GULF COAST CLAIMS FACILITY

Modification to Final Rules Governing Payment Options,

Eligibility and Substantiation Criteria, and Final Payment Methodology (dated February 18, 2011)

August 16, 2011

The GCCF believes that, although the economy continues to improve, some businesses will recover more slowly than others. The following modification to the GCCF's Final Rules Governing Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology (dated February 18, 2011) ("Final Rules"), is designed to provide a methodology for a fair and consistent approach to determine and calculate final and interim payments for individuals and businesses for 2011 losses sustained due to the Oil Spill. The GCCF Final Rules are amended as follows:

I. Final Payment Offers

The GCCF recognizes that recovery in the Gulf is well underway. However, the GCCF believes the future of the Gulf region remains sufficiently uncertain as to warrant the continuation of the Future Recovery Factor for actual documented 2010 losses as set forth in the GCCF's Final Rules.

- Final Payment Offers will continue to be calculated according to the rules previously set forth in the GCCF Final Rules as follows (except as noted below for claimants with 2011 losses with no documented 2010 losses, and in Section IV: Modification for Oyster Leaseholders):

> Each Claimant's Final Payment Offer Amount will be the larger of:
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> 1) Two times each eligible claimant's 2010 Actual Documented Losses (except for claimants with 2010 losses in excess of $500,000); four times 2010 Actual Documented Losses for oyster harvesters and oyster processors, and for **Oyster Leaseholders only**, the addition of the Future Risk Multiple as noted below in Section IV: Modification for Oyster Leaseholders; or
> 2) The total actual documented losses through the date of the determination of the Final Claim.

- Final Payment Offers for claimants **with no documented 2010 losses** will be reviewed and calculated using 2011 losses that can be ascribed to the Oil Spill. These claimants must provide evidence specifically linking the claimed 2011 losses to the Oil Spill. The Final Payment Offer for such claimants will be calculated on a case by case basis.

Consistent with the Final Rules,[1] the Final Payment Offer will be reduced by compensation already received by the claimant in Emergency Advance Payments from BP, Emergency Advance Payments and Interim Payments received from the GCCF, payments received from Gulf state real estate funds and other offsets.

II. Interim Payment Claims

- Interim Claims for Businesses:

  For Interim Claims submitted by businesses for second quarter 2011 losses (and thereafter), the GCCF will <u>require</u> that all businesses demonstrate an actual revenue growth rate of at least 5% from 2010. Losses associated with revenue less than the 5% growth rate are presumed to be from non-Oil Spill related factors and will not be compensated. (For greater detail on the methodology for the calculation of 2011 losses, see Attachment A: "ARPC Methodology for Calculating Interim Payment for 2011 Losses Due to the Oil Spill," prepared by ARPC, an expert firm of economists retained by the GCCF.)

- Interim Claims for Individuals:

  - The GCCF will <u>require</u> that all employed individuals demonstrate an actual growth in earnings of at least 5% from 2010 earnings. However, for these individual claimants, this modification will not become effective until the submission of interim claims in the third quarter of 2011 (and thereafter), for losses sustained beginning July 1, 2011. (Losses for individual claims filed for first and second quarter 2011 will be paid according to the GCCF's current calculation methodology as set forth in the GCCF Final Rules.) Losses associated with earnings less than the 5% growth rate are presumed to be from non-Oil Spill related factors and will not be compensated.

  - For individuals who assert unemployment as a result of the Oil Spill, the GCCF will allow an eligible individual to continue to be paid through the GCCF interim payment process for a maximum of 78 weeks of compensation for unemployment caused by the Oil Spill as supported by documentation provided by the claimant. The GCCF will review such continuing claims and will determine additional documentation requirements for individuals who have exhausted the 78 week unemployment maximum.

[1] See Final Rules page 5-6, *Calculation of Awards for Interim and Final Payments,* http://www.gulfcoastclaimsfacility.com/FINAL_RULES.pdf.

- Claims for Businesses and Individuals who have not been found by the GCCF to be eligible for compensation: These claimants must first qualify for eligibility for payment as set forth in Section IV.3. (a) (b) and (c) of the GCCF Final Rules. If no 2010 losses can be demonstrated, all claimants must provide evidence specifically linking the claimed 2011 losses to the Oil Spill to be deemed eligible for compensation from the GCCF.

III. Modification to Financial Test (Attachment C to the GCCF Final Rules)

The financial test explained in Attachment C to the "GCCF Final Rules" is an eligibility analysis to determine whether damage due to the Oil Spill should be presumed. The financial test is used to indicate whether any decline in revenue in the pre-Oil Spill period, relative to revenues during the same period in prior years, is due to the Oil Spill or some other factor(s). To "pass" the financial test currently, there must be some deterioration from the first four months of 2010 (pre Oil Spill) as compared to the last eight months of 2010 (post Oil Spill).

In a number of cases, the high variability of historical revenues does not fit the parameters for which the test was initially designed. Some claimant businesses lack historical financial data needed to perform the financial trending test. In certain of these situations the financial performance test as described in the GCCF Final Rules may not be sufficient to determine financial eligibility. Such claims will be reviewed and considered carefully according to the specific circumstances of the claimant's financial history in order to determine whether or not the financial data provided by the claimant indicates any potential impact due to the Oil Spill.

IV. Modification for Oyster Leaseholders

This modification is designed to provide a methodology for a fair and equitable approach to compensate oyster **leaseholders** in the Gulf of Mexico who have been financially harmed by the closure of the oyster beds, fresh water diversions, and/or possible oil contamination as a result of the Oil Spill. This modification recognizes that there is significant uncertainty regarding possible ongoing damage to the oyster crop and oyster producing areas in the Gulf. This modification recognizes three different types of potential losses to oyster leaseholders as follows:

- Initial loss of earnings/revenue during the Oil Spill in 2010 due to:
  - state/federal closures, or
  - inventory reductions from fresh water incursions related to government actions to divert the Oil Spill that may have increased the mortality rate in that year;[2]
- Subsequent potential losses during the anticipated recovery period given the production cycle of oysters;[3] and/or
- The residual risk of long-term Oil Spill related damage to the oyster beds and their ability to support the reproduction cycle of future generations of oysters.

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[2] Other fresh water incursions took place as the Mississippi crested during the Oil Spill period and flooded the lower delta region. Dr. Earl Melancon of Nicholls State University indicated that this action, coupled with the remedial action by the state of Louisiana, caught the oyster beds in a "vice."

[3] See *"ARPC Response to Comments on the Derivation and Calculation of Future Damages"* on GCCF web site as follows – http://www.gulfcoastclaimsfacility.com/FINAL_RULES_B.pdf.

Under the current procedures, the Final Payment Offer calculation begins with the determination of 2010 Losses for all harvesters. The GCCF's current calculation methodology for determination of the Final Payment Offer for claimants directly involved in the oyster industry, e.g. leaseholders, harvesters (captains and crew) and processors, is four times 2010 Lost Profits/Earnings. Their compensation continues to be determined in the same manner as described in the GCCF's Final Rules. The modification discussed below will be applied to oyster leaseholders only as described below.

This modified methodology continues to compensate for 2010 Loss and subsequent losses during the anticipated recovery period in exactly the same way. However, for oyster leaseholders only, the Final Payment Offer will, in addition, include a special Allowance for Future Risk that will be added to compensate for the risk of as yet undetected and possibly ongoing damage to oyster-producing areas in the Gulf and the possibility of significant delay before affected oyster beds are repaired. For leaseholders in Louisiana, Mississippi, Alabama and parts of the Florida Panhandle, the Allowance for Future Risk will be a multiple (the "Future Risk Multiple") of net income in a comparison year ("Comparison Year Net Income") added to the claimant's Final Payment Offer. **The Future Risk Multiple will apply to the leasehold component of the business only. To be eligible for the Future Risk Multiple, Oyster Leaseholders will be asked to file a GCCF Property Damage Claim in addition to their Lost Earnings/Profits Claim.** Comparison Year Net Income is generally based on either the average of 2008-2009 or the claimant's 2009 income, whichever is higher.[4] Businesses that are directly involved in the oyster industry e.g., harvesters (captains and crew) and production and processing businesses are not eligible for the Allowance for Future Risk. Only leaseholders are eligible for this special Allowance for Future Risk.

Future Risk Multiple

The GCCF has defined three distinct damage categories and has assigned a Future Risk Multiple to each depending upon the physical location of the oyster beds. The Allowance for Future Risk is equal to the product of the Comparison Year Net Income and a Future Risk Multiple based on the geographic location of the oyster beds.

- Based on a review of the lease locations within harvest areas ("Quads") in Louisiana (Map 1)[5], data on fresh water diversions (Map 2)[6] and oil infiltration (Map 3)[7], the GCCF has defined three distinct damage categories and assigned a Future Risk Multiple to each (See Attachment B for Maps 1-4.)

[4] If an oyster harvester indicates that his/her historic catch during these periods is not representative of a "normal" period, the GCCF will consider reasonable evidence of a more appropriate period.
[5] Louisiana Department of Wildlife and Fisheries – Oyster Lease Survey Section.
[6] Louisiana Department of Wildlife and Fisheries, March 2005. Flow Rates retrieved from Office of Coastal Protection and Restoration, LA; http://coastal.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=1216&catID=1.
[7] "Deep Water Horizon, One year Later", The Economist: http://www.economist.com/node/18587367.
Data for Map 3 was sourced from the Office of Response and Restoration - Deepwater Horizon Trajectory Map Archive Near shore Surface Oil Forecasts.
http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY%28entry_subtopic_topic%29=entry_id,su

High: (Multiple = 7 times Comparison Year Net Income)

Medium: (Multiple = 3.5 times Comparison Year Net Income)

Low: (Multiple = 2 times Comparison Year Net Income)

(Multiple = 1 times Comparison Year Net Income for **Florida (only leases in Apalachicola Bay & points west)**

These scores are the Future Risk Multiples to be used in the Allowance for the Future Risk formula and added to the claimant's Final Payment Offer.

(Note: the Comparison Year Net Income only applies to the net income related to the leasehold component of the claim.)

- Leaseholders in **Louisiana** will be assigned a Future Risk Multiple for each distinct lease area, called "Quads" by the Louisiana Department of Wildlife and Fisheries.[8] The Multiple will be based on the highest rated Quad for the specific lease. Map 4[9] shows the Quad boundaries and their Future Risk Multiples. (Oyster leaseholders whose acreage has not been productive for five years will not be compensated for future losses.) The maximum Future Risk Multiple for fresh water and oil damage to a lease in Louisiana is a multiple of 7 times the Comparison Year Net Income. The minimum is a multiple of 2 times the Comparison Year Net Income for Quads where only a small amount of oil contamination has been noted.

- Leaseholders in **Mississippi** and **Alabama** will be assigned a Future Risk Multiple of 3.5 times the Comparison Year Net Income. This reflects the fact that most of the shorelines of Mississippi and Alabama experienced a significant degree of oil contamination similar to that experienced in the most affected shorelines of Louisiana. However, fresh water incursion was not significant in these states.

- Certain leaseholder claims in **Florida (only leases in Apalachicola Bay and points west)** will be assigned a Future Risk Multiple of 1.0 times the Comparison Year Net Income. This reflects the fact that most of these shorelines experienced some oil contamination, though less than that experienced in Mississippi and Alabama. Fresh water incursion was not significant in these areas.

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[8] The Louisiana Department of Wildlife and Fisheries' public website posts the locations of each Quad as well as a database of the leases held by private leaseholders. Each private lease is assigned by the State to a Quad. GCCF will rely on this list to designate the leases for an individual claimant. http://oysterlease.wlf.la.gov/oysterlease1/framesetup.asp.

[9] Louisiana Department of Wildlife and Fisheries – Oyster Lease Survey Section for "Quads".

Oyster Leaseholders in Florida east of Apalachicola Bay and all oyster leaseholder claims in Texas are <u>not eligible to</u> receive an Allowance for Future Risk. [10] **Oyster beds in these areas did not experience significant fresh water or oil incursion.**

An adjustment (reflecting the percentage reduction in production) will be made to the Future Risk Multiple in the event that a leaseholder has harvested oysters in 2011 or thereafter from a lease for which future losses are claimed. [11]

[10] In 2002, there were 43 oyster leases in Texas, all of which were in Galveston Bay. Oysters from leased beds accounted for approximately one-third of Texas oyster landings. There are very few leased oyster beds in Florida and most of them are in the Apalachicola Bay area.
[11] For Quads rated a 7, the adjusted Future Risk Multiple will be a minimum of 3.5; for Mississippi and Alabama leases and Quads rated 3.5, the adjusted Future Risk Multiple will be a minimum of 1.75; for Quads rated 2.0, the adjusted Future Risk Multiple will be a minimum of 1.0 and for the western Florida Panhandle rated 1.0, the adjusted Future Risk Multiple will be a minimum of 0.5.