



**Navigating Newly Non-WOTUS
Wetlands: A Study of Six States'
Wetlands Programs after
*Sackett v. EPA***

LOUISIANA SUPPLEMENT



LOUISIANA

I. Overview

“The swamps and marshes of coastal Louisiana are among the Nation’s most fragile and valuable wetlands.”¹

Louisiana is home to a wide variety of wetland types, including scrub-shrub, non-tidal and fresh marshes, ponds, and swamps.² Swamps are the most common type in Louisiana, making up about 59% of the state’s wetlands.³ These swamps are primarily cypress-tupelo gum swamps along major waterways, including the Mississippi River, the Mississippi River Delta, and the Chenier Plain.⁴ Wetlands of all types across the state are critical habitat for millions of waterfowl and many species of fish and invertebrates, including many that supply the state’s seafood and fishing industry.⁵ As such, the state’s wetlands are critical environmental and economic resources.⁶

Although approximately 40% of the wetlands in the continental U.S. are located in Louisiana, the state has sustained about 80% of national wetland losses.⁷ Since European arrival and geographic modification activities began in the 1700s, Louisiana has lost approximately 46% of its coastal wetlands.⁸ That equates to roughly 2,000 square miles, or the size of Delaware.⁹ Estimates from 2017 placed the rate of loss at a football field every 100 minutes.¹⁰ While

¹ *Louisiana Coastal Wetlands: A Resource at Risk*, U.S. GEOLOGICAL SURVEY, <https://pubs.usgs.gov/fs/la-wetlands/> (last visited July 15, 2024) (quoting S. Jeffress Williams, U.S. Geological Survey).

² U.S. GEOLOGICAL SURVEY, NATIONAL WATER SUMMARY—WETLAND RESOURCES, LOUISIANA WETLAND RESOURCE 208 (1996), <https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-louisiana.pdf>.

³ NATIONAL ASSOCIATION OF WETLAND MANAGERS, LOUISIANA STATE WETLAND PROGRAM SUMMARY (2015), https://www.nawm.org/pdf_lib/state_summaries/louisiana_state_wetland_program_summary_083115.pdf.

⁴ U.S. GEOLOGICAL SURVEY, NATIONAL WATER SUMMARY—WETLAND RESOURCES, LOUISIANA WETLAND RESOURCE 210 (1996), <https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-louisiana.pdf>; LOUISIANA WILDLIFE AND FISHERIES & BARATARIA-TERREBONNE NATIONAL ESTUARY PROGRAM, THE NATURAL COMMUNITIES OF LOUISIANA (2009), https://www.wlf.louisiana.gov/assets/Conservation/Protecting_Wildlife_Diversity/Files/natural_communities_of_louisiana.pdf.

⁵ *Louisiana Wetlands*, UNIVERSITY OF LOUISIANA AT LAFAYETTE INSTITUTE FOR COASTAL & WATER RESEARCH, <https://icee.louisiana.edu/about-louisiana-wetlands> (last visited July 15, 2024).

⁶ Diego Herrera Garcia & Jim Wyerman, *What Does the Economy Stand to Lose if We Don’t Restore Louisiana’s Coast?*, RESTORE (July 31, 2017), <https://mississippiriverdelta.org/economy-stand-lose-dont-restore-louisianas-coast/>.

⁷ *Louisiana Coastal Wetlands: A Resource at Risk*, U.S. GEOLOGICAL SURVEY, <https://pubs.usgs.gov/fs/la-wetlands/> (last visited July 15, 2024).

⁸ U.S. GEOLOGICAL SURVEY, NATIONAL WATER SUMMARY—WETLAND RESOURCES, LOUISIANA WETLAND RESOURCE 210 (1996), <https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-louisiana.pdf>.

⁹ *Louisiana’s Changing Coastal Wetlands*, U.S. GEOLOGICAL SURVEY (July 12, 2017), <https://www.usgs.gov/news/national-news-release/usgs-louisianas-rate-coastal-wetland-loss-continues-slow>.

¹⁰ *Id.*

wetland losses are due to a combination of natural and manmade forces, human impacts are the most significant driver. Such actions include the leveeing of the Mississippi River,¹¹ the drainage of wetlands to support development,¹² and the dredging of oil and gas canals.¹³ The impact of such activities is further exacerbated by phenomena such as subsidence,¹⁴ sea level rise¹⁵ and tropical storms.¹⁶ Notably, estimates indicate that Hurricanes Katrina and Rita in 2005 caused the transformation of 217 square miles of coastal land to open water.¹⁷

Louisiana's only *statewide* wetland regulatory program is its implementation of the Clean Water Act (CWA), which is led by the Louisiana Department of Environmental Quality (LDEQ).¹⁸ The majority of the state's wetland management activities are focused on coastal wetland protection and restoration. Thus, while coastal wetlands represent the bulk of wetland loss in Louisiana, the remaining coastal wetlands are less likely to be impacted by *Sackett* than inland freshwater wetlands.

In the coastal zone, wetlands permitting is managed by the Louisiana Department of Energy and Natural Resources (LDENR), which implements the Coastal Use Permit program with federal oversight and in partnership with local municipalities.¹⁹ Restoration efforts are led primarily by the Coastal Protection and Restoration Authority (CPRA) which is responsible for comprehensive coastal protection.²⁰ Funding for the state's coastal programs comes from a wide variety of sources, including the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), the Gulf of Mexico Energy Security Act (GOMESA), and settlement funds associated with the *Deepwater Horizon* disaster.²¹ The Louisiana Department of Wildlife and Fisheries (LDWF) also plays a role in state wetland regulation by commenting on permit and

¹¹ The leveeing of the river has cut off deltaic processes of sediment deposition. *Louisiana Coastal Wetlands: A Resource at Risk*, U.S. GEOLOGICAL SURVEY, <https://pubs.usgs.gov/fs/la-wetlands/> (last visited July 15, 2024).

¹² *Id.*

¹³ U.S. GEOLOGICAL SURVEY, NATIONAL WATER SUMMARY—WETLAND RESOURCES, LOUISIANA WETLAND RESOURCE 210 (1996), <https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-louisiana.pdf> (“About one-half of the State's coastal marsh losses can be attributed to or related to canal construction.”).

¹⁴ Jaap H. Nienhuis et al., *A New Subsidence Map for Coastal Louisiana*, 27(9) GEOLOGICAL SOC'Y OF AMERICA 58 (2017).

¹⁵ Torbjorn E. Tornqvist et al., *Tipping Points of Mississippi Delta Marshes Due to Accelerated Sea-level Rise*, SCIENCE ADVANCES (2020), <https://doi.org/10.1126/sciadv.aaz5512>.

¹⁶ *Land Area Change in Coastal Louisiana*, U.S. GEOLOGICAL SURVEY (July 12, 2017), <https://www.usgs.gov/maps/land-area-change-coastal-louisiana-1932-2016>.

¹⁷ SCIENCE AND THE STORMS: THE USGS RESPONSE TO THE HURRICANES OF 2005, U.S. GEOLOGICAL SURVEY (2007), <https://pubs.usgs.gov/circ/1306/> (Land Area Changes in Coastal Louisiana After Hurricanes Katrina and Rita).

¹⁸ LA. STAT. ANN. 30:2074.

¹⁹ LA. STAT. ANN. 49:214.30.

²⁰ LA. STAT. ANN. 49:214.6.2.

²¹ COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA, LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST 88-91 (2023), https://coastal.la.gov/wp-content/uploads/2023/06/230531_CPRA_MP_Final-for-web_spreads.pdf.

certification applications and conducting non-regulatory activities, such as restoration, education, and outreach.²²

II. Regulatory Programs

A. Wetland Definitions and Delineation

The Louisiana Department of Environmental Quality (LDEQ) defines wetlands as “those inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”²³ This definition is used for purposes of water quality regulation.²⁴

The Louisiana Department of Energy and Natural Resources (LDENR) uses similar language for purposes of its coastal management program, which includes coastal use permitting. It defines wetlands as “open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.”²⁵ However, an exemption is provided for activities occurring on lands that are five feet or more above sea level or in fastlands,²⁶ pursuant to the agency’s position that “activities occurring wholly on lands five feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters.”²⁷

The state’s definition does not always align with the definition used by the U.S. Army Corps of Engineers (Army Corps or Corps) in administering its duties under Section 404 of the Clean Water Act. (In Louisiana, the Corps is guided by the *Supplement to the Wetlands Delineation Manual for the Atlantic and Gulf Coastal Plains*.²⁸) An example of an area considered a wetland by LDENR but not by the Army Corps is a bottomland hardwood site that sits below five feet of elevation, but does not meet the hydric soils parameter for wetlands for Section 404 regulation purposes.²⁹ When identifying wetlands in the Louisiana Coastal Zone (LCZ) for purposes of the

²² E-mail from Cole Garrett, General Counsel, La. Dep’t of Wildlife and Fisheries, to Author (July 15, 2024).

²³ LA. ADMIN. CODE tit 33, pt. IX, § 107.

²⁴ LA. ADMIN. CODE tit 33, pt. IX, § 107.

²⁵ LA. ADMIN. CODE tit 43, pt. I, § 700.

²⁶ Fastlands are defined as “lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.” *Id.*

²⁷ LA. ADMIN. CODE tit 43, pt. I, § 723 (Rules and Procedures for Coastal Use Permits).

²⁸ U.S. ARMY CORPS OF ENG’RS, ERDC/EL TR-10-20, SUPPLEMENT TO THE WETLANDS DELINEATION MANUAL FOR THE ATLANTIC AND GULF COASTAL PLAINS (VERSION 2.0) (2010).

²⁹ *Frequently Asked Questions*, LA. DEP’T OF ENERGY AND NAT. RES., <https://www.dnr.louisiana.gov/index.cfm/page/1387#wetlands> (last visited Aug. 7, 2024).

Coastal Use Permitting (CUP) program, LDENR primarily utilizes the National Wetlands Inventory maintained by the U.S. Fish and Wildlife Service.³⁰

B. Wetland-related Statutes and Regulations

Louisiana’s wetland regulation scheme is composed of state-level programs implementing federal laws and laws passed in response to Hurricanes Katrina and Rita.

i. *State and Local Coastal Resources Management Act*

In 1978, Louisiana passed the State and Local Coastal Resources Management Act (SCLRMA) in response to federal passage of the Coastal Zone Management Act of 1972 (CZMA).³¹ The CZMA gave coastal states the power to establish coastal zone management programs in furtherance of the federal policy to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone for this and succeeding generations.”³²

The goal of SCLRMA is to “protect, develop, and where feasible, restore or enhance the resources of the state’s coastal zone.”³³ SCLRMA established the Louisiana Coastal Resources Program, which includes a Coastal Use Permit (CUP) program to ensure the management and reasonable use of resources within the Louisiana Coastal Zone.³⁴ Under the CUP program, no activities of state or local concern shall be conducted in the LCZ without a valid permit.³⁵ Such activities include dredging or filling, levee works, hurricane and flood protection, urban developments, energy activities, wastewater discharge, and any activities that would require a permit from the Army Corps, the Environmental Protection Agency (EPA), or LDEQ.³⁶ Additionally, permitted CUP activities must be consistent with the state’s master plan for integrated coastal protection.³⁷

CUPs are primarily managed by LDENR’s Office of Coastal Management (OCM), which issues permits for activities of state concern.³⁸ Additionally, local governments may assume coastal permitting authority by developing local coastal management programs.³⁹ Once a local program has received federal and state approval, the parish government is authorized to issue CUPs for coastal uses of local concern.⁴⁰ Twelve of the twenty coastal parishes currently have active

³⁰ Interview with Charles Reulet, Administrator of Interagency Affairs and Field Services, La. Dep’t of Energy and Nat. Res. (July 18, 2024).

³¹ LA. STAT. ANN. 49:214.21 *et seq.*; 16 U.S.C. § 1451 *et seq.*

³² 16 U.S.C. § 1452(1).

³³ LA. STAT. ANN. 49:214.22(1).

³⁴ LA. STAT. ANN. § 49:214.30.

³⁵ *Id.*

³⁶ LA. ADMIN. CODE tit 43, pt. I, § 723.

³⁷ LA. STAT. ANN. 49:214.30.

³⁸ LA. STAT. ANN. 49:214.26; Interview with Charles Reulet, Administrator of Interagency Affairs and Field Services, La. Dep’t of Energy and Nat. Res. (July 18, 2024).

³⁹ LA. STAT. ANN. § 49 :214.28.

⁴⁰ *Id.*

programs: Calcasieu, Cameron, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, and Terrebonne.⁴¹

Whether an activity is of local or state concern is determined by considering its classification under SCLRMA.⁴² If not clearly classified under SCLRMA, an activity shall be of local concern unless it has significant impacts outside of parish, involves federal money, has significant impacts on federal or state waters, is related to mineral or energy development, will result in major changes to water quality or quantity, or impacts lands that establish the baseline for Louisiana's offshore jurisdiction.⁴³ Under the law, parishes have the authority to determine whether an issue is state or local.⁴⁴ However, local programs generally defer to the state to make the determination,⁴⁵ and the distribution of permits leans heavily towards the state.⁴⁶ OCM typically process over 1,000 permits each year, and permits are rarely denied.⁴⁷

ii. *Louisiana Water Control Law*

Designed to implement the Clean Water Act in Louisiana, the Louisiana Water Control Law establishes “a system to control and regulate the discharge of waste materials, pollutants, and other substances into the waters of the state.”⁴⁸ It provides that the Louisiana Department of Environmental Quality (LDEQ) is responsible for planning for protection and control of state waters and processing water quality certifications under Section 401 of the CWA.⁴⁹ This law also authorizes LDEQ to permit sources of water pollution to the surface waters of the state.⁵⁰

iii. *Louisiana Coastal Protection, Conservation, Restoration and Management Act*

The Louisiana Coastal Protection, Conservation, Restoration and Management Act (LCPCRMA) was passed in a special legislative session after Hurricanes Katrina and Rita to address the recovery issues facing the state.⁵¹ LCPCRMA provides that:

the state must act to develop, implement, and enforce a comprehensive integrated coastal protection plan [...] to conserve, restore, create, and enhance wetlands and barrier shorelines or reefs in coastal Louisiana while encouraging use of coastal

⁴¹ LOUISIANA LOCAL COASTAL MANAGEMENT PROGRAMS PERIODIC REVIEW, LA. DEP'T OF NAT. RES. OFFICE OF COASTAL MGMT. (2020), <https://www.dnr.louisiana.gov/assets/OCM/Interagency/LCP/finalreport20182020.pdf>.

⁴² LA. STAT. ANN. § 49:214.25.

⁴³ LA. ADMIN. CODE tit 43, pt. I, § 723 (Rules and Procedures for Coastal Use Permits).

⁴⁴ LA. STAT. ANN. § 49:214.30.

⁴⁵ Interview with Charles Reulet, Administrator of Interagency Affairs and Field Services, La. Dep't of Energy and Nat. Res. (July 18, 2024).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ LA. STAT. ANN. § 30:2072.

⁴⁹ LA. STAT. ANN. § 30:2074.

⁵⁰ LA. STAT. ANN. § 30:2075.

⁵¹ LA. STAT. ANN. § 49:214.1 et seq.; *Structure*, COASTAL PROTECTION AND RESTORATION AUTHORITY, <https://coastal.la.gov/about/structure/> (last visited July 24, 2024); COASTAL PROTECTION AND RESTORATION AUTHORITY, FISCAL YEAR 2025 ANNUAL PLAN 7 (2025) (“The widespread impact of the storms highlighted the need to improve Louisiana’s hurricane protection systems and restore the destroyed wetlands.”).

resources and recognizing that it is in the public interest of the people of Louisiana to establish a responsible balance between development and conservation.⁵²

To carry out this policy priority, the legislature established the Coastal Protection and Restoration Authority (CPRA), the CPRA Board, and the Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation.⁵³

The law established the CPRA Board within the Office of the Governor.⁵⁴ The CPRA Board is responsible for comprehensive coastal protection planning activities, including the development of a Master Plan that is revised every five years and an annual plan of action that is submitted to the legislature every year.⁵⁵ The law also created the Coastal Protection and Restoration Authority, which is its own corporate body and is the implementation and enforcement arm of the CPRA Board.⁵⁶ As described in the next section, CPRA is the state agency responsible for implementing and enforcing the CPRA Board’s plans by implementing the prescribed hurricane protection, storm damage reduction, flood control, infrastructure, and coastal protection and restoration efforts.

Additionally, LCPCRMA established the Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation.⁵⁷ The Commission was formed to: advise the governor on integrated coastal activities; provide a forum for coordinating activities and information across federal, state, and local governmental agencies, conservation organizations, and the private sector; identify and resolve conflicts among stakeholders; review programs, conditions, trends, and scientific and engineering findings; and assist in identifying funding sources.⁵⁸

C. Organization of State Agencies

i. *Louisiana Department of Energy and Natural Resources*

The Louisiana Department of Energy and Natural Resources (LDENR) is responsible for regulating development activities and managing the resources of the Coastal Zone, especially those with a direct and significant impact on coastal waters.⁵⁹ This responsibility is carried out by the agency’s Office of Coastal Management, which is comprised of two

⁵² LA. STAT. ANN. § 49:214.1.

⁵³ LA. STAT. ANN. § 49:214.1 et seq.

⁵⁴ LA. STAT. ANN. § 49:214.5.1.

⁵⁵ LA. STAT. ANN. § 49:214.5.2. Approval of the Annual Plan by the legislature appropriates funds necessary for project implementation.

⁵⁶ LA. STAT. ANN. § 49:214.6.1.

⁵⁷ LA. STAT. ANN. § 49:214.4.1.

⁵⁸ *Id.*

⁵⁹ LA. STAT. ANN. § 36:351.

divisions: the Permits/Mitigation Division and the Interagency Affairs & Field Services Division.⁶⁰

Additionally, the OCM participates in the Coastal Zone Enhancement Program under the federal Coastal Zone Management Act, which is non-regulatory and provides federal grants to enhance the Louisiana Coastal Resources Program within nine key areas: wetlands, coastal hazards, public access, marine debris, cumulative and secondary impacts, special area management planning, ocean and Great Lakes resources, energy and government facility siting, and aquaculture.⁶¹

The Secretary of LDENR is a member of the CPRA Board.

ii. Louisiana Department of Environmental Quality

The Louisiana Department of Environmental Quality (LDEQ) is responsible for issuing water quality certifications and permitting management associated with the Louisiana Water Control Law and its regulations. The Office of Environmental Services is responsible for water permitting activities.⁶²

The Secretary of LDEQ is a member of the CPRA Board.

iii. Louisiana Department of Wildlife and Fisheries

The Louisiana Department of Wildlife and Fisheries (LDWF) comments on permit and certification applications and conducts non-regulatory activities, such as restoration, education, and outreach.⁶³ Much of this work is done through private land management assistance⁶⁴ and in Wildlife Management Areas.⁶⁵

The Secretary of LDWF is a member of the CPRA Board.

iv. Coastal Protection and Restoration Authority

CPRA was formed in 2005 as a direct response to hurricanes Katrina and Rita and the devastation they wrought.⁶⁶ While the federal government was willing and able to contribute significant resources towards rebuilding efforts, it requested a central authority to be fiscally

⁶⁰ *Office of Coastal Management (OCM)*, LA. DEP'T OF ENERGY AND NAT. RES., <https://www.dnr.louisiana.gov/index.cfm/page/85> (last visited July 24, 2024).

⁶¹ *About OCM*, LA. DEP'T OF ENERGY AND NAT. RES., <https://www.dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=89&ngid=5> (last visited July 24, 2024).

⁶² *Directory*, LA. DEP'T OF ENV'T QUALITY, <https://deq.louisiana.gov/directory> (last visited July 24, 2024).

⁶³ E-mail from Cole Garrett, General Counsel, La. Dep't of Wildlife and Fisheries, to Author (July 15, 2024).

⁶⁴ *Private Land Management Assistance*, LA. DEP'T OF WILDLIFE AND FISHERIES, <https://www.wlf.louisiana.gov/page/private-land-management-assistance> (last visited Aug. 8, 2024).

⁶⁵ Trey Iles, *Massive Wetland Restoration Project Completed on Russel Sate WMA*, LA. DEP'T OF WILDLIFE AND FISHERIES (June 21, 2017), <https://www.wlf.louisiana.gov/news/massive-wetland-restoration-project-completed-on-russell-sage-wma>.

⁶⁶ LA. STAT. ANN. § 49:214.1 *et seq.*

and operationally accountable for coastal activities in the state.⁶⁷ Legislation establishing the CPRA was passed during the special legislative session called in the wake of the storms.⁶⁸

CPRA has authority to articulate the state’s approach to “protection, conservation, enhancement, and restoration of the coastal area of the state.”⁶⁹ This mission is primarily carried out through its development and coordination of comprehensive coastal protection master plans and annual plans. Master plans provide a “comprehensive strategy addressing the protection, conservation, enhancement, and restoration of the coastal area through the construction and management of integrated coastal protection projects and programs.”⁷⁰

The coastal master plan is revised every five years.⁷¹ Annual plans are the implementation tool for the comprehensive master plan. They are submitted to the legislature each year for approval, at which point CPRA receives the necessary appropriations.⁷²

v. *Governor’s Office*

The Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation was established in 2009 to support the state in developing and implementing a plan to achieve a sustainable coastal ecosystem.⁷³ Its activities include advising the governor on the status of the coastal program; providing a forum for coordinating coastal protection activities; fostering cooperation among government agencies, conservation organizations, and the private sector; advising on conflict resolution; and assisting with identifying potential funding sources.⁷⁴ Thirty-six members of the commission are primarily appointed by the Governor and represent a variety of perspectives, including academic, industry, nonprofit, agriculture, and fishing.⁷⁵

⁶⁷ *Structure*, COASTAL PROTECTION AND RESTORATION AUTHORITY, <https://coastal.la.gov/about/structure/> (last visited July 24, 2024).

⁶⁸ CPRA’s establishing legislation has been amended twice since its original enactment. The original language established a single entity, the Coastal Protection and Restoration Authority, which was a restructuring of the state’s Wetland Conservation and Restoration Authority. In 2009, the legislature created the Office of Coastal Protection and Restoration (OCPR) as the implementation and enforcement arm of CPRA. Finally, in 2012, the legislature renamed CPRA and OCPR to “better reflect the true nature of their relationship.” CPRA was renamed the CPRA Board, and the implementation and enforcement arm was changed from OCPR to CPRA. *Id.*

⁶⁹ LA. STAT. ANN. § 49:214.5.2.

⁷⁰ *Id.*

⁷¹ *Id.* § 49:214.5.3.

⁷² *Id.*

⁷³ *Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation*, LA. DIVISION OF ADMIN., <https://wwwcfprd.doa.louisiana.gov/boardsAndCommissions/viewBoard.cfm?board=465> (last visited July 26, 2024).

⁷⁴ LA. STAT. ANN. § 49:214.4.1.

⁷⁵ *Id.*

Additionally, the Governor’s Office of Coastal Activities is home to the Executive Assistant to the Governor for Coastal Activities, Deputy Director, Chief Resilience Officer, Director of Intergovernmental Affairs, Director of Federal Affairs, and Policy Advisors.⁷⁶

D. Water Quality Standards

Water quality standards apply to surface waters of the state.⁷⁷ For purposes of the standards, waters of the state are defined as “all surface and underground waters and watercourses within the state of Louisiana, whether natural or man-made, including but not limited to, all rivers, streams, lakes, wetlands, and groundwaters, within the confines of the state, and all bordering waters extending three miles in to the Gulf of Mexico.”⁷⁸ Wetlands are defined further as “those areas that have one or more of the following attributes: support hydrophytic (water tolerant) vegetation during most of the year; contain predominately undrained hydric (water saturated) soils; and/or are periodically inundated or saturated by surface water or groundwater.”⁷⁹

An application for state water quality certification under Section 401 (see below) is reviewed for compliance with the state’s water quality standards.⁸⁰ While Louisiana does not have water quality standards specific to wetlands, it does have a unique renourishment program. In “recogni[tion] that many of the state’s wetlands are deteriorating due to a high natural subsidence rate and changes in hydrology and the result of lack of nutrients, and suspended solids,” LDEQ may permit discharges of effluent with treatment into wetlands for the purpose of nourishment.⁸¹ Such a permit requires a feasibility assessment, a baseline study, and public participation in the process.⁸² Once a permit has been issued, monitoring and reporting on its status is required.⁸³

E. Section 401 Certification

⁷⁶ *Governor’s Office of Coastal Activities*, OFFICE OF THE GOVERNOR, <https://gov.louisiana.gov/page/governors-office-of-coastal-activities> (last visited July 26, 2024). As of the publication of this report, the Deputy Director, Director of Intergovernmental Affairs, and the Director of Federal Affairs positions were vacant. Additionally, the Chair of the CPRA Board serves as the Executive Assistant to the Governor for Coastal Activities.

⁷⁷ LA. ADMIN. CODE tit. 33, pt. IX, § 1101.

⁷⁸ LA. ADMIN. CODE tit. 33, pt. IX, § 1105.

⁷⁹ *Id.*

⁸⁰ LA. ADMIN. CODE tit. 33, pt. IX, § 1507.

⁸¹ LA. DEP’T OF ENV’T QUALITY, PERMITTING GUIDANCE DOCUMENT FOR IMPLEMENTING LOUISIANA SURFACE WATER QUALITY STANDARDS WATER MANAGEMENT PLAN VOLUME 3 (2022), https://deq.louisiana.gov/assets/docs/Permits/WQMP_Implementation_Procedures_Vol_3.pdf (“the department may allow the discharge of effluent with treatment equivalent to secondary treatment”); Alex Lubben, *A Dozen Louisiana Sewage Plants Release Wastewater Into Swamps. Is it Helpful or Harmful?*, NOLA.COM (June 25, 2024), https://www.nola.com/news/environment/dozen-louisiana-sewage-plants-discharge-to-swamps-does-it-help-or-hurt/article_eb1b4248-29b3-11ef-b44d-e74746210bcd.html.

⁸² LA. DEP’T OF ENV’T QUALITY, PERMITTING GUIDANCE DOCUMENT FOR IMPLEMENTING LOUISIANA SURFACE WATER QUALITY STANDARDS WATER MANAGEMENT PLAN VOLUME 3 (2022), https://deq.louisiana.gov/assets/docs/Permits/WQMP_Implementation_Procedures_Vol_3.pdf.

⁸³ *Id.*

The Louisiana DEQ serves as the certifying authority for water quality certifications in the state.⁸⁴ Louisiana's water quality certification regulations, developed under Louisiana's Water Quality Control Law, apply to all applications for federal licenses or permits.⁸⁵ The regulations include procedures for issuance, modification, and revocation of water quality certifications, including application requirements and public notice requirements.⁸⁶ All applications are reviewed in accordance with state water quality standards and the approved water quality management plan for the affected water body.⁸⁷

F. Nationwide Permits

Louisiana has imposed eight regional conditions for all NWPs:⁸⁸

1. No permitted activity can cause the loss or conversion of more than 0.5 acres of cypress and/or cypress-tupelo swamp.
2. No permitted activity can cause the permanent loss or conversion of more than 0.5 acre of coastal prairie, pine savanna, and/or pitcher plant bogs.
3. No permitted activity is authorized where it would have an adverse impact on a federal or state designated rookery and/or bird sanctuary.
4. Dredge and fill material placed within wetlands and other waters must be free of contaminants.
5. For work within the Louisiana Coastal Zone and the Outer Continental Shelf, the New Orleans District's Programmatic General Permit generally supersedes the nationwide permits.
6. Preconstruction notice will be provided for regulated activities that adversely affect more than 0.1 acre of wetlands within the LCZ and/or adversely impact a designated Natural and Scenic River or a state or federal wetland/wildlife management area and/or refuge.
7. Culverts must be sized to maintain expected high-water flows and must be installed at a sufficient depth to maintain the movement of aquatic species at low flows.
8. Proponents of regulated activities are reminded that while NWPs authorize activities from the perspective of U.S. Army Corps and the state, additional approvals and authorizations may be required with regards to rare, threatened, and endangered species.

Additionally, Louisiana has imposed regional conditions for thirteen NWPs.⁸⁹ This includes disavowals of certification for projects occurring within the LCZ.⁹⁰ For such permits, individual

⁸⁴ LA. STAT. ANN. § 30:274.

⁸⁵ LA. ADMIN. CODE tit. 33, pt. IX, § 1503.

⁸⁶ LA. ADMIN. CODE tit. 33, pt. IX, § 1501 et seq.

⁸⁷ LA. ADMIN. CODE tit. 33, pt. IX, § 1507(C)(3).

⁸⁸ U.S. ARMY CORPS OF ENG'RS, NATIONWIDE PERMIT REGIONAL CONDITIONS FOR LOUISIANA (2021), https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2021_16NWP-LRC-Final-SPN.pdf.

⁸⁹ *Id.*

⁹⁰ *Id.*

requests for approval under the NWP will be conditioned to require the applicant to secure a determination/certification from LDENR.⁹¹

These permits are NWP 12 (Oil or Natural Gas Pipeline activities), NWP 29 (Residential Developments), NWP 39 (Commercial and Institutional Developments), NWP 40 (Agricultural Activities), NWP 42 (Recreational Facilities), NWP 43 (Stormwater Management Facilities), NWP 44 (Mining Activities), NWP 51 (Land-Based Renewable Energy Generation Facilities), NWP 52 (Water-Based Renewable Energy Generation Pilot Projects), NWP 55 (Seaweed Mariculture Activities), NWP 5 (Finfish Mariculture Activities), NWP 57 (Electric Utility Line and Telecommunication Activities), and NWP 58 (Utility Line Activities for Water and Other Substances).⁹²

G. Programmatic General Permits

The New Orleans District of the Army Corps has a programmatic general permit (PGP) authorizing activities that result in “minimal adverse impacts within the boundaries of the Louisiana Coastal Zone.”⁹³ There are two categories of permitted activities under the PGP. Category I activities cannot cause the loss of more than half an acre of special aquatic sites.⁹⁴ Examples of activities that may qualify under Category I include many oil and gas activities, pipelines, maintenance of existing structures, and scientific measuring devices.⁹⁵

Category II uses not related to oil and gas may impact no more than 2.0 acres of tidal or 3.0 acres of non-tidal special aquatic sites, while oil and gas related activities may impact no more than 3.5 acres of tidal or non-tidal special aquatic sites.⁹⁶ Activities that may qualify under Category II are similar to those under Category I.⁹⁷ However, Category II also includes wetland restoration and creation activities.⁹⁸

H. Mitigation

State statutes and regulations provide for mitigation for impacts to wetlands within the LCZ. Generally, CUPs must contain requirements for mitigation to offset any loss of wetland ecological value, pursuant to a state law requiring compensatory mitigation “at a level sufficient

⁹¹ *Id.*

⁹² *Id.*

⁹³ U.S. ARMY CORPS OF ENG’RS, A PROGRAMMATIC GENERAL PERMIT FOR USE IN THE NEW ORLEANS DISTRICT WITHIN THE BOUNDARIES OF THE LOUISIANA COASTAL ZONE (2022), https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/permits/generalpermits/PGP_exp_06-2027.pdf.

⁹⁴ Special Aquatic Sites are defined as “geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.” 40 C.F.R. § 230.3.

⁹⁵ U.S. ARMY CORPS OF ENG’RS, A PROGRAMMATIC GENERAL PERMIT FOR USE IN THE NEW ORLEANS DISTRICT WITHIN THE BOUNDARIES OF THE LOUISIANA COASTAL ZONE (2022), https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/permits/generalpermits/PGP_exp_06-2027.pdf.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

to replace or to substitute for the ecological value of the wetlands lost as a result of each permitted activity.”⁹⁹ Regulations further provide that a CUP shall not be granted “unless the permit process includes evaluation of [...] a requirement for compensatory mitigation to offset any net loss of coastal resources ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts.”¹⁰⁰

Mitigation options include individual mitigation measure(s), acquisition of mitigation credits, contribution to the Louisiana Wetlands Conservation and Restoration Fund, and others as deemed appropriate by LDENR.¹⁰¹ When selecting the appropriate mitigation type, the proposal “must completely offset the unavoidable net loss of coastal resources due to permitted activities,” must “have an anticipated positive impact on the Louisiana coastal zone or the Louisiana Coastal Wetlands Conservation Plan area, “shall be of the same habitat type as the proposed impact or produce ecological values which would be similar to those lost,” and “shall be located within the same hydrologic basin as the proposed impact.”¹⁰²

Louisiana’s changing landscape also raises a myriad of issues for the existing mitigation scheme. With rising sea levels, there is the possibility of tidal wetland projects going underwater. Additionally, sediment diversions have risen to the forefront of solutions for deltaic land loss, and with diversions comes a conversion of environments from saline to fresh water.

I. Tracking Systems

LDEQ maintains a records tracking system called the Electronic Document Management System (EDMS), which is available to the public.¹⁰³ It contains LDEQ official records, including water permits.¹⁰⁴

LDENR’s Office of Coastal Management maintains an extensive database system, PermitTrak, to track all CUPs, consistency applications, enforcement actions, and local programs.¹⁰⁵ PermitTrak is live, making information available in the database as it is updated.¹⁰⁶ The tracking system helps the agency to manage the large number of permit applications, while allowing permittees to track the status of their applications.¹⁰⁷ State and federal natural resource agencies, local

⁹⁹ *Id.*

¹⁰⁰ LA. ADMIN. CODE tit. 43, pt. I, § 724. A variance in mitigation requirements may be granted when the required mitigation would render the activity impracticable and such activity has a clearly overriding public interest. *Id.*; LA. STAT. ANN. § 49:214.41.

¹⁰¹ *Id.* The state recommends satisfying mitigation requirements through mitigation banking or an in-lieu fee program.

¹⁰² LA. ADMIN. CODE tit. 43, pt. I, § 724.

¹⁰³ EDMS, LA. DEP’T OF ENV’T QUALITY, <https://deq.louisiana.gov/page/edms> (last visited July 25, 2024).

¹⁰⁴ *Id.*

¹⁰⁵ *PermitTrak System*, LA. DEP’T OF ENERGY AND NAT. RES., <https://www.dnr.louisiana.gov/index.cfm/page/87> (last visited July 25, 2024).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

governments, university researchers, environmental and community associations, and various industry groups also use the information in the database.¹⁰⁸

III. Monitoring and Assessment

While fragmented, there are a variety of wetland monitoring programs that track water quality and coastal restoration projects.

Wetland water quality is assessed by the LDEQ as part of the overall water quality assessment and conditions reported in the state's 305(b) and 303(d) report.¹⁰⁹ The report includes a chapter on wetland water quality assessments, which includes the wetland acres of impaired water bodies identified as being impacted by various suspected causes of impairment, which include dissolved oxygen, fecal coliform, mercury, dissolved solids, and toxics.¹¹⁰

There are two major coastal restoration monitoring programs. The first is managed through the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), which maintains the Coastwide Reference Monitoring System.¹¹¹ The System is designed to monitor the effectiveness of restoration projects at multiple scales, from the scope of an individual project to the influence of projects on the broader landscape.¹¹² It currently monitors approximately 390 sites.¹¹³

Additionally, CPRA maintains a Coastal Information Management System, which provides geospatial, tabular database, and document access to CPRA's projects, CRMS stations, the 2023 Master Plan, the 2017 Master Plan, geophysical data, and coastal community resilience information.¹¹⁴

IV. Restoration

Most wetland restoration activities in Louisiana are conducted along the coast by CPRA. As the body responsible for coastal planning activities, CPRA released its first Master Plan in 2008, which has been updated in 2012, 2017, and 2023.¹¹⁵ The 2023 Master Plan includes 77

¹⁰⁸ *Id.*

¹⁰⁹ LA. DEP'T OF ENV'T QUALITY, LOUISIANA WATER QUALITY INVENTORY: INTEGRATED REPORT FULFILLING REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT, SECTIONS 305(B) AND 303(D) (2024), https://deq.louisiana.gov/assets/docs/Water/Integrated_Report/2024_Integrated_Report/24_IR1_Master_Text_3-28-2024.pdf.

¹¹⁰ *Id.* at 83.

¹¹¹ *Coastwide Reference Monitoring System, CRMS WETLANDS*, <https://lacoast.gov/crms/> (last visited July 25, 2024).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Welcome to the Louisiana Coastal Protection and Restoration Authority's Coastal Information Management System (CIMS)*, COASTAL PROTECTION AND RESTORATION AUTHORITY, <https://cims.coastal.la.gov/> (last visited July 25, 2024).

¹¹⁵ The 2023 Master Plan has an operating budget of over \$50 billion. COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA, LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST 53 (2023).

restoration and risk reduction projects, across a wide range of activities including marsh creation, hydrologic restoration, diversions, and structural and nonstructural risk reduction.¹¹⁶

The most recent Annual Plan, FY 2025, is the first annual plan to be published and approved under the current Master Plan.¹¹⁷ It marks the largest investment in coastal projects to-date, allotting \$1.71 billion towards 136 projects, in addition to ongoing operations and maintenance of an additional 190 completed projects. Since 2007, CPRA projects have resulted in over 55,000 acres of coastal habitat benefitted, 71.6 miles of restored barrier islands, and 193 million cubic yards of sediment placed.¹¹⁸

Collectively, CPRA has secured \$21.4 billion for coastal restoration and risk reduction projects.¹¹⁹ Funds come from a wide variety of sources, including both state and federal programs.

Current Funding Sources ¹²⁰				
State Mineral Revenues	CWPPRA ¹²¹	Natural Resources Damage Assessment	National Fish and Wildlife Foundation	RESTORE Act
Used to match funding for CWPPRA projects and fund state agency operations.	Federal funds used for the planning and implementation of projects that create, protect, restore, and enhance wetlands in coastal Louisiana.	\$5B in <i>Deepwater Horizon</i> spill settlement funds used for oil spill restoration activities. Funding will end in 2031.	\$1.27B allocated to NFWF for Louisiana as a result of criminal plea agreements associated with the <i>Deepwater Horizon</i> spill. Funds barrier island restoration and sediment diversions.	Funds a variety of activities, including restoration, from <i>Deepwater Horizon</i> oil spill Clean Water Act civil penalties. Funding will end in 2031.

The most significant effort that addresses inland wetlands in Louisiana is the Louisiana Watershed Initiative (LWI), which is state funding that coordinates resources among CPRA, LDWF, the Louisiana Department of Transportation and Development, the Governor’s Office of

¹¹⁶ CPRA Board Approves 2023 Coastal Master Plan and FY 2024 Annual Plan, COASTAL PROTECTION AND RESTORATION AUTHORITY (Apr. 19, 2023), <https://coastal.la.gov/news/cpra-board-approves-2023-coastal-master-plan-and-fy-2024-annual-plan/>.

¹¹⁷ COASTAL PROTECTION AND RESTORATION AUTHORITY, FISCAL YEAR 2025 ANNUAL PLAN (2025).

¹¹⁸ COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA, LOUISIANA’S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST 8 (2023).

¹¹⁹ *Id.*

¹²⁰ COASTAL PROTECTION AND RESTORATION AUTHORITY, FISCAL YEAR 2025 ANNUAL PLAN 9-10 (2025).

¹²¹ Has benefitted over 110,000 acres in Louisiana. CWPPRA, COASTAL PROTECTION AND RESTORATION AUTHORITY, <https://coastal.la.gov/funding/cwppra/> (last visited July 26, 2024).

Homeland Security and Emergency Preparedness, and the Louisiana Office of Community Development for the purpose of reducing flood risk and improving floodplain management through a watershed-based approach.¹²² LWI coordinates a \$1.2 billion line of credit in Community Development Block Grant mitigation funds for flood risk reduction priorities, and many of those funds are directed towards projects across the state that are designed to support healthy wetland ecosystems.¹²³

V. Public-Private Partnerships

The majority of collaboration around wetland protection and restoration occurs in coastal regions, where both planning and implementation practices frequently engage private stakeholders.

Much of the CPRA Master Plan and Annual Plan planning processes includes a wide array of stakeholders as there are significant public engagement requirements.¹²⁴ When developing the 2023 Coastal Master Plan, CPRA held four ‘Master Plan 101’ presentations, five to eight ‘Community Conversations,’ and four public hearings, and provided opportunities for public comment.¹²⁵

Additionally, CPRA awards Conservation and Restoration Partnership Fund awards on an annual basis. These awards fund restoration activities to be completed through non-governmental organizations. In 2024, CPRA awarded \$1,000,000 in matching funds to six different non-profits for restoration projects including vegetative plantings, terracing, and oyster reef construction.¹²⁶

Private industry also plays an important role in wetlands restoration work. For example, ConocoPhillips is the largest private owner of wetlands in the U.S.¹²⁷ ConocoPhillips frequently partners with nonprofits and the CPRA to support wetland restoration projects such as terracing.¹²⁸

¹²² LOUISIANA WATERSHED INITIATIVE, <https://watershed.la.gov/> (last visited Aug. 15, 2024).

¹²³ OFFICE OF COMMUNITY DEVELOPMENT, STATE OF LOUISIANA MASTER ACTION PLAN FOR THE UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION FUNDS (CDBG-MIT) 56, 60, 65, 72 (Feb. 20, 2020), https://www.doa.la.gov/media/ylhkkcgl/cdbg-mit-master-ap-approved-2_20_20_inc_attachments.pdf.

¹²⁴ LA. STAT. ANN. § 49:214.5.3.

¹²⁵ Coastal Protection and Restoration Agency, Louisiana’s Coastal Master Plan 101 (Sept. 2022), https://coastal.la.gov/wp-content/uploads/2022/09/MasterPlan-101_FinalWebsite.pdf.

¹²⁶ CPRA Announces 2024 Conservation and Restoration Partnership Fund Award Recipients, COASTAL PROTECTION AND RESTORATION AUTHORITY (Jan. 29, 2024), <https://coastal.la.gov/news/cpra-announces-2024-conservation-and-restoration-partnership-fund-award-recipients/>. Recipients were Coalition to Restore Coastal Louisiana, Ducks Unlimited, Pontchartrain Conservancy, Restore or Retreat, The Nature Conservancy, and Tulane University.

¹²⁷ *Restoring Coastal Wetlands*, CONOCOPHILLIPS (Dec. 7, 2018), <https://www.conocophillips.com/sustainability/sustainability-news/story/restoring-coastal-wetlands/>.

¹²⁸ Maxine Madison, *Louisiana’s Coastal Wetlands: Restoration Through Collaboration*, CONOCOPHILLIPS SPIRIT (Fourth Quarter 2015), https://static.conocophillips.com/files/resources/4qtr15_spiritmag.htm?_gl=1*1nhn8d8*_gcl_au*MTMyMTA5OTAyOS4xNzIzMTI2Njk2#1.

VI. Education and Outreach

CPRA maintains a database of many different educational resources, including:

- Coastal 101: The story of Louisiana’s coast, centered around sediment and river water.¹²⁹
- Louisiana Marine Education Resources: A variety of education materials about marine and aquatic ecosystems to raise awareness.¹³⁰
- Watch the Delta Grow: Lesson plans and activities for middle and high school science classes.¹³¹
- 4-H Youth Wetlands Education and Outreach Program: An LSU AgCenter program sponsored by CPRA that offers K-12 lesson plans designed to raise students’ awareness of wetland loss in the state.¹³²
- WETshop: A weeklong coastal awareness workshop for teachers hosted by LDWF.¹³³
- Mighty Mississippi Electronic Field Trip: A video tour of the Mississippi River from its headwaters in Minnesota to its mouth in Louisiana.¹³⁴

VII. Coordination with State and Federal Agencies

Louisiana state agencies regularly coordinate both with each other and with federal agencies on wetland-related issues. The Governor’s Commission was formed in part to provide a forum for cooperation and collaboration among federal, state, and local governmental agencies, conservation organizations, and the private sector.¹³⁵

The Governor’s Executive Assistant for Coastal Activities also chairs the CPRA, which is charged with developing, implementing, and enforcing a comprehensive coastal protection master plan and annual coastal protection plans, as well as representing the state’s policy position relative to coastal protection, conservation, and restoration.¹³⁶ The CPRA Board represents one of the largest opportunities for cross-agency collaboration, as the Board is primarily comprised of the secretaries of other environmentally oriented agencies.

¹²⁹ Coastal Protection and Restoration Authority, Louisiana’s Vanishing Coast: Coastal 101, <https://coastal.la.gov/wp-content/uploads/2022/05/Coastal-101-FINAL.pdf> (last visited July 26, 2024).

¹³⁰ *Louisiana Marine Education Resources*, SEA GRANT LOUISIANA, <https://www.laseagrant.org/education/> (last visited July 26, 2024).

¹³¹ *Storm Event on the Wax Lake Delta*, WATCH THE DELTA GROW, <https://www.watchthedeltagrow.com/resources-lessonplan-storm/> (last visited July 26, 2024).

¹³² *Youth Wetlands Program*, LSU AGCENTER, https://www.lsuagcenter.com/topics/kids_teens/projects/ywp (last visited July 26, 2024).

¹³³ *Teacher Resources and Workshops*, LA. DEP’T OF WILDLIFE AND FISHERIES, <https://www.wlf.louisiana.gov/page/for-teachers> (last visited July 26, 2024).

¹³⁴ WYES-TV, *The Mighty Mississippi*, YOUTUBE (Nov. 20, 2018), <https://www.youtube.com/watch?v=BKC3Nthm5ck>.

¹³⁵ LA. STAT. ANN. § 49:214.4.1. However, there is currently no agency represented on the Board.

¹³⁶ LA. STAT. ANN. § 49:214.5.1.

Agencies currently represented on the CPRA Board are the Department of Energy and Natural Resources, the Department of Wildlife and Fisheries, and the Department of Environmental Quality.¹³⁷ Up until the most recent legislative session, the Department of Transportation & Development, Louisiana Economic Development, Department of Administration, Department of Agriculture, Department of Insurance, and Governor’s Office of Homeland Security and Emergency Preparedness were also represented.¹³⁸ Additionally, the Board includes representatives of coastal parishes and levee districts.¹³⁹

LDENR has coordinated with the Army Corps through the development of the Programmatic General Permit, which was developed by the New Orleans District in conjunction with the Office of Coastal Management.¹⁴⁰ This allows the Army Corps to issue a letter to the permit applicant stating that the permit and attached conditions granted by OCM also serve as authorization from the Army Corps.¹⁴¹

VIII. Impact of *Sackett* on Louisiana’s Wetlands Programs

Many wetlands within the coastal zone will remain jurisdictional because the area is so regularly saturated that they will continue to meet the definition of WOTUS.¹⁴² As such, the *Sackett* decision will have the largest impact on wetlands outside of Louisiana’s coastal zone, which are subject to little regulation aside from the Clean Water Act.¹⁴³

The state-run program in Louisiana likely to experience the largest impact is the state’s CWA Section 401 water quality certification program, because it is most directly reliant on the federal definition of waters of the United States. Water quality certifications are only required for applications for *federal* licenses or permits; thus, a decrease in jurisdictional wetlands—which means there are fewer geographical areas where federal CWA permits are needed for development—is likely to result in a corresponding decrease in water quality certifications. As noted previously, this impact will be felt primarily toward the north of the state, as the level of saturation near the coast means that most wetland areas remain jurisdictional even under the narrower definition. However, an outstanding question with critical implications for the coastal areas and along the Mississippi River is whether wetlands that are behind a levee and under a pump will be classified as jurisdictional after *Sackett*.¹⁴⁴

¹³⁷ 2024 La. Act 726 (Provides for membership on the Coastal Protection and Restoration Authority Board).

¹³⁸ LA. STAT. ANN. § 49:214.5.1 (2023). In addition to removing these agencies representation on the board, this legislation also added three members to be appointed by the Governor.

¹³⁹ *Id.*

¹⁴⁰ *Other Regulatory Agencies and Agency Coordination*, LA. DEP’T OF ENERGY AND NAT. RES., <https://www.dnr.louisiana.gov/index.cfm/page/1387#other> (last visited Aug. 5, 2024).

¹⁴¹ *Id.*

¹⁴² Interview with Matt Rota, Senior Policy Director, Healthy Gulf (July 19, 2024).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

Sackett is not anticipated to impact the CUP program because the program is not reliant on the WOTUS definition.¹⁴⁵ As it currently stands, the program is continuing as normal.¹⁴⁶ The CUP program is the key backstop against *Sackett*-related losses in protection, though it's important to note that because of its exemption of fastlands, the CUP definition of wetlands is not as broad as the pre-*Sackett* federal definition.¹⁴⁷

In Louisiana, the only formal legislative action taken in direct response to the *Sackett* decision was the introduction of a senate concurrent resolution requesting that LDENR eliminate wetland protections under Louisiana regulations that exceed what is required under *Sackett*.¹⁴⁸ The resolution was referred to the Committee on Environmental Quality and considered, but no further action was taken.¹⁴⁹

¹⁴⁵ LA. STAT. ANN. 49:214.2(16); LA. ADMIN. CODE tit 33, pt. IX, § 107.

¹⁴⁶ Interview with Charles Reulet, Administrator of Interagency Affairs and Field Services, La. Dep't of Energy and Nat. Res. (July 18, 2024).

¹⁴⁷ Interview with Matt Rota, Senior Policy Director, Healthy Gulf (July 19, 2024).

¹⁴⁸ S.C.R. 64, 2024 Reg. Sess. (La. 2024).

¹⁴⁹ *SCR64 by Senator Michael "Big Mike" Fesi*, LA. STATE LEGISLATURE, <https://www.legis.la.gov/Legis/BillInfo.aspx?s=24RS&b=SCR64&sbi=y> (last visited Aug. 8, 2024).