal licenses or permit activities—activities performed by a non-Federal entity requiring federal permits, license, etc.**
 - 3. OCS Plans**
 - 4. Federal assistance to state or local governments**
- **Requires that federal actions be consistent with approved state coastal management programs to the maximum extent practicable.**

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Coastal Estuarine Land Conservation Program

- CELCP competitive program provides for the acquisition of sensitive coastal habitats from willing sellers that otherwise might be developed to the detriment of the coastal zone and its resources.

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Coastal Non-Point Pollution Control Program (CNPCP)

- **Section 6217 of Coastal Zone Act Reauthorization Amendments (1990) required States with approved CZM programs to develop and implement CNPCPs to restore and protect coastal waters**
- **States must implement measures to control nonpoint source pollution from agriculture, forestry, urban runoff, marinas and recreational boating, and hydromodification**

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