

Preliminary Options for Establishing Recreational Servitudes for Aquatic Access over Private Water Bottoms

Frequently Asked Questions

1. What is Louisiana Sea Grant?

Louisiana Sea Grant, based at Louisiana State University, is part of the National Sea Grant Program, a network made up of 33 programs located in each of the coastal and Great Lakes states and Puerto Rico. Modeled after the Land Grant College system, Louisiana Sea Grant was established in 1968 and is mandated to provide research, extension, and teaching to address major marine and coastal challenges. For additional information, see: <http://www.laseagrant.org/about/>

2. What is this coastal access conflict all about?

In recent years, there has been a growing dispute in Louisiana regarding navigation in coastal waters. This conflict has been primarily between private landowners and recreational fishermen, and it involves disputes over what water areas are considered private and what water areas are open for public access. The region's coastal land loss crisis has been a principal driver of this conflict. In response to this crisis, landowners have sought out various means for expanding surface revenues, reiterating property boundaries, and limiting liability. These actions have resulted in a growing number of negative encounters with recreational fishermen, due primarily to historical expectations of aquatic access and new disputes over waterways perceived to be in the public domain. As a result of these and other factors, there has been a substantial increase in the number of local law enforcement actions related to aquatic trespassing over private water bottoms.

3. What is the difference between public and "private waters"?

There is a legal distinction between natural navigable water bodies, publicly constructed waterways, and canals or ponds constructed with private funds on private land. The first two categories are almost always considered open to public access while the latter is only accessible to the public with permission of the landowner.

4. Who commissioned this study and who is the intended audience?

In July 2017, the Louisiana Legislature unanimously approved a study resolution (HR 178) that directed Louisiana Sea Grant to study and make recommendations on the creation of public servitudes to facilitate increased recreational access in coastal waterways. The intended audience of the report is the Louisiana Legislature.

5. What guidance did the Legislature provide for preparing the report?

The main guidance imposed by the resolution was that the study and report would focus on voluntary actions only that would not impinge on individual property rights or impede commerce.

6. Was funding provided for the study?

No. The report was developed in-house by faculty and staff supported by the Louisiana Sea Grant College Program at Louisiana State University.

7. What was the process used to develop the report?

Louisiana Sea Grant identified potential representatives from three distinct stakeholder groups: Fishermen, Landowners and State Agencies. Invitations were extended to these individuals to participate in discussions of the public access issues. Sea Grant then conducted a series of separate meetings with the three stakeholder groups. To provide a neutral setting, all group meetings were held at Louisiana Sea Grant offices on the Baton Rouge campus of Louisiana State University. The meetings were held as follows:

- Recreational Fishermen – Aug. 9, 2017
- State Agencies – Sept. 7, 2017
- Landowners – Oct. 4, 2017

Each meeting followed a consistent agenda and covered the following topics:

- Overview of study resolution and clarification of mandate
- Structure of preliminary meetings
- Input from stakeholder attendees
- Major concerns
- Potential options for resolution
- Next steps

Following each meeting, minutes were assembled, organized, and distributed to attendees for review and any needed corrections. In drafting this report, Louisiana Sea Grant relied primarily on the discussions and options heard during each stakeholder meeting. Louisiana Sea Grant also drew from secondary sources where appropriate, including: public statutes, published articles, social media, and television and radio broadcasts. After a thorough assessment of stakeholder input and a review of relevant secondary information, ten options emerged as potential mechanisms for addressing the aquatic access conflict.

8. What are the general findings of the study?

This report provides the Louisiana Legislature with a general overview of the context, history, and drivers of this conflict; describes the process utilized for soliciting stakeholder input; and details economic and legal considerations for ten preliminary options that could be used to partially mitigate this conflict. Those options included: 1) creative leasing arrangements; 2) temporary access for special events; 3) public acquisition of land or easements; 4) liability protection measures; 5) tax incentives; 6)

limitations to acquisitive prescription; 7) boundary fixing; 8) decoupling of mineral rights; 9) incentivizing access via restoration funding; and, 10) increasing the frequency, quality and capacity of coastal mapping.

9. Does Louisiana Sea Grant favor a particular option or resolution to this conflict?

No. As a neutral party, Louisiana Sea Grant does not endorse or oppose any of the preliminary options nor any specific outcomes associated with resolution of this conflict.

10. Does the report recommend changes in property rights?

No. A guiding principle imposed by HR 178 was to limit the study focus to voluntary options that would not impinge on individual property rights or impede commerce.

11. Is Louisiana Sea Grant advocating for specific changes to any laws, regulations, or policy?

No. For each option listed in the report, there is a description of the opportunity and a general overview of various stakeholder opinions. A discussion section is also provided to examine the possible mechanics of a given option and the relevant legal and economic considerations that would likely be needed if the option were to be implemented.

12. Does the report estimate the economic impacts for various options?

No. While economic implications are central to this conflict, the time and resources required for an objective calculation of all public and private tradeoffs is beyond the scope of this study. This report is limited to a qualitative assessment of economic questions and considerations only.

13. How many incidents of aquatic trespassing have occurred in regards to this issue?

Unknown. While an increase in coastal citations for aquatic trespassing has been acknowledged by both fishermen and landowners, the actual number and trend of such citations has not been calculated. Developing such an estimate would require collection of detailed times series data from law enforcement offices in more than 100 coastal municipalities.

14. What is the next step in resolving the coastal access conflict?

As previously noted, Louisiana Sea Grant has a science-based mandate to provide objective information to support decision-making. In that sense, we can help identify options (descriptive role), but we cannot endorse or oppose specific options or outcomes (prescriptive role). Future input and guidance on this issue would therefore need to come from the Louisiana Legislature and might involve a number of possibilities, including: no action, convening exploratory subcommittees, sponsoring demonstration trials, or pursuing legislation to facilitate one or more incentive-based options.

15. Will the report be available to the public?

Yes. A final version of the report will be presented to the Legislature in February 2018 and a copy will be publicly available at the following website:

<http://www.laseagrant.org/sglegal/publications/other/>