GULF COAST CLAIMS FACILITY

Second Modification to Final Rules Governing Payment Options,

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

November 30, 2011

The GCCF has analyzed various economic data including tourism-related revenues and taxable sales to continue to monitor the status of the recovery, both Gulf-wide and on regional levels. 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 reflect the current economic situation in the Gulf while continuing 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.

Modifications to the Final Rules outlined below (with the exception of Section I Changes in Compensation for Commercial shrimp and crab Harvesters and Processors), will be effective immediately and applied to all claims <u>submitted</u> to the GCCF postmarked, filed electronically, faxed or hand delivered on or after November 30, the date of this modification. For claims filed on or after November 30, 2011**, including claims new to the GCCF and existing claimants filing additional interim or new final claims (including those claimants who previously received an Emergency Advance Payment from the GCCF),** the eligibility requirements and computations for Interim Payments and Final Payments will follow the modified rules.

The GCCF Final Rules are modified as follows:

I. Changes in Compensation for Commercial Shrimp and Crab Harvesters and Processors

The GCCF recognizes the ongoing uncertainty regarding the state of the commercial harvesting of shrimp and crab in the Gulf and the uncertainty of any ongoing impact from the spill. As a result of this uncertainty, the GCCF has adjusted its methodology for compensation to commercial shrimp and crab harvesters and processors to include additional compensation. This modification for compensation for commercial shrimp and crab harvesters and processors will apply to all Final Payment Offers made by the GCCF <u>for claims currently under review by the GCCF but not yet determined or accepted, and for all claims received on or after November 30, 2011</u>, the date of this modification. Note that commercial shrimp and crab harvesters and processors will continue to be required to prove 2010 losses. Commercial shrimp and crab harvester business claimants must provide evidence of their license to harvest in the loss year that they are claiming losses.

Specific Eligibility and Documentation Requirements:

- Business Claimants: Commercial shrimp and crab harvester and processor business claimants must provide tax returns for the past three years (2008 – 2010). In addition, business claimants who are shrimp harvesters must provide evidence of: 1) a commercial shrimp license or shrimp vessel license; 2) a shrimp captain's license; 3) proof of ownership of a shrimping vessel; or 4) a commercial gear license. For business claimants who are crab harvesters, claimants must provide: 1) a commercial crab catcher license; 2) a commercial crab trap license; or 3) a commercial crab fisherman's license. More generic saltwater product or commercial fisherman's licenses will be considered for both shrimp and crab harvesters on a case by case basis.

- Individual Claimants: Individual shrimp and crab harvester or processor claimants who are employed by commercial harvesters and processors of shrimp or crab must provide proof of employment by a captain or owner of a vessel or business entity who has submitted a claim to the GCCF for a similar loss period and whose claim has been deemed eligible for payment, received a final payment offer or has been paid by the GCCF prior to or after the effective date of this modification, or the claimant must provide an appropriate harvesting license and a letter from the employer confirming the dates and type of employment.

Therefore, the following rules for compensation for commercial shrimp and crab harvester and processor claimants will be applied. (For generic seafood harvesters and processors, only the portion of losses attributable to Gulf shrimp or crab will be eligible for the new compensation calculation provided with this modification to the Final Rules described below.)

Each Commercial shrimp and crab Harvester Claimant (who meets the specific eligibility and documentation requirements as noted above) and who provides the required documentation to harvest in the loss year that they are claiming losses and Commercial shrimp and crab Processors will be **eligible for a Final Payment Offer Amount of the larger of:**

1) **Four times each claimant's 2010 Actual Documented Losses (except for claimants with 2010 losses in excess of $500,000); or**

2) **The total actual documented losses through the date of the determination of the Final Claim.**

Consistent with the Final Rules, the Final Payment Offer will be reduced by compensation already received in Emergency Advance Payments from BP, Emergency Advance Payments from the GCCF and Interim Payments from the GCCF.

II. Changes in Eligibility Rules for All Individuals and Businesses in the Florida Peninsula and Texas

Based on an analysis of recent revenue trends at beachfront hotels along the Gulf as well as taxable sales data at a county level in Florida and Texas, the GCCF has concluded that there is a significant differential impact of the oil spill between (1) the Gulf Alliance counties along the western coast of Florida south of the Panhandle (hereafter called "Florida Peninsula") and Texas, and (2) other areas in the Gulf. See Appendix A for a list of the Gulf Alliance counties in the Florida Peninsula.) (Availability of data varies from state to state.)

The GCCF has analyzed the performance of three economic components related to tourism and compared the performance level observed in the Florida Peninsula and Texas with the performance in Mississippi, Alabama and the

Florida Panhandle. The three components are: (1) revenues for beachfront hotels; (2) taxable sales of restaurants and (3) taxable sales of amusement activities. (See Appendix B, Figures 1, 2 and 3.)

The GCCF will ensure that claimants from the Florida Peninsula and Texas that were affected by the oil spill are appropriately compensated.

Accordingly, the following modifications will be made to the eligibility requirements for individuals and businesses where the place of work or business is in a county in the Florida Peninsula or Texas.

- In general, losses claimed by **Individuals and Businesses** in the Florida Peninsula and Texas are no longer presumed to be the result of the oil spill as defined in Section IV 3a of the Final Rules. This rule previously allowed a presumption of loss due to the oil spill solely if the claimant was "in the immediate vicinity of the Gulf Shore."[1] This rule no longer applies to any claimants except seafood harvester and processor claimants.

- **Business Claimants** claiming 2010 losses in the Florida Peninsula and Texas will hereafter be treated as follows:

    - All Business claimants (including claimants in the immediate shore vicinity) will now have to satisfy the requirements of the financial test.[2]

    - All Business claimants who either (1) fail the financial test, or (2) are outside of the immediate vicinity of the Gulf shore, will also have to provide specific proof demonstrating an identifiable link between the asserted damage and the oil spill. (See the Final Rules, Section IV. 3c and Attachment A for examples of such proof.)[3]

- **Individual Claimants:** Individuals are deemed to be eligible for compensation for their losses if they can demonstrate that their employer has either been made an offer or has been paid by the GCCF <u>under the revised eligibility rules described herein</u>. Otherwise, Individual claimants will need to provide specific proof demonstrating an identifiable link between the asserted damage and the oil spill. This link could be a specific proof of termination of employment or reduction in wages that an employer confirms was a result of the oil spill.

- **All claimants in the Construction Industry in the Florida Peninsula and Texas**, both Individuals and Businesses, will now have to provide proof demonstrating an identifiable link between the asserted damage and the oil spill. Businesses in the Construction Industry will also be required to pass the financial test.

III. Changes in the Rules for Computing Comparison Year Income for Individuals

- Actual Documented Losses for Individuals will continue to be based on the difference in financial performance between the loss year and a Comparison Year as described in the Final Rules.[4] Effective with this modification, the Comparison Year income will be the average of the annual incomes for 2008, 2009 and 2010[5] except under the following circumstances:

[1] *Final Rules*, Section IV 3a.
[2] *Final Rules,* Attachment C.
[3] *Final Rules,* Attachment A.
[4] *Final Rules*, Section III 4a.
[5] For this purpose, the GCCF will annualize 2010 using January through April results provided by the claimant.

- If annual income from 2008 through 2010 shows either a consistent increase or decrease, 2010 will be used.
- If the income for two of the three years is more than 10% different from the average of all three, the claim will be evaluated under a Special Review process.
- 2008 income must be made available unless the difference between 2009 and 2010 is less than 10%.
- Income for 2010 will be based on the January through April period and annualized as follows:
  - Bonus or special award payments will be deducted from income prior to annualization.
  - The income, after deduction of bonus or special award payments, will be annualized using a seasonality factor that is a function of:
    - Location (Florida Peninsula vs. all other areas)
    - Business type (Tourism related vs. other)
    - Compensation type (Salary vs. Hourly)
  - Bonus or special award payments will be added back to total income after annualization.

- Individual claimants who provide either insufficient income data or were laid off during any of the Comparison Years (2008, 2009) or the pre-spill months in 2010 (January – April) will be evaluated under Special Review.

Note: For all claimants with actual documented losses in 2010 of $500,000 or more, the GCCF will not automatically apply the recovery factor to claimant's actual 2010 total losses. The Final Payment calculation for these claimants will be determined on an individualized basis after analyzing input from the claimant as well as the GCCF's economists. The Final Payment Offer will be the actual documented losses in 2010 and an additional amount to compensate for the projected recovery and risk of possible future losses.

Appendix A

Listing of Gulf Alliance Counties in the Florida Peninsula

Charlotte
Citrus
Collier
DeSoto
Glades
Hardee
Hendry
Hernando
Hillsborough
Lake
Lee
Levy
Manatee
Marion
Monroe
Pasco
Pinellas
Polk
Sarasota
Sumter

Appendix B

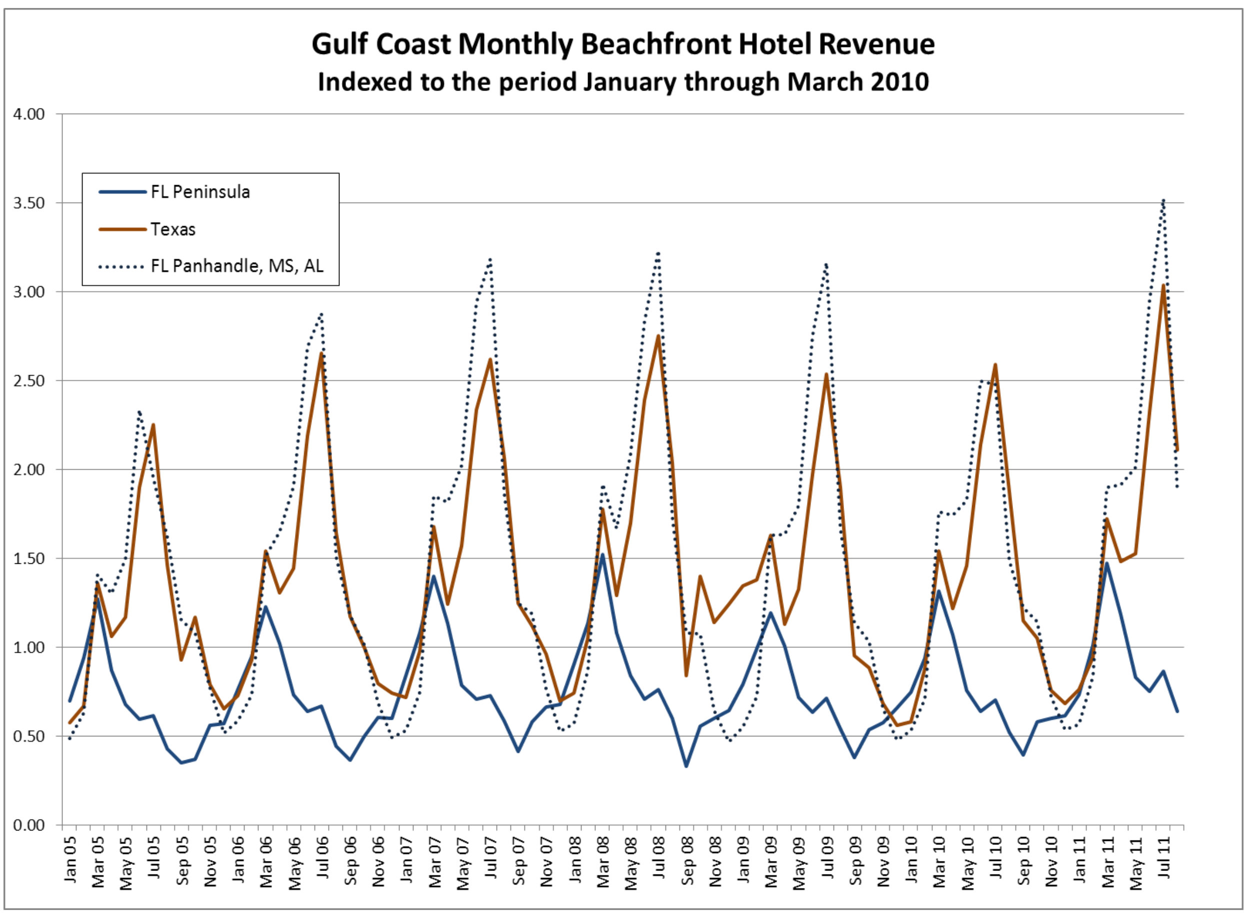
Graphs of Key Tourism Indicators

Revenues at Beachfront Hotels[6]

Beachfront hotel revenue in the Florida Peninsula and Texas grew steadily from 2005 to 2008.[7] (See Figure 1.) Likewise, the Florida Panhandle, Mississippi and Alabama also experienced steady growth over the same period. In 2009, the beachfront hotels throughout the Gulf experienced a slight decline, likely a result of the nationwide recession. However, in 2010 revenues from hotels in Texas and the Florida Peninsula began to diverge from revenues generated in the rest of the Gulf. Specifically, the Florida Panhandle, Mississippi and Alabama declined dramatically in the summer of 2010, likely the combined effect of the continued recession and effect of the oil spill. The Florida Peninsula and Texas show a very different pattern. Rather than a steep decline through the summer of 2010, both areas actually showed a slight increase in revenues.

The upward trend in the Peninsula and Texas continued in 2011 and by August hotel revenues in these areas had returned to 2008 levels. It seems clear that in the aggregate, the Florida Peninsula and Texas did not experience a significant decline immediately after the oil spill.

Figure 1: Trends in Beachfront Hotel Annual Revenues

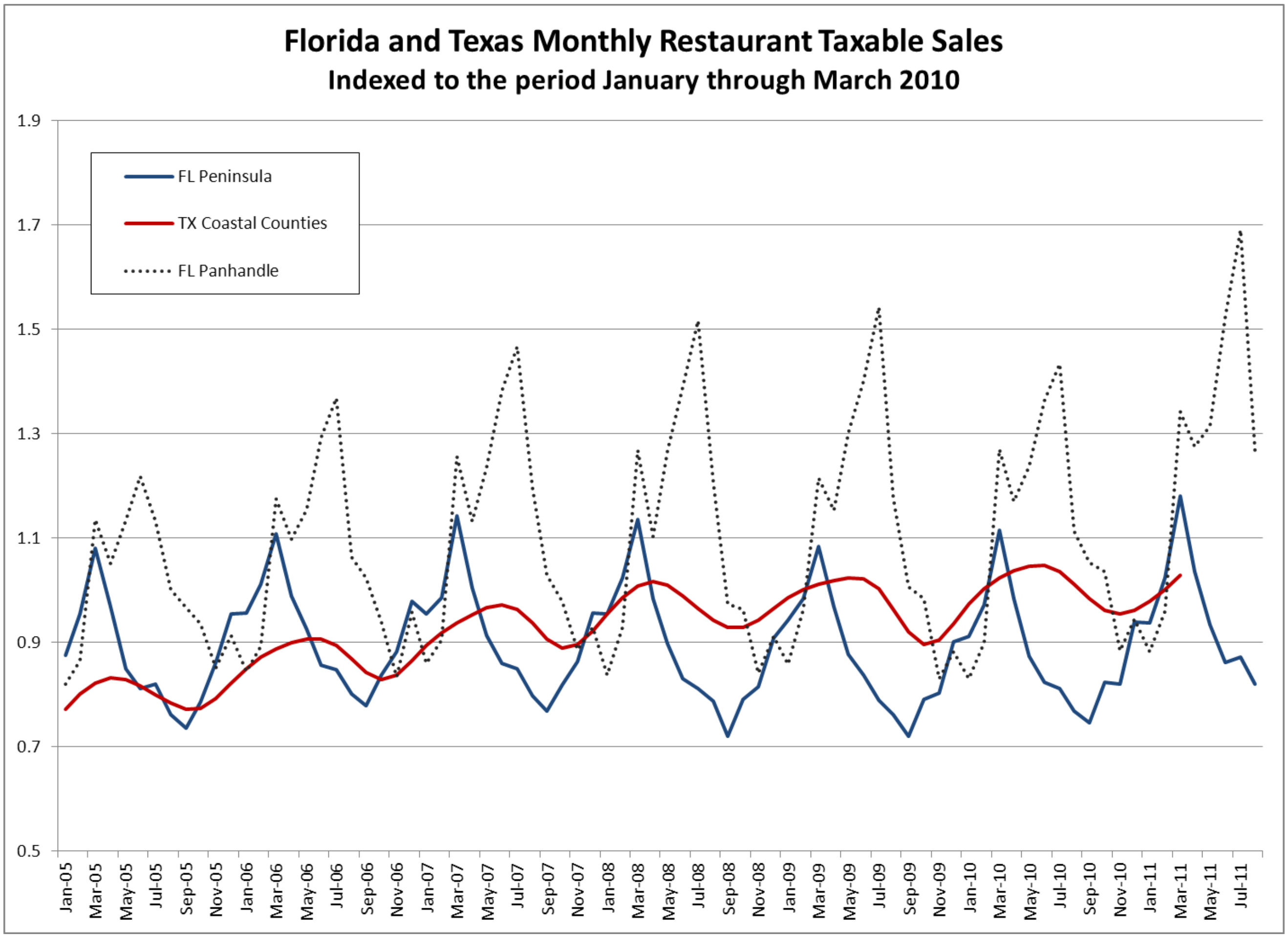


[6] Note that data were not available for similarly situated hotels in Louisiana.
[7] "Beachfront" hotels are located within one mile of the coastline.

Taxable Sales – Restaurants[8]

Taxable restaurant sales in the coastal counties in the Florida Peninsula and the Panhandle as well as coastal Texas all experienced steady growth between 2005 and 2008.[9] (See Figure 2.) However, in 2009, the coastal Florida Peninsula experienced declining revenues while the Panhandle continued its upward trend in revenues through 2009. Revenues at restaurants in coastal Texas were flat during the peak summer period in 2009, falling off somewhat more than usual thereafter. In the aftermath of the oil spill, the Panhandle region demonstrated a severe decline in peak revenues while the Florida Peninsula and Texas seemed unaffected. In 2011, both regions in Florida have recovered significantly with the June-August period bringing the highest restaurant sales of the last five years in the Panhandle, while in the Peninsula, restaurant sales have returned to 2008 levels. Revenues have remained consistent in Texas.

Figure 2: Trends in Restaurant Taxable Sales



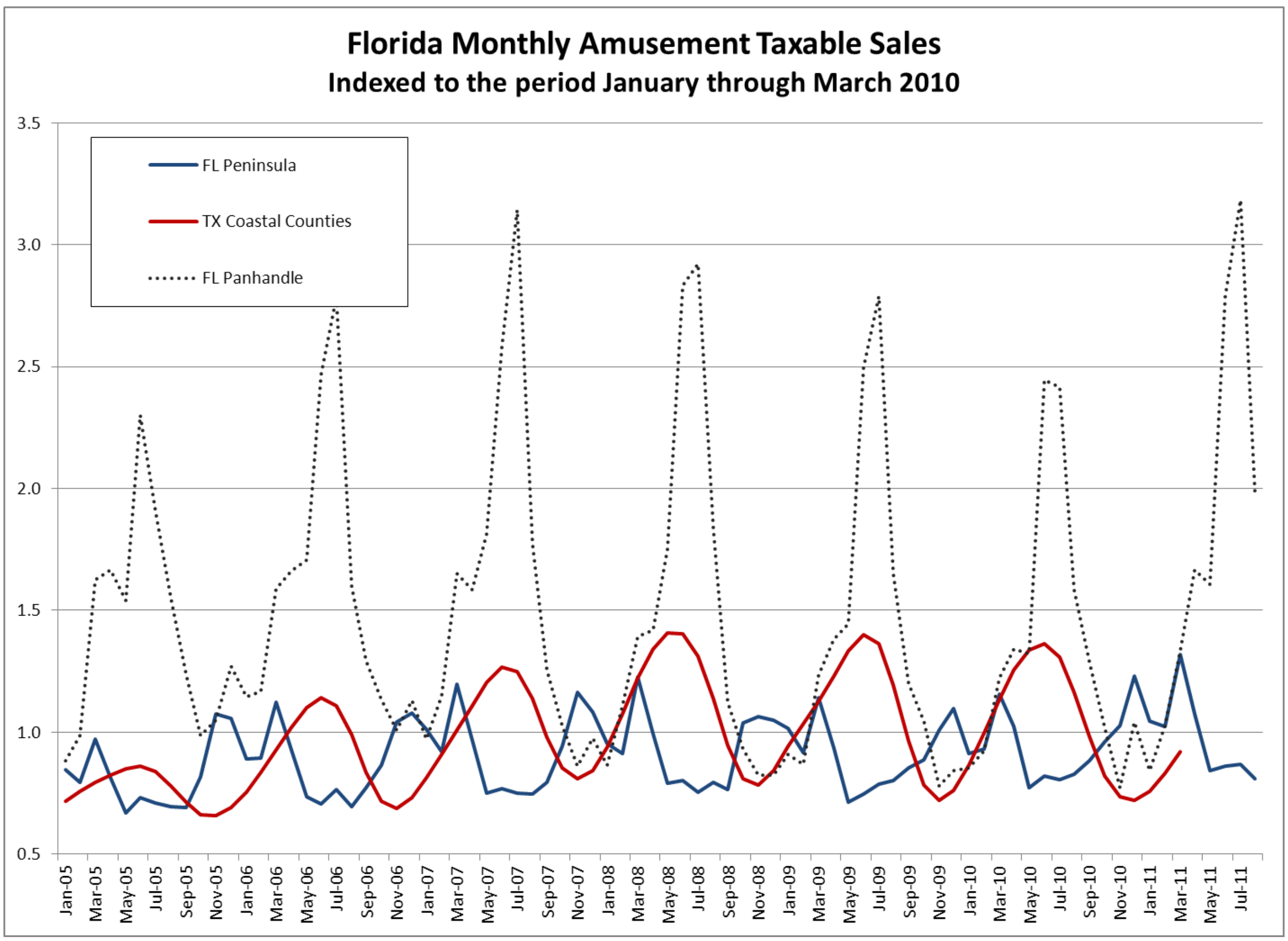
[8] Data for Alabama, Mississippi and Louisiana were not available on a comparable basis.
[9] Texas data is only available by quarter and unavailable after the first quarter of 2011. The line shown is an interpolated representation of the quarterly data.

Taxable Sales – Amusements[10]

Taxable amusement sales provide further evidence of the disparity in the effects of the oil spill in the Florida Panhandle and coastal counties in the Florida Peninsula as well as coastal Texas. (See Figure 3.) The Panhandle experienced steady growth in taxable amusement sales between 2005 and 2007 while the Florida Peninsula and coastal Texas continued to experience growth in 2008. As Figure 3 in Appendix B shows, taxable sales in the coastal Peninsula show a reasonably similar pattern in 2008 through 2009 to prior years while in the Panhandle, decline in peak months began in 2008 and continued into 2009. Coastal Texas was flat to marginally down during this period.

Once again the 2010 data indicate that the coastal counties in the Peninsula showed no ill-effects as a result of the spill as sales continued to grow. The Panhandle on the other hand experienced a sharper downturn in the post spill period of June-August 2010. Amusement sales in both regions rebounded in 2011. In the Panhandle, sales recovered from the effects of the recession and the oil spill to post 2011 peak revenues that are comparable to those seen in 2007. The Florida Peninsula also looks to have recovered successfully in 2010 and 2011 from the effects of the 2009 downturn showing growth in both years to post peak sales comparable to 2008 levels. Revenues have remained consistent in Texas.

Figure 3: Trends in Amusement Taxable Sales



[10] Data for Alabama, Mississippi and Louisiana were not available on a comparable basis.