



THE MONSON  

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LAW FIRM, LLC

*Beating Bad Faith  
After Laura, Delta and Ida*

## **Presenter's Biography**

**MATTHEW D. MONSON, ESQ.** hails from New Orleans, Louisiana. He has been practicing law for the past twenty-four years and is the founder of The Monson Law Firm. He graduated from Georgetown University with a double major in International Business and Accounting. While at Georgetown, he studied International Business in Copenhagen, Denmark. Matthew received his law degree from Tulane University Law School, where he studied European Union Law in Amsterdam.

Matthew is admitted to practice in Louisiana and Texas, where he focuses his practice on issuing coverage opinions, defending premises liability and first-party property damage claims. He has been a speaker at numerous events, including The Worley Companies Claims Expos and the Louisiana Claims Association's Educational Conferences. Matthew is a Past President the New Orleans Claims Association and Louisiana Claims Association. He is also a founding member of The North Shore Claims Association. Matthew and his wife, Katherine, are proud parents of Andrew, 20, and Jessica, 17.

# Overview

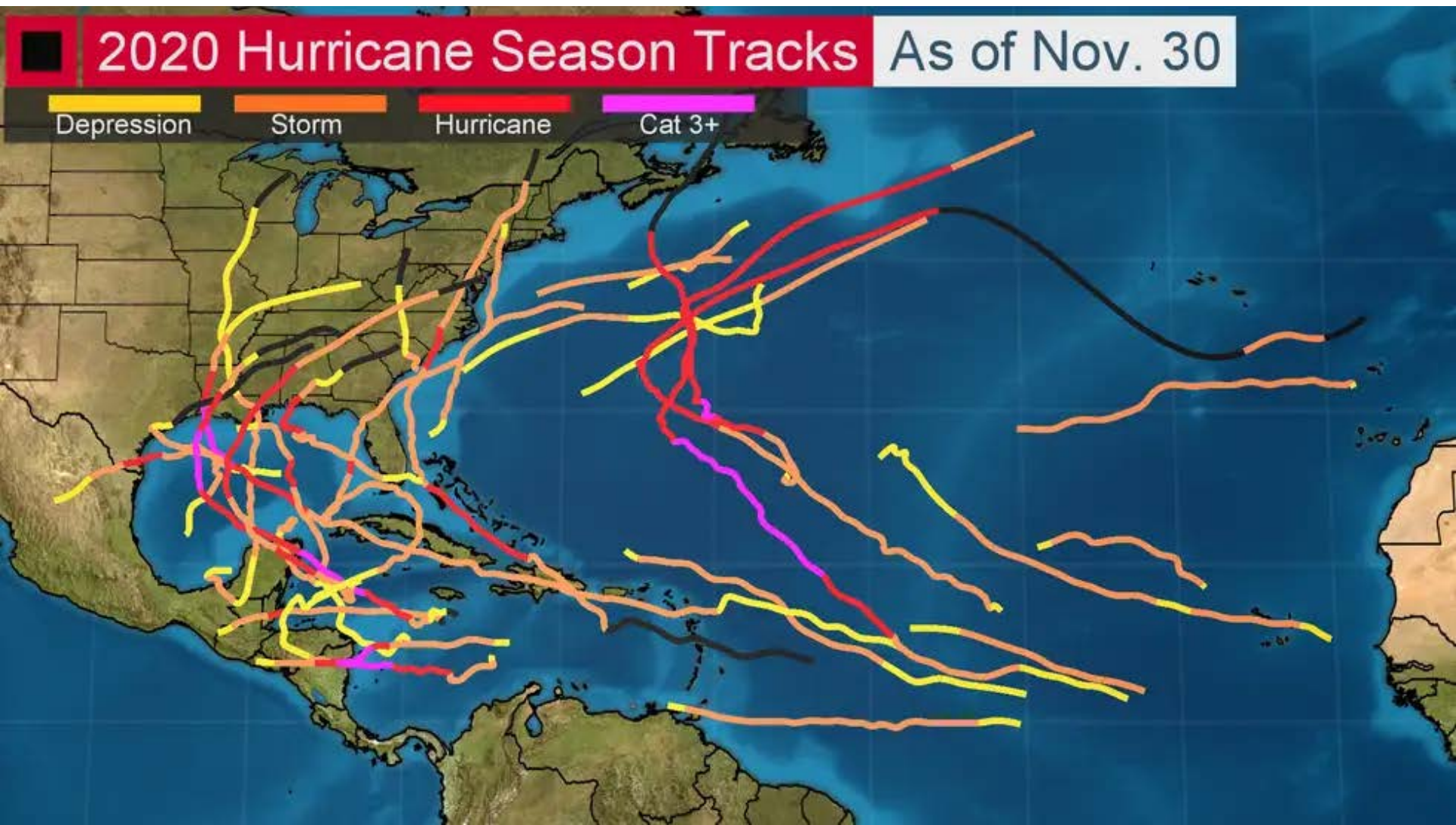
- Louisiana 2020 Hurricane Season
- Hurricane Laura
- Hurricane Delta
- Hurricane Zeta
- Hurricane Ida
- Bad Faith
- Beating Bad Faith with Appraisal

# 2020 Louisiana Hurricane Season

- 2020 was an unprecedented year for tropical weather in Louisiana
- Twelve Storms made landfall in the continental US
  - Previous record was nine (1916)
- Five Storms made landfall:
  - Tropical Storm Christobal
  - Tropical Storm Marco
  - Hurricane Laura
  - Hurricane Delta
  - Hurricane Zeta







# 2020 Louisiana Hurricane Season

- Hurricane Laura was the strongest hurricane to make landfall in Louisiana since the 1856 Last Island Hurricane

11 Most Intense Hurricanes to Make Louisiana Landfall on Record (Since 1851) - Ranked by Wind						
Rank	Year	Month	Day	Storm Name	Landfall Wind (mph)	Landfall Pressure (hPa)
T-1	1856	8	10	Last Island	150	934
<b>T-1</b>	<b>2020</b>	<b>8</b>	<b>27</b>	<b>Laura</b>	<b>150</b>	<b>938</b>
T-3	1965	9	10	Betsy	130	946
T-3	1893	10	2	Chenier Caminanda	130	948
T-5	2005	8	29	Katrina	125	920
T-5	1915	9	29	New Orleans	125	944
T-5	1855	9	16	Middle Gulf Shore	125	945
T-5	1860	8	11	---	125	945
T-5	1879	9	1	---	125	945
T-5	1957	6	27	Audrey	125	946
T-5	1974	9	8	Carmen	125	952
				<i>T Denotes Tie with Other Years</i>		

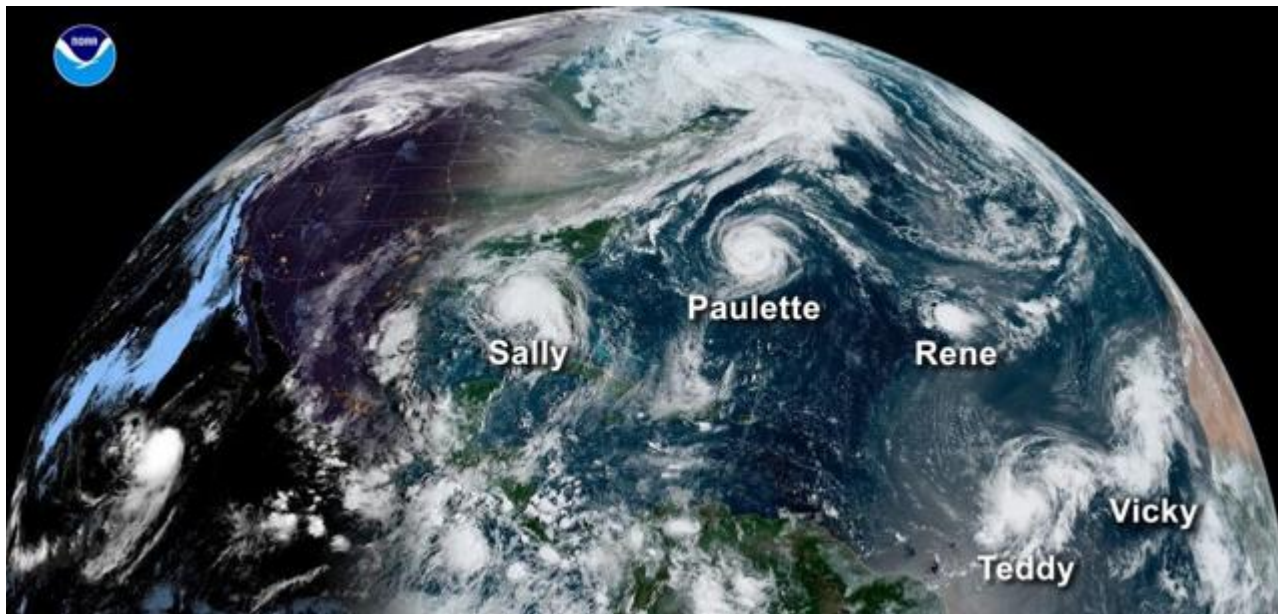
# 2020 Louisiana Hurricane Season

- Hurricane Zeta represented the first time a hurricane eye travelled over New Orleans in over 50 years
- There have been only four other times in recorded history that an eye of a Hurricane has gone directly over the city
  - Hurricane Betsy (1965)
  - 1919 Hurricane
  - 1947 Hurricane
  - 1948 Hurricane

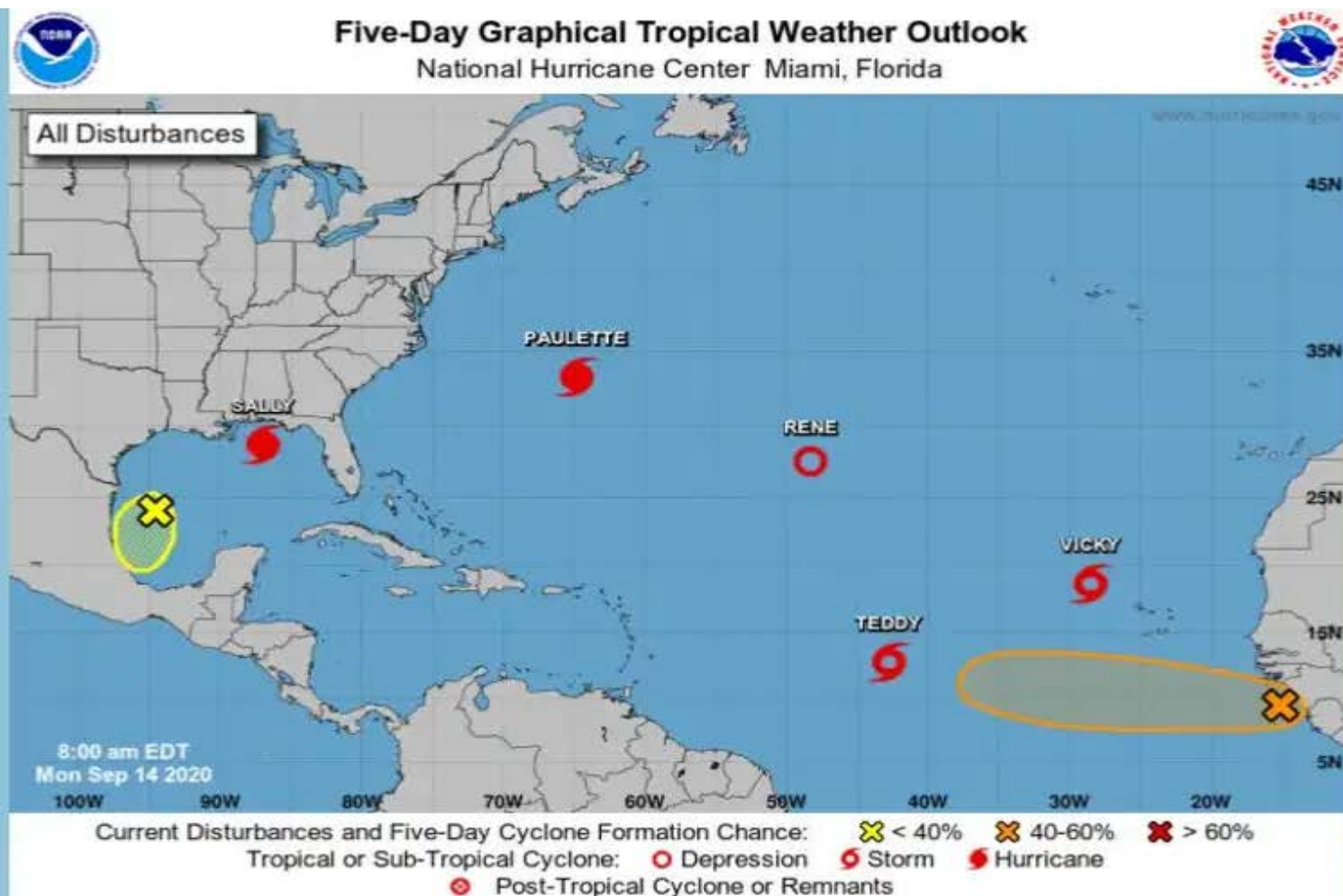


# 2020 Louisiana Hurricane Season

- A record ten named storms formed in September, the most in any month on record
- On September 14, 2020, there were five tropical systems in the Atlantic at the same time



# 2020 Louisiana Hurricane Season



# 2020 Louisiana Hurricane Season

- For the second time in recorded history (2005) Greek names had to be used to name storms.



The graphic displays the 2020 Atlantic tropical cyclone names, organized into six columns. The first four columns contain names that have been retired and are crossed out with a red line. The fifth and sixth columns contain Greek letters used for naming storms in 2020. The background features a satellite image of a hurricane.

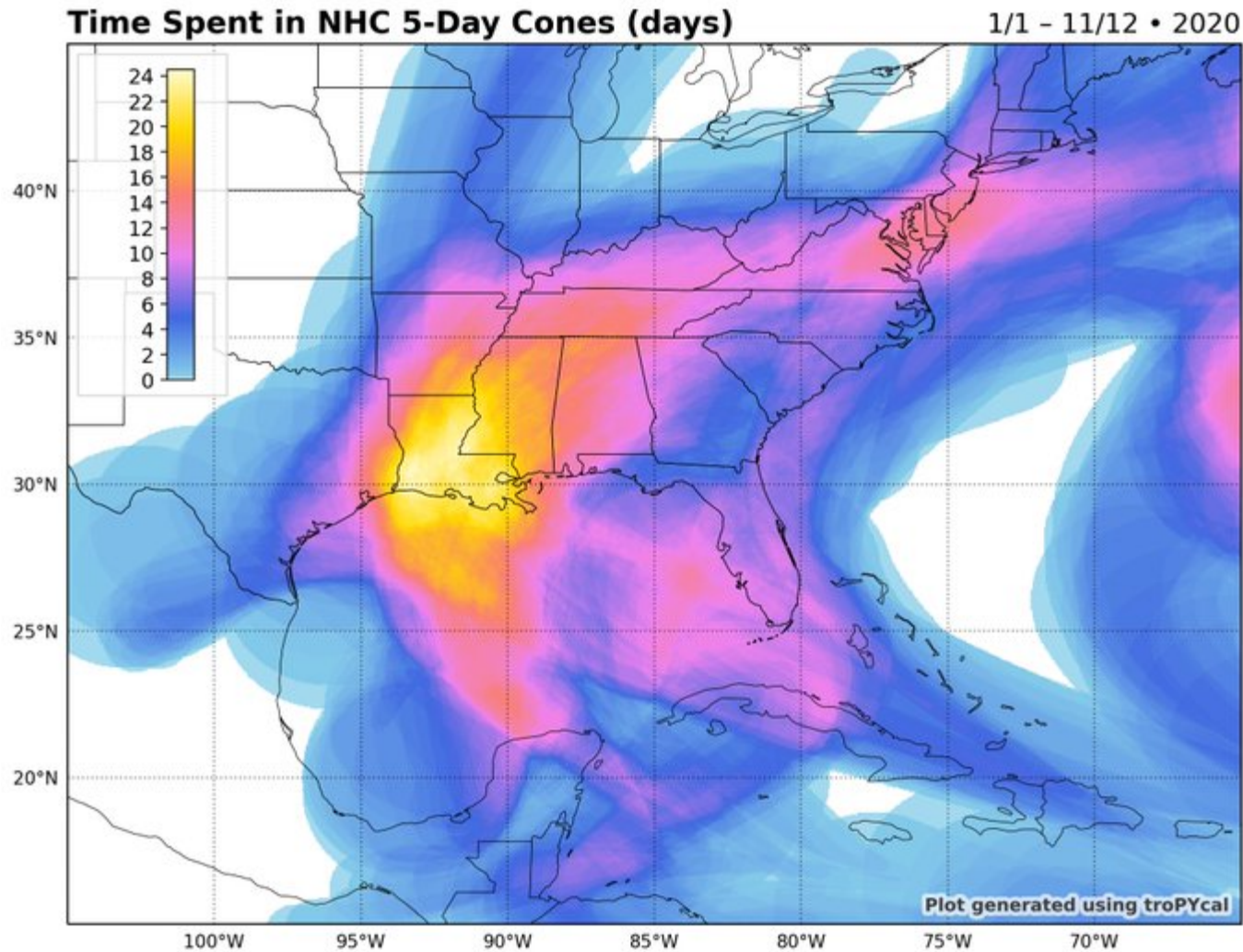
2020 Atlantic Tropical Cyclone Names					
<del>Arthur</del>	Hanna	<del>Omar</del>	<del>Alpha</del>	<del>Iota</del>	Rho
<del>Bertha</del>	Isaias	<del>Paulette</del>	<del>Beta</del>	Kappa	Sigma
<del>Cristobal</del>	Josephine	<del>Rene</del>	<del>Gamma</del>	Lambda	Tau
<del>Dolly</del>	Kyle	<del>Sally</del>	<del>Delta</del>	Mu	Upsilon
<del>Edouard</del>	Laura	<del>Toddy</del>	<del>Epsilon</del>	Nu	Phi
<del>Fay</del>	Marco	<del>Vicky</del>	<del>Zeta</del>	Xi	Chi
<del>Gonzalo</del>	Nana	<del>Wilfred</del>	<del>Eta</del>	Omicron	Psi
			<del>Theta</del>	Pi	Omega

Be prepared: Visit [hurricanes.gov](https://hurricanes.gov) and follow @NWS and @NHC\_Atlantic on Twitter.

11/24/20



# 2020 Louisiana Hurricane Season



# 2020 Louisiana Hurricane Season

- Ten Storms Underwent Rapid Intensification

Atlantic Rapid Intensification Storms in 2020		
	When	Wind Increase
Iota	Nov. 15-16	75 mph
Eta	Nov. 1-2	80 mph
Zeta	Oct 27-28	45 mph
Epsilon	Oct. 20-21	50 mph
Delta	Oct. 5-6	85 mph
Gamma	Oct. 2-3	35 mph
Teddy	Sep. 15-16	40 mph
Sally	Sep. 14	40 mph
Laura	Aug 25-26	65 mph
Hanna	Jul 24-25	40 mph

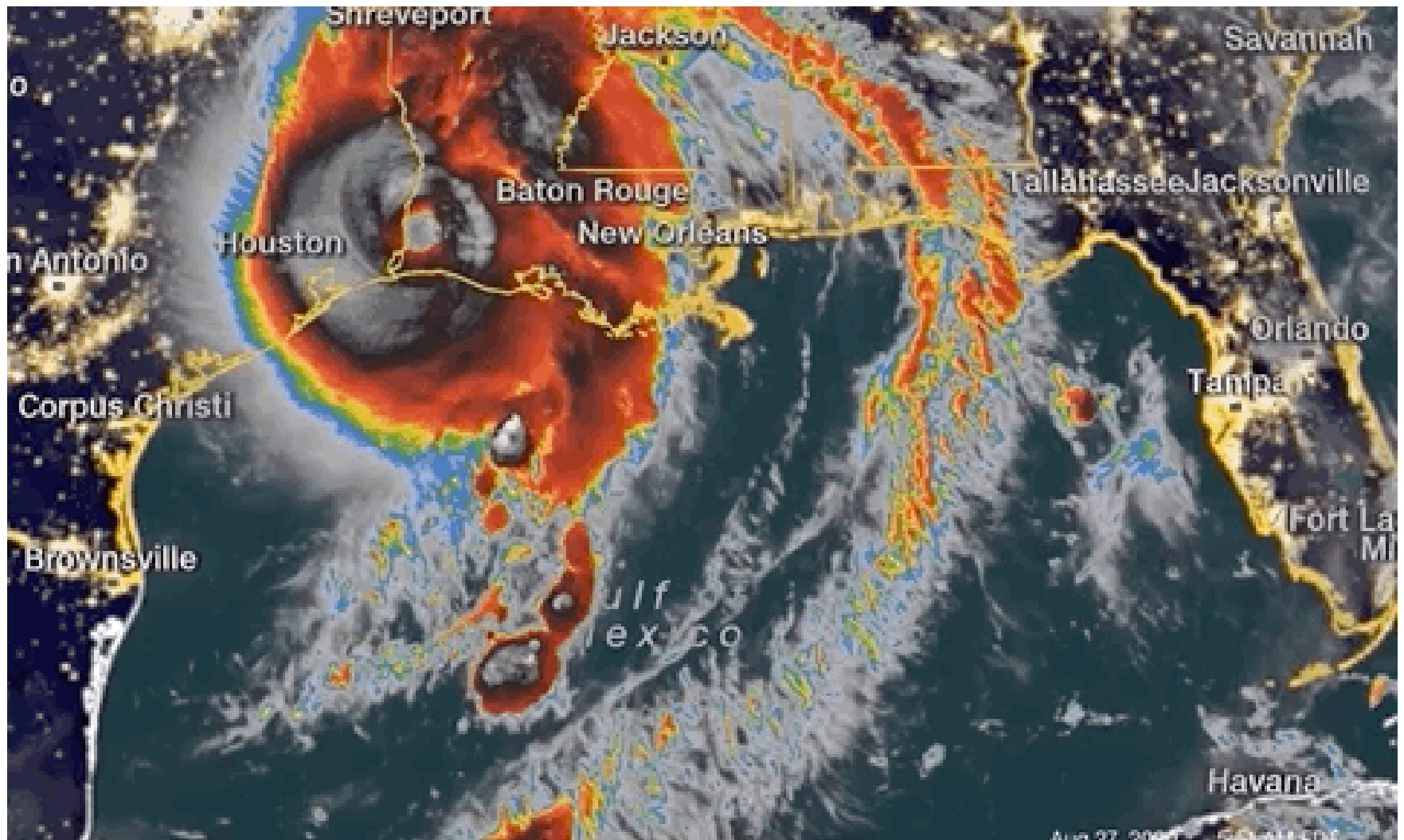
# 2020 Louisiana Hurricane Season

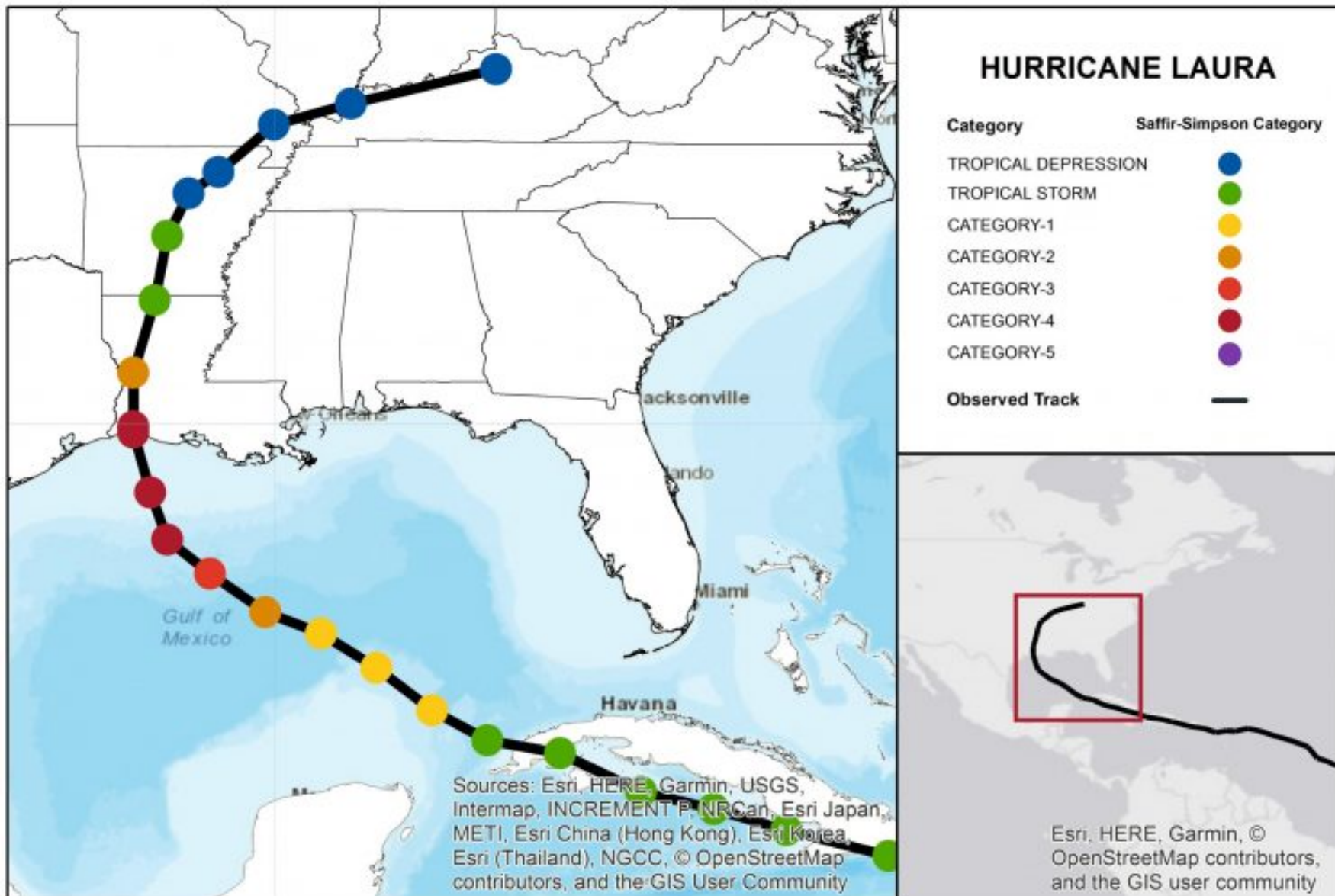
- The National Hurricane Center named three storms in a period of six hours.
  - Tropical Storm Wilfred
  - Subtropical Storm Alpha
  - Tropical depression Beta
- This is the first time since 1893 that three systems formed in a single calendar day.



# Hurricane Laura

- Landed near peak intensity at 1:00 a.m. on August 27, 2020 at Cameron, Louisiana
- 10-foot-high plus storm surge
- Caused 33 deaths in Louisiana.
- Estimated to have caused damage totaling \$20 Billion
- More than 910,000 customers lost power
- Gusts of 137 mph 30 miles inland
- Destroyed the doppler radar in Lake Charles








# Hurricane Delta

- Landed near peak intensity at 6:00 p.m. on October 9, 2020 near Creole, Louisiana
  - 43 days after Hurricane Laura
- 5-foot-high storm surge
- Caused 6 deaths
- More than 17 inches of rain
- Estimated to have caused damage totaling over \$3 Billion
- More than 600,000 customers lost power

**HURRICANE  
SEASON  
2020**

## DELTA'S TOP GUSTS FRIDAY

Texas Point, TX	101 mph
Lake Arthur, LA	96 mph
Lake Charles, LA	95 mph
Port Arthur, TX	90 mph
Jennings, LA	89 mph

 AccuWeather





## SIMILAR LANDFALLS

### HURRICANE LAURA

AUG 27 - CAT 4  
150 MPH WINDS

LANDFALL NEAR  
CAMERON, LA

4

2

### HURRICANE DELTA

FORECAST CAT 2  
96-110 MPH WINDS

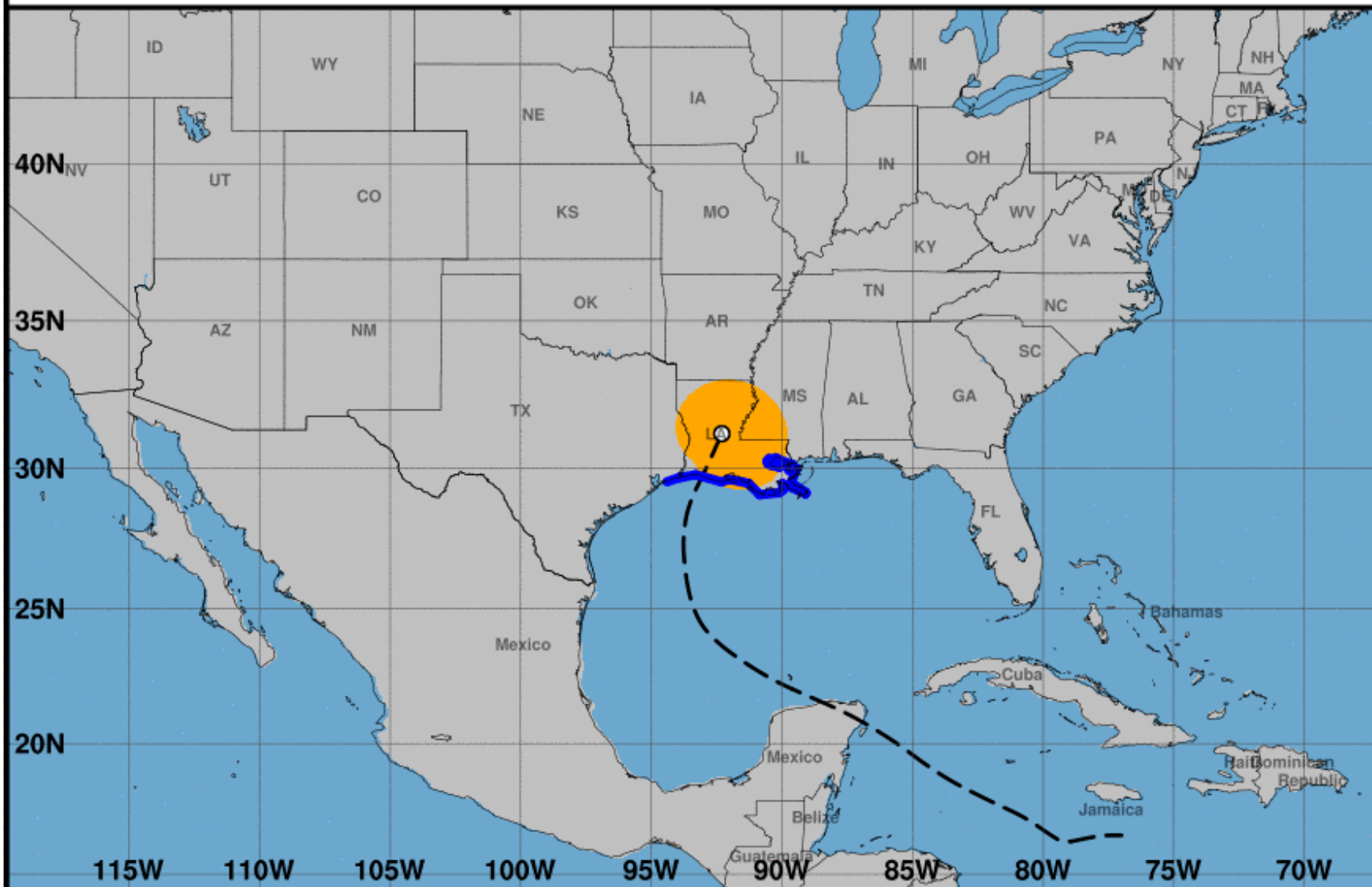
LANDFALL ~30 MILES  
EAST OF LAURA



# Surface Wind Field of Tropical Storm Delta

Sustained Winds as of 100 AM CDT Sat Oct 10, 2020

Advisory Number 22A



## Watches:

- Hurricane Watch
- Tropical Storm Watch

## Warnings:

- Hurricane Warning
- Tropical Storm Warning

## Sustained Winds:

- Hurricane Force
- Tropical Storm Force

## Position:

- O Center as of 100 AM CDT
- Past Track

- Lake Marie Estates – September 29, 2020



# Hurricane Zeta

- Landed near peak intensity at 4:00 p.m. on October 28, 2020 near Cocodrie, Louisiana
  - 19 days after Hurricane Delta
- 10-foot-high storm surge
- Caused 8 deaths
- Category 3 storm – Up to 115 mph winds
- Estimated to have caused damage totaling over \$4.4 Billion
- More than 2.3 million customers lost power from LA to VA
- Latest landfalling major hurricane
- Produced accumulated snow in New England





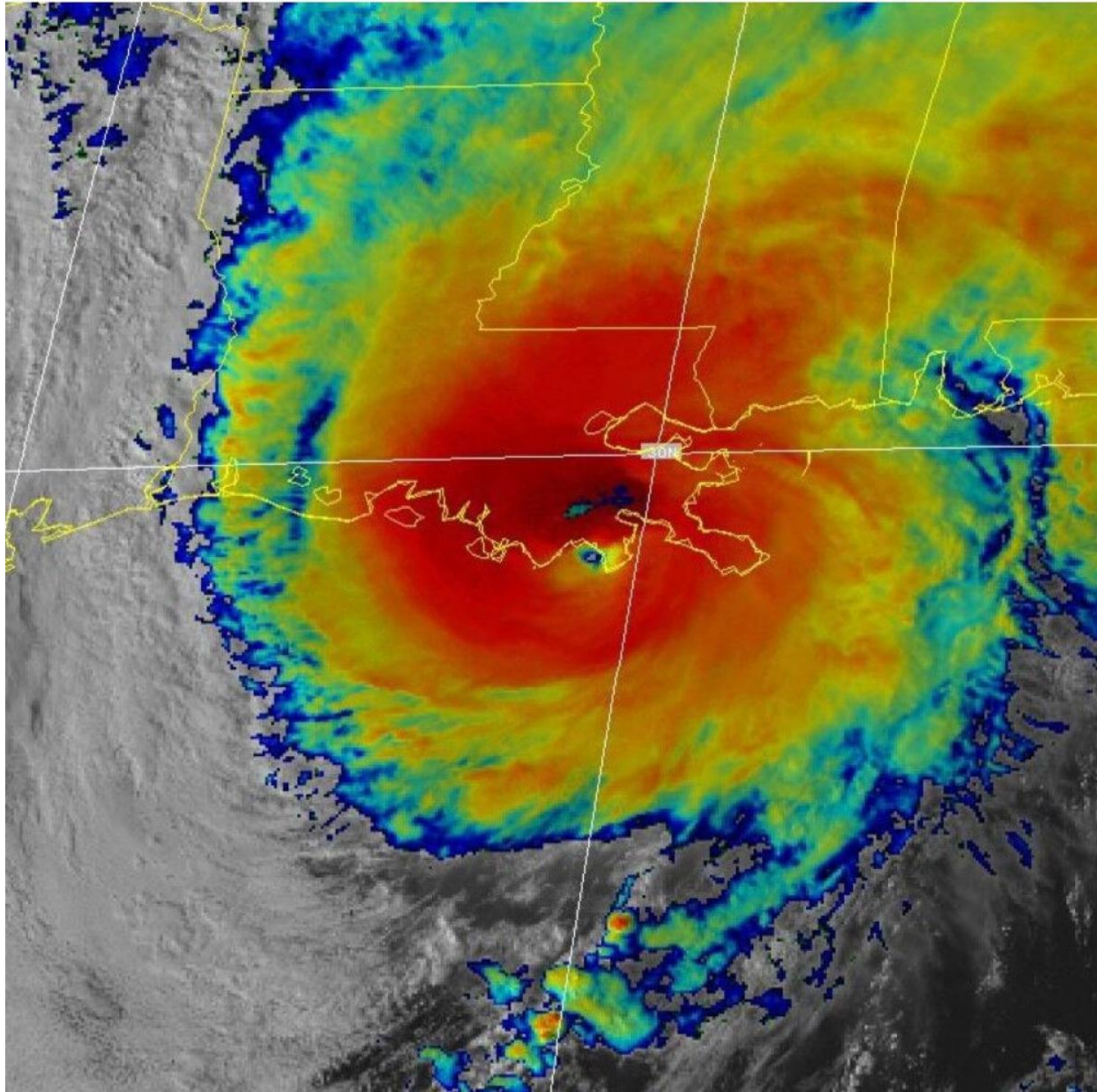












# Hurricane Ida

- Landed near peak intensity with 150 mph sustained winds on August 29, 2020 at Port Fouchon, Louisiana
- Second most powerful Hurricane to ever hit Louisiana
- Laura and Ida marked the first time any state has seen two 150 mph hurricane landfalls in consecutive years.
- In its final day over water, Ida gained 65 mph
- Estimated to have caused damage totaling \$95 Billion
- Tornadoes touched down in 6 states
- Gust of 172 mph Port Fouchon

# Hurricane Ida

## Landfall August 29, 2021

### Losses Reported by Line as of 12/31/2021

Line of Business	Claims Reported	Claims Closed with Payment	Claims Closed without Payment	Percentage Reported Claims Closed	Percentage Reported Claims Closed with Payment	Paid Loss	Paid + Reserves on Reported Claims
Residential Property	339,193	198,273	87,783	84%	58%	\$ 4,646,796,408	\$ 5,550,113,546
Personal Auto	50,871	40,726	6,140	92%	80%	\$ 311,339,016	\$ 347,403,824
Private Flood	605	240	215	75%	40%	\$ 15,642,723	\$ 30,885,366
Commercial Property	26,885	8,295	5,247	50%	31%	\$ 1,219,051,267	\$ 3,720,771,522
Commercial Auto	802	527	121	81%	66%	\$ 10,254,376	\$ 11,671,414
Business Interruption	4,022	1,873	788	66%	47%	\$ 125,213,729	\$ 497,248,505
All Other Lines of Business	12,255	9,200	1,310	86%	75%	\$ 137,868,134	\$ 332,132,317
Statewide, All Lines Combined	434,633	259,134	101,604	83%	60%	\$ 6,466,165,653	\$ 10,490,226,493

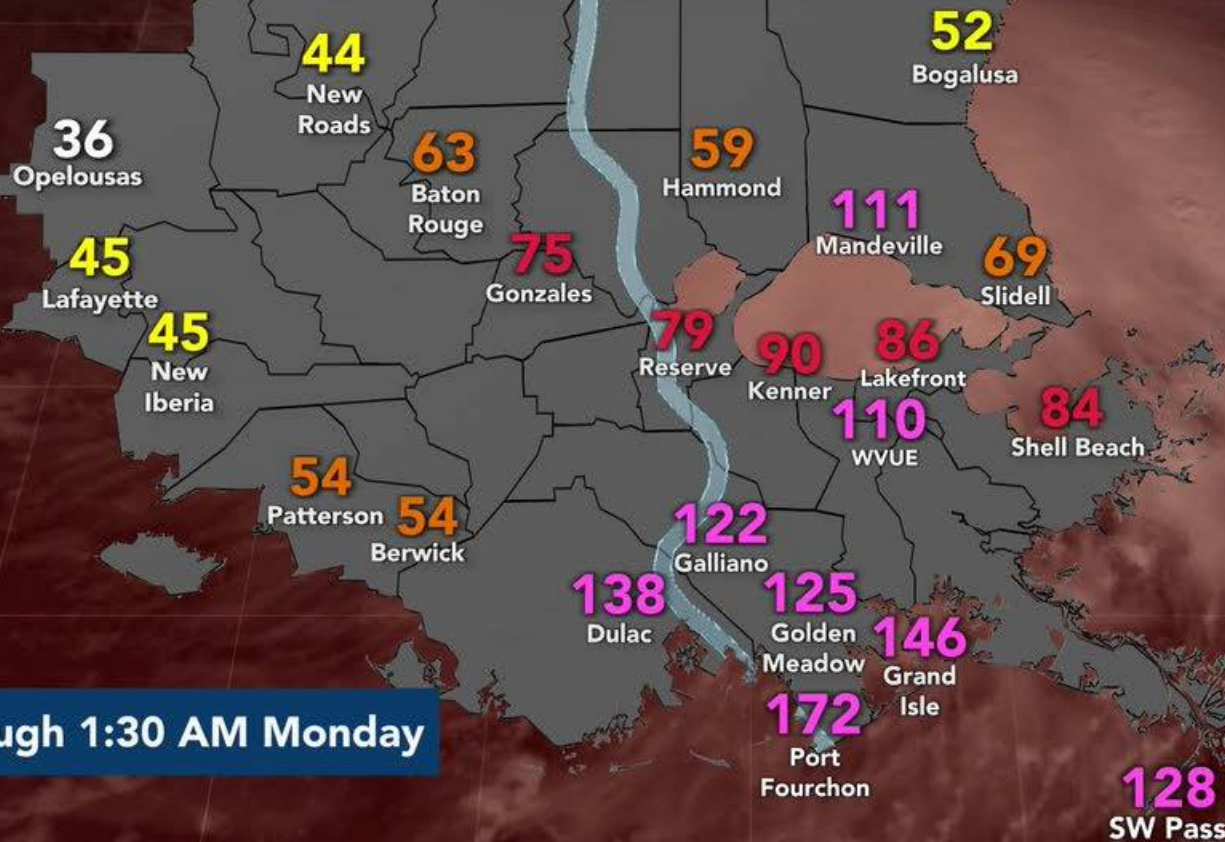


FIRST ALERT  
WEATHER



## PEAK WIND GUSTS

TRACKING  
**IDA**  
FIRST ALERT



Through 1:30 AM Monday







# What is Bad Faith?

- “Bad Faith” is not defined specifically in Louisiana statutes.
- “Bad Faith” is a generic term used to describe the conduct of an insurer who breaches its statutorily-imposed duty to act in “good faith” and engage in “fair dealing” in adjusting claims.
- Black’s Law Dictionary – “Bad Faith” is any frivolous or unfounded refusal to pay proceeds of an insurance policy. “Bad Faith” conduct suggests a dishonest purpose for self-interest.

# What is Bad Faith?

- If a claimant seeks to file a bad faith claim in Louisiana resulting from a property damage claim, the claim is governed by statutory law.
- The two main statutes at issue are La. R.S. 22:1892 and La. R.S. 22:1973.

## La. R.S. 22:1892

- Purpose is to ensure that an insurance carrier fully apprised of the facts and circumstances of the claim, does *not arbitrarily or capriciously deny a claim that is due*.
- First party claims primarily – but possible to have third party bad faith claims for property damage.
- 2-year statute of limitations (prescriptive period) for first party property claims.

# La. R.S. 22:1892

## Requirements and Time Delays

- *Initiating Loss Adjustment*
  - 22:1892(A)(3)
  - 14 days after notification of loss by claimant.
  - Catastrophic Losses – 30 days after notification.
  - Insurance Commissioner has authority to extend by 30 more days.
- *Written Offer to Settle*
  - 22:1892(A)(4)
  - Shall make a written offer to settle within 30 days of receipt of satisfactory proof of loss.
- *Claim Settlement*
  - 22:1892(A)(1)
  - Shall pay any claim due to an insured within 30 days of receipt of satisfactory proof of loss.



# **La. R.S. 22:1892**

## **Key Terms**

- Initiation of Loss Adjustment
- Satisfactory Proof of Loss
- Unconditional Tender
- Arbitrary, Capricious or Without Probable Cause

# La. R.S. 22:1892

## Initiation of Loss Adjustment

- Insurer must take *substantive and affirmative steps* to accumulate facts.
- Merely opening a file is insufficient.
- No requirement that claim is completely investigated within 14 days.

# **La. R.S. 22:1892**

## **Satisfactory Proof of Loss**

- Receipt of sworn statement in proof of loss – **WRONG!!!!**
  - No formal requirements for proof of loss.
- That which is sufficient to fully apprise the insurer of the insured's claim.
- Makes certain that insurer has adequate knowledge of the loss suffered such that the insurer can properly adjust the claim.
- No formal/written proof of loss necessary for total losses exceeding policy limits of which the insurer has actual knowledge.

# **La. R.S. 22:1892**

## **Unconditional Tender of Reasonable Amount**

- An insurer has an affirmative duty to tender amounts due and owing to an insured.
- An insurer can avoid penalties and attorneys fees by unconditionally tendering that portion of the claim that is undisputed.
- An offer of payment in exchange for a complete release is not an unconditional tender.
- “Unconditional” does not mean “final,” “conclusive,” “irrevocable,” or “forever binding.”

# La. R.S. 22:1892

## Arbitrary, Capricious or Without Probable Cause

- “*Arbitrary*” act is “based on random choice or personal whim, rather than any reason or system.”
- “*Capricious*” action is one “given to sudden and unaccountable changes of behavior.”
- “*Arbitrary, capricious or without probable cause*” is synonymous with “vexatious”, which is defined as “unjustified, without reasonable or probable cause or excuse and is not based on a good faith defense.”
- To establish *arbitrary, capricious, or without probable cause* behavior under 22:1892, the claimant must show
  - (1) the insurer received satisfactory proof of loss;
  - (2) the insurer failed to pay claim timely;
  - (3) and the failure to timely tender a reasonable amount was arbitrary and capricious.

# La. R.S. 22:1892

## Penalties

- 22:1892(B)(1)
- Penalty, in addition to the amount of the loss, of *fifty percent damages* on the amount found to be due from the insurer to the insured, or *one thousand dollars*, whichever is greater.
- Plus attorneys fees!
- If partial payment or tender has been made, fifty percent of the difference between the amount paid or tendered and the amount found to be due.



# **La. R.S. 22:1892**

## **Penalties**

- 22:1892 is penal in nature and is strictly construed.
- An unconditional tender can act to avoid penalties.
- An insurer's error in interpreting its own contract is no excuse.
- Penalties are not appropriate when insurer has a reasonable basis to defend the claim.

## **La. R.S. 22:1973**

- Purpose is to impose an affirmative duty on insurer to adjust claims fairly and promptly and to make a reasonable effort to settle claims after receipt of satisfactory proofs of loss.
- Sets forth five specific prohibited acts.

# La. R.S. 22:1973

## Five Prohibited Actions

- Misrepresenting pertinent facts or policy provisions regarding coverage.
- Failing to pay a settlement within *thirty days* after an agreement is reduced to writing.
- Denying coverage or attempting to settle a claim on the basis of an application which the insurer knows was altered without consent of the insured.
- Misleading a claimant as to the applicable prescriptive period.
- Failing to pay a claim due within *sixty days* after receipt of satisfactory proof of loss when such failure is arbitrary, capricious, or without probable cause.

# La. R.S. 22:1973

## Penalties

- A penalty *may* be assessed against the insurer in *an amount not to exceed two times the damages sustained or \$5,000.00, whichever is greater*, in addition to any general or special damages to which a claimant is entitled under the facts of the case.
- The insurer *shall* be liable for damages as a result of the breach and *may* be liable for penalties.

# LA ACT 345

- LA HB 591 – Sponsored by Gary Firment, a licensed claims adjuster
- Adds to La. R.S. 22:1892
  - Requires notice of withheld depreciation
  - Insurers must explain how depreciation was applied
  - Insurers cannot require remediation or repair be performed by a particular vendor
  - Must require O&P where a general contractor is reasonably foreseeable

# LA ACT 345

- Adds a new appraisal clause to be in every property policy in addition to what is already expressed in La. R.S. 22:1311F(2)
- Appraisal. If you and this Company fail to agree as to the amount of loss, either party may demand that the amount of the loss be set by appraisal. If either party makes a written demand for appraisal, each party shall select a competent appraiser and notify the other party of their appraiser's identity within twenty days of receipt of the written demand for appraisal. The appraisers shall select a competent and impartial umpire; but, if after fifteen days the appraisers have not agreed upon who will serve as umpire, the umpire shall be appointed by a judge of the court of record in which the property is located. The appraisers shall then appraise the loss. *(stating separately actual cash value and loss to each item)*



# LA ACT 345 - Appraisal

- If the appraisers submit written notice of an agreement as to the amount of the loss to this Company, the amount agreed upon shall set the amount of the loss. If the appraisers fail to agree within thirty days, the appraisers shall submit their differences along with any supporting documentation to the umpire, who shall appraise the loss. The appraisers may extend the time to sixty days for which they must agree upon the amount of loss or submit their differences and supporting documents to the umpire, if the extension is agreed to by the appraisers from both parties. A written agreement signed by the umpire and either party's appraiser shall set the amount of the loss, pursuant to the appraisal process, but shall not preclude either party from exercising its rights under the policy or the law. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the expenses of the umpire shall be divided and paid in equal shares by you and this Company. If there is an appraisal award, all applicable policy terms, limits, deductibles, and conditions will still apply. If you file a lawsuit relative to this policy against this Company prior to a demand for appraisal, the lawsuit will be held in abatement until the execution of an appraisal award.

# Appraisal Beats Bad Faith

- On disputed claims, Appraisal is the best way to beat bad faith.
- An insurer does not act arbitrarily and capriciously . . . when it withholds payment based on a genuine (good faith) dispute about the amount of a loss or the applicability of coverage.
  - *Calogero* decision of the Louisiana Supreme Court.
- Compliance “with a contracted and self-involved appraisal process fails to provide evidence or factual proof of vexatious, arbitrary or capricious conduct or conduct without probable cause.
  - *Long v. American Security Insurance Company*

## **Appraisal Beats Bad Faith**

- If an insurer timely pays all undisputed amounts timely, it is not bad faith to resolve the disputed portions of the claim via Appraisal.
- Appraisal Demand is timely if it is made within 60 days of receipt of the insured's estimate.
  - However, La. R.S. 22:1892(G) indicates Appraisal demand can be made after litigation.
  - Ideally, demand appraisal in under 30 days after receipt of the competing estimate.

## Appraisal Beats Bad Faith

- Payment of the Appraisal Award must be within 30 days of the issuance of the award.
- “Failure to pay Plaintiff the amount of the appraisal award before the award was given does not constitute evidence of bad faith.”
  - *Letitcia Wells v. Southern Fidelity Insurance Company*
- Usually, Appraisal Awards come in significantly less than the amount of the insured’s demand.
  - This proves the carrier’s good faith in disputing the demand.



# THE MONSON

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