Louisiana Sea Grant Legal Program

Louisiana Coastal Law Email Update Service
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Cases

Giauque v. Clean Harbors Plaquemine, L.L.C., **2006 WL 1575405 (La.App. 1st Cir. 2006)**

Plaintiffs argued that a hazardous waste injection well near Bayou Sorrel, located near the City of Plaquemine, in Iberville Parish, violated La. R.S. 30:2202(C), which states that "no person shall dispose of hazardous waste by injection into a Class I underground injection well when the well head or any portion of the casing is within the banks or boundaries of a lake, stream, or other surface water body…whether man-made or occurring naturally, whether on a temporary or permanent basis." The plaintiffs argued that since the area surrounding the well was considered swamp, and since there is historical evidence that the well site was once part of a body of water, the site fell within R.S. 30:2202(C).

The court, however, disagreed. The statute prohibits disposal of hazardous wastes into underground injection wells where the wellhead or any part of the casing is within a body of water. For wetlands, the statute only applies if the site is covered by surface water a majority of the year. Additionally, if the area is regularly inundated by floodwaters, the statute would apply. The statute is applied according to present-day conditions; historical designation is not determinative.

In this case, since the well is protected by a berm and is only occasionally subjected to floodwaters, it does not fall under the restriction in R.S. 30:2202(C).

Gulf Restoration Network v. U.S. States Dept. of Transportation, **2006 WL 1549953 (5th Cir. 2006)**

The Gulf Restoration Network (GRN) requested review of the decision by the Secretary of the U.S. Department of Transportation to grant a license for a liquefied natural gas (LNG) facility in the Gulf of Mexico, approximately 38 miles off of the coast of Louisiana. This facility is to be located in one of the most biologically productive areas in the Gulf of Mexico, the "fertile fisheries crescent."

The GRN argued that the Secretary failed to adequately consider the impact of the port with three other ports for which applications were filed. While the Secretary considered the impact of two ports, he did not consider the impact of three facilities for which applications had been filed but had not yet reached the draft stage. The Secretary argued, and the court agreed, that it would be inappropriate to speculate on the sites that had not reached draft stage, two of which were geographically distant from the site at issue here. The GRN additionally argued that the Secretary did not use the best available technology as required by the §1503(c) of the Deepwater Port Act[1] when he did not mandate that a "closed loop" system be used.

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[1] 33 U.S.C. §§ 1501 – 1524.

The court denied review, stating that the Secretary was not arbitrary or capricious in his decision of allowing construction and not mandating the use of a closed loop system. The court also found that the Secretary did not violate the "best available technology" requirement of the Deepwater Port Act.

***Mikeska v. City of Galveston,* 2006 WL 1529729 (5th Cir. 2006)**

The Texas Open Beaches Act (OBA) protects the public right to "free and unrestricted" access to state-owned beaches, which is defined as the area from the line of vegetation to the mean low tide line. In this area, it is an offense for any person to create or construct anything that would interfere with the public right to enter and exit the beach.

The appellants in this case owned beachfront properties in Galveston, Texas. The houses were landward of the public beach until Tropical Storm Francis made landfall. Due to the erosion of the vegetation line caused by the storm, the houses were entirely seaward of the vegetation line, on the public beach. While the Texas Attorney General decided that the homes did not need to be removed, he left it up to the city to decide if utilities should remain connected. The city decided to disconnect the electricity, sewer, and water services. The appellant's requests for reconnection with the city were rejected.

The appellants filed suit in federal court, seeking a preliminary injunction for restoration of utilities and compensatory damage. The district court granted the injunction. The claim for damages was dismissed on summary judgment.

The 5th Circuit Court of Appeals held that summary judgment in this case was improper. While the City argues that it had a legitimate governmental interest in upholding the OBA, the obligations set out in the OBA explicitly prohibit construction. In this case, no construction was required for the reconnection of utilities. Additionally, the city failed to provide any rational reason why having the utilities disconnected would protect public access to the beach. The city also failed to provide any reason or evidence as to why some houses in the same situation were allowed to reconnect utilities while others were not.

The decision of the district court on the issue of summary judgment was vacated, and the case was remanded for further proceedings.

***Piazza's Seafood World, LLC v. Odom,* 2006 WL 1174584 (5th Cir. 2006)**

A Louisiana company that imports and distributes seafood sued the Commissioner of Louisiana Department of Agriculture and Forestry to enjoin the Commissioner from enforcing two Louisiana Revised Statutes. One statute, La. R.S. § 3:4617(C), regulates the labeling of catfish ("catfish statute").[2] The other statute, La Rev. Stat. Ann. § 3:4617(D), (E), regulates the use of the word "Cajun" on food products ("Cajun statute").[3]

The U.S. Court of Appeals for the Fifth Circuit held that the catfish statute violated the dormant commerce clause of the U.S. Constitution because the statute treated domestic catfish differently from foreign catfish t benefit the former and to the detriment of the latter. Therefore, Piazza's Seafood World does not have to stop labeling its products as "catfish," even though the fish are imported from another country.

The court also found the Cajun statute to be invalid as applied because the statute made no exception for sellers like Piazza's who disclose truthful information (country of origin) on their food labels. Therefore, Piazza's labels including the word "Cajun" are not inherently deceptive and, as such, cannot be regulated by the statute.

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[2] *Id*. at 1.
[3] *Id*. at 1.

***Sierra Club v. Flowers*, 423 F.Supp. 2d 1273 (S.D.Fla. 2006)**

Environmental protection organizations brought action against the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service, seeking declaratory and injunctive relief stemming from issuances of permits to members of the limestone mining industry to conduct mining in water conservation areas and alleging violations of the Administrative Procedure Act (APA)[4], the Endangered Species Act (ESA)[5], the Clean Water Act (CWA)[6], and the National Environmental Policy Act (NEPA)[7]. The U.S. District Court for the Southern District of Florida held:

- The Corps violated NEPA by approving mining in close proximity to wellfield, and its multiple wellheads from which drinking water is pumped daily, before the risk of contamination had been studied adequately or sufficient data had been collected;
- The Corps' Environmental Impact Statement (EIS) concerning environmental impact of proposed limestone mining of wetlands announcing that the proposed mining plan would have no effect on any federal listed species misrepresented the nature of the Corps' consultation with the Fish and Wildlife Service;
- The Corps' dismissal of the negative impacts of increasing urbanization when preparing EIS concerning the limestone mining of wetlands violated NEPA requirement that all indirect effects be addressed;
- The Corps' balancing under NEPA of mining permit applicants' need to use the environment against the enhancement of the environment's long-term productivity was conducted in violation NEPA;
- The EIS did not comply with the public disclosure requirement of NEPA;
- The Corps violated NEPA and the Administrative Procedure Act (APA) by failing to prepare a Supplement Environmental Impact Statement (SEIS) with respect to permits to mine Florida's wetlands;
- The proposed mining of limestone did not require siting within the wetlands in order to fulfill its basic purpose to extract limestone; and
- They did not comply with public participation requirements of the Clean Water Act (CWA) when issuing mining permits to mine Florida wetlands.

***S.D. Warren Co., v. Maine Board of Environmental Protection*, 126 S.Ct. 1843 (2006)**

The S.D. Warren Company (Warren) uses a number of dams along the Presumpscot River in southern Maine to provide electricity to its paper mill. At each dam, water is funneled into a canal, directed through turbines, and then returned to the river. The Maine Board of Environmental Protection (Board) argued the return of the water to the river was considered a discharge under § 401 of the Clean Water Act.[8] This section of the act allows states to formulate their own regulations and certifications. Warren denied any need for the § 401 state certification, under which he would be required to maintain a minimum stream flow in the bypassed portions of the river.

The Supreme Court held that the word “discharge” in § 401 would be given its common meaning of a “flowing or issuing out.” This definition was based on prior case law and use of the word by EPA and the Federal Energy Regulatory Commission. Warren’s returning the water to the river, therefore, is covered under the definition of discharge.

Additionally, the Court points out that the Clean Water Act was passed to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”[9] Warren has admitted that the dams possibly

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[4] 5 U.S.C. § 706.
[5] 16 U.S.C. § 1531.
[6] 33 U.S.C. § 1251.
[7] 42 U.S.C. § 4321.
[8] 33 U.S.C. § 1251.
[9] 33 U.S.C. § 1251(a).

change the water flow, lowering the oxygen level in the water, which in turn makes it more difficult for fish and aquatic life to breathe. A study also showed that Warren's dams have in some places made the river go dry, blocked passage of fish and other aquatic life, and made fishing impossible in some places.

The decision of the Maine Supreme Court was affirmed.

Sierra Club v. Georgia Power Company, 443 F.3d 1346 (11th Cir. 2006)

The Sierra Club brought this action against Georgia Power Company, claiming that on approximately 4,000 occasions, Georgia Power had emissions that exceeded the 40% opacity rule established in the permits issued under Title V of the Clean Air Act.[10] Georgia Power argued that the excess emissions all occurred during periods of startup, shutdown, or malfunction (SSM) – periods during which such excess emissions are allowed. The Sierra Club argued that because of the wording of the permit, Georgia Power could not use the affirmative defense of SSM.

The court held that the EPA's 1999 Guidance did not alter the SSM policy, made clear in the 2001 Clarification issued by the EPA. The Clarification clearly stated that the EPA's Guidance "was not intended to alter the status of any existing [SSM] provision in a SIP that has been approved by the EPA." Additionally, the court explained that policy guidance by the EPA does not and "cannot trump the SSM Rule adopted by Georgia and approved formally by the EPA."[11]

The court reversed the district court's partial summary judgment in favor of the Sierra Club and remanded for further proceedings. Georgia Power has the ability to raise the affirmative defenses of the SSM Rule. The court also instructed the Sierra Club that they still have the power to challenge Georgia's SSM Rule by petitioning the EPA for alteration of the SSM policy.

Pelts and Skins, LLC v. Landreneau, Secretary for the Dept. of Wildlife and Fisheries, WL 1163855 (La. App. 5th Cir 2006)

In April 2004, an alligator farmer sued the Secretary of the Louisiana Department of Wildlife and Fisheries (DWF), claiming that imposition of fees to support generic advertising of alligator products violated his First Amendment rights. Pelts and Skins, LLC claimed that the generic advertising campaign undercut their message that Pelts and Skins produces a unique product that is superior in quality to other alligator products. The United States Court of Appeals for the Fifth Circuit held that Louisiana's use of a portion of the mandatory fees collected from alligator industry participants to fund generic advertising campaign for alligator products violated First Amendment rights of the alligator farmer who objected to the message. The court commented that Louisiana does not need to compel alligator harvesters to support generic marketing, but could simply fund the marketing from general tax revenue. The following year the U.S. Supreme Court decided *Johanns, Secretary of Agriculture v. Livestock Marketing Association*. *Livestock Marketing* was brought by several associations and individuals, seeking injunctive relief with respect to communications made using mandatory contributions collected from beef producers. The Supreme Court held that generic advertising funded by targeted assessment on beef producers was "government speech" and, therefore, not susceptible to First Amendment challenge.

The same year, the Supreme Court considered *Pelts and Skins, LLC v. Landreneau*, vacating appeals court judgment and remanding for further consideration in light of *Livestock Marketing*.

In May 2006, the U.S. Court of Appeals for the Fifth Circuit vacated its previous judgment and remanded the case to the district court for further in consideration in light of the new standard set forth in *Livestock Marketing*. The new standard rests on how much governmental control is involved in the speech at issue.

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[10] 42 U.S.C. § 7401.
[11] *Georgia Power Company* at 1354.

Louisiana Attorney General Opinion

Land Use Commission

The Louisiana Attorney General's Office issued an opinion that explained that neither the Land Use Commission nor the Sulphur City Council is required to consider the building restrictions of a subdivision when granting a variance or change in classification. However, the Commission would be advised to review any applicable subdivision restrictions, as the restrictions are not superceded by variance or change.

Source: Opinion No. 05-0184 (May 16, 2006)

News

House Denies Increase to Wetlands Restoration Program

While the U.S. House of Representatives approved a $76 billion fiscal year 2007 U.S. Department of Agriculture spending bill, an effort to restore full farm bill funding for a wetlands restoration program was rejected. The program provides support to those farmers who want to plant native trees and vegetation on marginally productive farmland, turning the farmland back into wetlands. The proposed change would have increased the acreage from 144,776 acres to 250,000 acres, the full bill-mandated level. This is the first time in the Bush presidency that the White House backed the full farm bill amounts. However, the Chairman of the Agricultural Appropriations committee said the Bush administration might have pushed too hard. For every one person who receives funding, five farmers are on the waiting list.

Source: Energy & Environment Daily, *House Turns Aside Funding Boost for Wetlands*, May 24, 2006 (on file with the LSGLP).

Louisiana Coastal Wetlands Restoration Project

The National Ocean and Atmospheric Administration and the Louisiana Department of Natural Resources awarded $17.7 million to Pine Buff Sand and Gravel Co., an Arkansas-based company, to restore 1,400 acres of wetlands. The area, located about an hour west of New Orleans, has lost a considerable amount of wetlands due to shore erosion, subsidence, and channel construction. The project will create inter-tidal wetlands and intermediate marsh as well as provide a defense against future hurricanes. Completion is scheduled for early next winter.

Source: NOAA News Release, *NOAA Begins Louisiana Coastal Wetlands Restoration Project*, April 4, 2006, *available at* http://www.publicaffairs.noaa.gov/releases2006/apr06/noaa06-r109.html.

Proposed EPA Rule Allows for Water Transfers Without NPDES Permit

In a proposed rule by the EPA, water users would no longer need a federal permit for moving water from one basin to another as long as there is no intermediate use. The proposed rule was prompted by an issue presented to the U.S. Supreme Court in 2004 in *South Florida Water Management District v. Miccosukee Tribe of Indians*: are National Pollutant Discharge Elimination Systems (NPDES) permits for water transfers necessary in the above scenario? The Supreme Court did not directly answer this question and remanded the issue back to the lower court. In August 2005, EPA issued a legal memorandum on the issue. In "Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers," EPA states that its "interpretation that Congress intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the NPDES permitting program." This proposed rule is intended to clarify that NPDES permits are not needed for water transfers. Those opposed to the rule believe this is a way for the EPA to "cave" to polluters. They claim this could cause potential

problems, especially in the Florida Everglades, as dirty stormwater can now be dumped from canals directly into the Everglades without regulation. However, states do have the option to regulate these transfers if they choose. The comment period for this proposed rule is open until July 24, 2006.

Source: EPA Agriculture, *New Water Transfers Rule*, June 2, 2006, *available at* http://cfpub.epa.gov/npdes/home.cfm?program_id=41#water_transfer**.**

Clean Water Act Applies To Wetlands

The EPA has decided that Steve Buratt, a Louisiana landowner wishing to clear 200 acres of cypress trees near Baton Rouge, will only be exempt from Clean Water Act regulations if he can prove with reasonable assurance that the trees would grow back. Buratt applied for a federal permit to clear "strips" of trees, ranging between 200- and 400-feet wide. The EPA is concerned that the soil is extensively damaged by frequent inundations, possibly making restoration difficult. According to the EPA, placing conditions on exemptions is necessary to protect wetland buffers.

Source: Wold, Amy. *EPA Sets Coastal-Forest Logging Rule*, THE ADVOCATE, June 15, 2006 (on file with LSGLP).

Governor Blanco Protests Vanishing Coastal Wetlands

Governor Kathleen Blanco submitted a 24-page letter to the U.S. Minerals Management Service (MMS), objecting to a federal lease sale for oil and gas exploration off Louisiana's coast. Governor Blanco would like the state to receive a larger share of the money the federal government makes from oil and gas exploration off of Louisiana's coast, but she has stated she would settle for federal investment in protection and restoration of wetlands. If MMS decides to go through with the lease sale, the governor can sue the federal government in an attempt to block the sale. The state has already hired a Washington, D.C. firm to represent Louisiana in the event of a trial. The letter can be viewed at http://www.gov.state.la.us/assets/docs/newsrelated/MMS%20OCS%20Lease%20Sale%20Letter%2006-14-2006.pdf.

Source: *Letter Protests Sale of Gulf Leases for Oil, Gas Exploration*, THE ADVOCATE, June 15, 2006 (on file with the LSGLP).

Bycatch and Ocean Fish Populations

The Marine Fish Conservation Network released a report, asserting that federal fish managers are not adequately counting or minimizing the volume of unwanted catch that commercial fishers discard. They claim this may be a central reason for the decline in ocean fish populations. While bycatch is typically returned to their ocean habitat, many of these animals – including sea turtles and marine mammals – often die before they make it back to the sea. The group is also concerned that proposals to reauthorize the Magnuson-Stevens Act could make the situation worse.

Source: Associated Press, *Conservation Group Says Bycatch Disregarded By Fishery Managers*, June 2, 2006, *available at* http://www.boston.com/news/local/maine/articles/2006/06/02/conservation_group_says_bycatch_disregarded_by_fishery_managers/.

Aircraft Carrier As Artificial Reef

The 56-year-old *U.S.S. Oriskany*, an aircraft carrier the length of three football fields, was sunk off the coast of Florida. This event was part of a federal program for turning ships into reefs. Federal and state officials

believe the artificial reef will make a positive impact on fish populations, the local economy, and the federal budget. The government hopes that the increased fish population will bring divers and charter fisherman to the reef. However, environmentalists are concerned that the cleaning requirements are not strict enough, which could result in chemicals such as PBCs and lead seeping into the water and ultimately into the fish. Another concern is that the storm surge from a strong hurricane could move the ship and damage the area's natural reefs.

Source: Wheeler, Larry, *A Veteran of Two Wars, Ship Surrenders To Sea*, PENSACOLA NEWS JOURNAL, May 18, 2006, *available at* http://pensacolanewsjournal.com/apps/pbcs.dll/article?AID=/20060518/NEWS01/605180328/1006.

Oil Platform Donated As Artificial Reef

Chevron plans to donate its Typhoon oil platform, which capsized during Hurricane Rita, to a U.S. Department of the Interior program that transforms oil and gas structures into artificial reefs.

Source: Carroll, Joe, *Chevron to Sink Typhoon Platform Damaged by Hurricane*, May 9, 2006, BLOOMBERG, *available at* http://www.bloomberg.com/apps/news?pid=10000081&sid=a0J.TXumCtVQ&refer=australia.

Corals To Be Placed On "Threatened" List

The National Marine Fisheries Service ruled that elkhorn and staghorn corals must be officially registered as "threatened" under the Endangered Species Act. This is the first time that coral species have been listed as such. These two corals species are the main reef-building species in the Caribbean and Gulf of Mexico, and scientists believe rising sea surface temperatures is one reason for their decline.

Source: NOAA News Online, *Elkhorn and Staghorn Corals Listed in Threatened Status*, May 5, 2006, *available at* http://www.noaanews.noaa.gov/stories2006/s2627.htm.

Hawaiian Conservation Area to Become World's Largest

President Bush has set aside a 1,400-mile section of the uninhabited northwest Hawaiian Islands as a national monument. The area is host to 7,000 marine species, including endangered sea turtles. Rather than designate the area a wildlife sanctuary, the President listed it as a monument, allowing for faster protection and broad presidential powers. Commercial fishing will be phased out in five years, and other extractive industries will eventually be banned. Visitors will be limited to scientists and researchers. This designation now marks the area is the largest protected marine area in the world.

Sources: MSNBC, *Bush Creates World's Biggest Ocean Preserve*, June 15, 2006, *available at* http://msnbc.msn.com/id/13300363/.

Shogren, Elizabeth, *Vast Hawaii Area Now National Monument*, NATIONAL PUBLIC RADIO, *available at* http://www.npr.org/templates/story/story.php?storyId=5488173.

USFWS Proposes Protected Mussel Habitat

The U.S. Fish and Wildlife Service proposed to designate approximately 1,200 miles of streams and rivers as a critical habitat for seven species of freshwater mussels. The seven species, which can be found predominately in Georgia, Florida, and Alabama, are protected under the Endangered Species Act. Existing

developed sites, including roadways, private homes, and commercial buildings, would not be included under the designation. However, maintenance and operation of dams by the Corps of Engineers along the Apalachicola-Chattahoochee-Flint River drainage would be affected.

Source: U.S. Fish and Wildlife Service, *U.S. Fish and Wildlife Service Proposes Critical Habitat for Seven Freshwater Mussels*, June 6, 2006, *available at* http://news.fws.gov/newsreleases/showNews.cfm?newsId=F710B653-DEAE-F265-C554977490165940.

Alabama Governor Veto Threat Spurs Withdrawal of ConocoPhillips LNG Terminal

Approximately one month after Louisiana Governor Kathleen Blanco vetoed Freeport-McMoRan's offshore LNG proposal involving an industry-favored vaporization technology, Alabama Governor Bob Riley threatened to veto a major LNG terminal planned off the Alabama coast. While Governor Riley stated that he did not object to the offshore LNG terminal per se, he expressed reservations regarding how it may impact saltwater fisheries. Government leaders in both states currently oppose the technology because they believe it is a threat to marine life. "Open-rack vaporization" converts LNG into gas, requiring the withdrawal of millions of gallons of seawater on a daily basis. Federal and state fisheries scientists have cautioned that the use of this technology, sometimes called "open loop," could draw large numbers of fish eggs and larvae into the terminal's water intake pipes. The Freeport-McMoRan project in Louisiana has returned to the design stage in order to implement the use of more "fish-friendly" technology, and the ConocoPhillips may do the same for its project.

Source: Raines, Ben, *ConocoPhillips Withdraws LNG Proposal*, PRESS REGISTER, June 9, 2006, *available at* http://www.al.com/news/mobileregister/index.ssf?/base/news/1149845247319240.xml&coll=3.

Proposal for Two Natural Gas Terminals in Mississippi

Chevron has submitted a proposal to build a liquefied natural gas terminal at the Port of Pascagoula, Mississippi. This terminal would be able to convert 1.3 billion cubic feet (bcf) of gas per day, relying on a closed-loop vaporizer. As the cooling water will be provided from the adjacent oil refinery, the terminal should pose no harm to local fisheries.

Additionally, Gulf LNG Energy, LLC and Gulf LNG Pipeline, LLC have proposed to build a natural gas terminal in the same area. Unlike the Chevron terminal, this terminal would use submerged combustion vaporizers, discharging wastewaters into the Mississippi Sound.

While the "footprints" for both projects are small, construction of the terminals and pipelines would affect approximately 171 acres of surrounding wetlands. More than a dozen federally protected species could also be affected. Concerns also include the proximity of the location to the open-water Gulf of Mexico and the possibility of catastrophic storm surges.

Source: Greenwire, *LNG: Regulators Weigh Environmental Effects of Miss. Proposals*, May 22, 2006 (on file with the LSGLP).

Fishers Challenge Shell LNG Terminal off of Louisiana Coast

Fishers, environmentalist, and conservation groups appeared before Shell's shareholders on May 16, 2006, to encourage the company to change the planned Gulf Landing offshore LNG terminal from an open-loop system to a closed loop system. Their concerns were focused on the impact to local fisheries, as open-loop systems take in fish larvae and eggs along with water.

Source: Greenwire, *LNG: Fishery Group to Challenge Shell Project off La. Coast*, May 16, 2006 (on file with the LSGLP).

Effects of Dredging Sand Temporary

Experts conclude that the dredging of sand to replenish eroding shorelines is only a temporary solution. Erosion on coasts around the U.S. has been increased due to increased storm activity and rising water levels. In 2001, San Diego, California, used 54 million cubic feet of dredged sand on twelve badly eroded beaches. Unfortunately, most of the sand was gone in two years.

Source: *Greenwire, Beaches: Dredging Sand to Combat Erosion Futile, Experts Say*, June 5, 2006 (on file with the LSGLP).

Louisiana Register

March 2006

Declaration of Emergency – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Oyster Season Closure – Bay Gardene Public Oyster Seed Reservation

Due to increases in fishing effort levels and harvest rates in comparison with recent years, there is a decline in annual stock size and evidence of excessive amounts of non-living reef material onboard vessels harvesting seed oysters for bedding purposes in the Bay Gardene area. This had led to the closure of the public oyster seed reservation to protect the remaining resource. The area was closed one-half hour after sunset on March 8.

Oyster Season Closure – Bay Gardene Public Oyster Seed Reservation, 32 La. Reg. 3 (Mar. 20, 2006). See: http://www.doa.state.la.us/osr/reg/0603/0603EMR.pdf

April 2006

Declaration of Emergency – Department of Agriculture and Forestry, Office of the Commissioner
Fluoroquinolones in Seafood

Fluoroquinolones, a broad-spectrum antibiotic restricted to human use only, have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and increased prevalence of infections. Foods that contain fluoroquinolones are considered "adulterated"[12] foods. Due to these risks, the Commissioner of Agriculture and Forestry implements through this rule testing measures for seafood. The rule became effective on April 5, 2006 and will remain in effect for 120 days unless renewed or until permanent rules are created.

Fluoroquinolones in Seafood, 32 La. Reg. 4 (Apr. 20, 2006). See: http://www.doa.state.la.us/osr/reg/0604/0604EMR.pdf

Declaration of Emergency – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Shrimp Season Extension and Partial Reopening

The shrimp season in the open waters of Breton and Chandeleur Sounds shall be extended until 6 a.m., April 7, 2006. Additionally, State Outside Waters from the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the U.S. Coast Guard Navigational light off the northwest shore of Caillou Boca shall reopen shrimping at 6 a.m., April 10, 2006. Data shows that these

[12] According to 21 U.S.C. § 342 (The Federal Food, Drug, and Cosmetic Act), a food is deemed adulterated if it contains any poisonous substance that could injure health. The statute also provides for the designation if the food has been prepared, packed, or held in unsanitary conditions that would cause food contamination.

areas have sufficient quantities of marketable white shrimp and extension of the season provides added economic opportunity to shrimpers while limiting risks to early recruiting brown shrimp.

Shrimp Season Extension and Partial Reopening, 32 La. Reg. 4 (Apr. 20, 2006). See: http://www.doa.state.la.us/osr/reg/0604/0604EMR.pdf

May 2006

Declaration of Emergency – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Shrimp Season – Zone 2

Shrimp Management Zone 2 opened at 12 p.m. on May 4, 2006. This area covers the inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island as well as that portion of the state's outside waters south of the Inside/Outside Shrimp Line described in La. R.S. 56:495 from the eastern shore of Freshwater Bayou Canal at 92 degrees, 18 minutes, and 33 seconds west longitude to the Atchafalaya River Channel at Eugene Island as delimitated by the River Channel Buoy Line.

Shrimp Season – Zone 2, 32 La. Reg. 5 (May 20, 2006). See: http://www.doa.louisiana.gov/osr/reg/0605/0605emr.pdf

Rule – Department of Environmental Quality, Office of the Secretary, Legal Affairs Division
Designated Uses and Criteria for Luling Wetland, Subsegment 020303-001, (LAC 33:IX.1123)(WQ062)

Based on the results of a scientific study conducted from March 2003 to April 2005, Luling Wetland has been designated for Secondary Contact Recreation and Fish and Wildlife Propagation. Luling Wetland is located west of St. Martinville. Similar regulation has been created for Cote Gelee Wetland and South Slough Wetland, both of which also have been designated for Secondary Contact Recreation and Fish and Wildlife Propagation.

Designated Uses and Criteria for Luling Wetland, Subsegment 020303-001, (LAC 33:IX.1123)(WQ062), 32 La. Reg. 5 (May 20, 2006). See: http://www.doa.louisiana.gov/osr/reg/0605/0605rul.pdf

Federal Register

Rules and Regulations – Department of Commerce, National Oceanic and Atmospheric Administration

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats

In order to control increases in for-hire fishing vessels or passenger capacity, no applications for additional charter vessel/headboat permits for Gulf costal migratory pelagic fish or Gulf reef fish will be accepted. Existing permits may be renewed. Existing permits may also be transferred, provided certain guidelines are followed.

This regulation becomes effective June 15, 2006.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats, 71 Fed. Reg. 94, 28282 (May 16, 2006)

Proposed Rules - Department of Commerce, National Oceanic and Atmospheric Administration

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13

This proposed rule would implement a 10-year moratorium on issuance of federal Gulf of Mexico shrimp vessel permits. It would require owners of vessels fishing for or possessing royal red shrimp from the Gulf of Mexico exclusive economic zone to have a royal red shrimp endorsement and also require owners or operators of all federally permitted Gulf of Mexico shrimp vessels to report information on landings and vessel and gear characteristics. It would also require vessels selected by the National Marine Fisheries Service to carry observers and/or install an electronic logbook provided by the agency.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13, 71 Fed. Reg. 65 (April 5, 2006).

Proposed Rule – Department of Commerce, National Oceanic and Atmospheric Administration Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fishery of the Gulf of Mexico; Amendment 18A

The proposed rule would prohibit vessels from retaining reed fish caught under the recreational size and bag/possession limits when commercial quantities of Gulf of Mexico reef fish are on board. Additionally, this rule would prohibit using any species in the reef fish management unit, except sand perch and dwarf sand perch, as bait in any commercial or recreational fishery. Exceptions to this would include using reef fish carcasses as bait in traps for blue crab, stone crab, deep-water crab, and spiny lobster, unless otherwise restricted.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fishery of the Gulf of Mexico; Amendment 18A, 71 Fed. Reg. 80 (April 26, 2006).

Proposed Rule – Department of Commerce, National Oceanic and Atmospheric Administration Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C

The proposed rule would impose restrictive quotas on commercial fisheries in order to end overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass. The proposal also establishes trip limits for snowy grouper and golden tilefish, sets requirements for mesh in black sea bass pots, and changes the fishing year for black sea bass. Additionally, increases in the trip limit for red porgy proposed will allow for a moderated increase in the commercial harvest. The proposed rule reduces the bag limit for snowy grouper, golden tilefish, and black sea bass; increases the minimum size limit for vermilion snapper and black sea bass; changes the fishing year for black sea bass; and increases the bag limit for red porgy.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C, 71 Fed. Reg. 111 (June 9, 2006).