



Louisiana Sea Grant Legal Program

Louisiana Coastal Law Email Update Service **Issue #23, September 2006**

Cases

Louisiana Crawfish Procedures Association- West v. Rowan

From 1999 to 2003, the United States Army Corps of Engineers (Corps) conducted an environmental assessment (EA) on Buffalo Cove, a unit in the Atchafalaya Basin flood control area. The goal of the proposed project was to improve circulation within the swamp, remove barriers to water flow, input more river water, and manage sediment input into the swamp.

The Louisiana Crawfish Producers Association (LCPA), a not-for-profit organization for commercial fishermen, claimed that the Corps did not address the LCPA-proposed alternative in the EA. LCPA argued that the Corps did not address the possibility of opening up historical bayous and enforcing permit requirements in the EA. LCPA believed the Corps was required to address all possible alternatives, which they did not. Additionally, LCPA argued that their alternative would result in less harm to the environment than the plan proposed and eventually adopted by the Corps, which included sediment traps, construction of river water inputs, and gaps placed in the embankment.

The U.S. Court of Appeals for the Fifth Circuit held that the Corps was under no duty to address all possible alternatives. While the EA did not address the alternative presented by LCPA, it did address two other alternatives. Additionally, the court agreed with the Corps that the alternative presented by LCPA would actually cause more detriment to the environment than taking no action at all, whereas the plan presented and adopted by the Corps would improve the situation.

Louisiana Crawfish Procedures Association- West v. Rowan, 2006 WL 2474845 (La. 5th Cir. August 29, 2006).

Little Lagoon Preservation Society v. Unites States Army Corps of Engineers

A developer applied to the U.S. Army Corps of Engineers (Corps) for a permit under the Clean Water Act to build a single-family residential development in Alabama, including seventy-three lots, a pool, and a pier with seventy-three boat slips. The Corps granted a provisional permit, which set forth the work that would be allowed on the modified development. Little Lagoon Preservation Society (LLPS) filed this action, claiming that the Corps had violated federal law. The district court held that the Corps had not made a final decision at the time the case was filed, and, therefore, it had no jurisdiction. The case was dismissed.

Little Lagoon Preservation Society v. Unites States Army Corps of Engineers, 2006 WL 2270797 (S.D. Ala. August 4, 2006).

National Parks Conservation Association, Inc. v. United States Army Corps of Engineers

In 1996, Atlantic Civil, Inc. (ACI) submitted an application to the Corps for a permit under the Clean Water Act (CWA). The Corps granted the permit, which allowed ACI to fill in over 981 acres of wetlands, more than half of which were considered waters of the United States, for the sole purpose of improving farmland that, due to its elevation, had only marginal value. In 2005, the Corps became aware that the purpose for filling in the land had changed to building a residential community and suspended the permit, but then later reinstated it and issued a 120-day extension.

The National Parks Conservation Association filed a claim, arguing that the Corps' reinstatement and extension violated the CWA, the National Environmental Policy Act, and the Administrative Procedure Act. The court held that the Corps did not act arbitrarily or capriciously in its decision to reinstate and extend the permits, as ACI had not acted outside the permit. Additionally, the reinstatement and extension of the permit were not modifications of the content of the original permit.

National Parks Conservation Association, Inc. v. United States Army Corps of Engineers, 2006 WL 2370320 (S.D. Fla. August 15, 2006).

News

Request to Block Sale of Oil and Gas Lease Denied

U.S. District Judge Kurt Engelhardt rejected Gov. Kathleen Blanco's request to block the planned sale of federal oil and gas leases off the Louisiana and Texas coast. While her request was denied, Blanco said she was pleased with the findings, as the judge indicated that the U.S. Department of Interior's and the Minerals and Management Service's compliance with environmental protection acts was questionable. Additionally, the judge pointed out that while there was not reason enough to issue an injunction, the state has a substantial likelihood of prevailing on the merits of the case.

Source: The Advocate, *Judge OKs Gulf Lease Sale* (August 15, 2006) (on file with the LSGLP).

"Philadelphia Ditch Rule" Withdrawn by Army Corps of Engineers

The Corps withdrew its "Philadelphia Ditch Rule" as a result of the U.S. Supreme Court's decision in the consolidated *Rapanos* and *Carabell* case. The rule allowed the Corps to exert jurisdiction over ditches as "navigable waters," as many are part of natural hydrological systems. While the National Association of Home Builders considers this a victory for affordable housing, the Corps stated they are simply waiting to see how the Supreme Court decision is interpreted before making further determinations over ditches.

Source: Lucy Kafanov, *Wetlands: Army Corps Re-Examining Ditch Regulations*, Greenwire (August 7, 2006) (on file with the LSGLP).

Groups Push Congress for Answers Concerning *Rapanos* Decision

At least four construction groups and ten environmental groups have submitted comments to Congress regarding the recent Supreme Court decision in *Rapanos*. Environmental groups argue that Congress needs to be directly involved in the outcome over the question of what constitutes "waters of the United States," the main issue presented in the case. On the other hand, developers believe that the Bush administration should issue rules to clarify the meaning of the decision. While some members of Congress feel that the issue should be left up to the states to decide, others believe that the problem can be resolved only through congressional action.

Source: Daniel Cusick, *Wetlands: Lobbying Campaign Builds in Wake of Rapanos*, Greenwire (August 11, 2006) (on file with the LSGLP).

9th Circuit Interprets *Rapanos* and *Carabell*

On August 10, 2006, the U.S. Court of Appeals for the Ninth Circuit became the first appellate court to interpret the joint *Rapanos* and *Carabell* decision. The Ninth Circuit upheld the lower court's holding that faulted a California city for dumping wastewater into a pond. The appellate court found that the pond was connected to the Russian River through both underground and surface waters. Additionally, the pond supported both bird and fish populations, which are part of the Russian River ecosystem.

Source: *Wetlands: 9th Circuit Becomes First Appeals Court to Interpret Supreme Court Decision*, Greenwire (August 11, 2006) (on file with the LSGLP).

Reduction in Alligator Nests Results in Lower Hunting Limits

A recent count by the Louisiana Department of Wildlife and Fisheries showed that the number of alligator nesting sites is down by 50 percent from 2004. The number of nesting sites in the southwest part of the state fell 85 percent, with some parishes experiencing a decline in brackish nests of 100 percent. Experts believe the decline in the nests is a result of Hurricanes Katrina and Rita, which pushed saltwater into the brackish and freshwater nesting areas. This, compounded with a dry winter and a spring drought, led to bare dirt where marshes usually exist. Because of the reduction in the number of nests, the state has reduced the number of wild alligators that can be hunted during the season from 36,500 last year to 29,000 this year.

Even more significant is the reduction in the number of eggs expected to be collected from alligator nests for farming purposes. Last year, farmers collected 507,000 eggs, while experts predict that only 275,000 will be collected this year. After farmers collect eggs from private property, hatch them in their facility, and allow them to grow to four feet in length, the farmers must release 14 percent of the alligators back into the wild. Therefore, the reduction in the number of eggs collected will not only reduce income for the farmers, but also will reduce the number of alligators released back into the wild. In turn, the shortage of eggs will continue into the future, with a predicted loss of income to alligator farmers to last four to five years.

Source: Amy Wold, *Alligator Crop Washed Away: Storm Aftereffects Force Limits on Hunting*, The Advocate (September 5, 2006) (on file with the LSGLP).

Technical Committee Recommends Wetland Rebuilding

A technical committee recommended four projects for approval by the Breaux Act Task Force.¹ One project is to rebuild wetlands along a 7-mile stretch of eastern New Orleans, including building a land bridge between Lake Pontchartrain and Lake Borgne and planting vegetation along 7 ¼ miles of Lake Borgne shoreline. The second project recommended by the committee focuses on creating new marsh in Madison Bay. A third project would restore the barrier shoreline west of Belle Pass, and the fourth would protect the Gulf of Mexico shoreline in Cameron and Vermillion parishes.

Source: Mark Schleifstein, *Wetlands Rebuilding Proposal for East N.O. Takes Major Step*, The Advocate (September 14, 2006) (on file with the LSGLP).

¹ More information regarding the Breaux Act and the Breaux Act Task Force can be found at <http://dnr.louisiana.gov/crm/background/breaux.asp>.

Mud Could Help Wetlands

The Army Corps of Engineers dredges approximately 70 million cubic yards of sediment from waterways every year, but only 15 million cubic yards is used to rebuild marshes and wetlands. The rest is wasted through activities such as offshore dumping. Many experts are upset that instead of putting the sediment to use, it is being discarded. Corps officials say that the reason they do not reuse more of the sediment is because of financial restraints. However, part of the Water Resources Development Act (H.R. 2864) now before Congress would launch a 10-year, \$ 100 million program to increase the sediment used to 45 million cubic yards a year.

Source: Matthew Brown, *Muddy Water Mud Flap*, The Times-Picayune (September 20, 2006) (on file with the LSGLP).

Diverting River may Help Wetlands

In April 2006, a group of researchers met to consider what alternatives were available to help restore and protect Louisiana's wetlands. All attendees agreed on one thing – diverting the Mississippi River is necessary. The diversion would need to occur south of New Orleans, near the river's bird-foot delta. The goal of the diversion would be for water to enter marshes and shallow areas, dumping sediment and rebuilding the coast. While the project is physically possible, hurdles include financial considerations, land rights, oil and gas leases, and navigation of the river.

Source: *Wetlands: Mississippi River Needs to be Diverted*, Experts Say, Greenwire (September 19, 2006) (on file with the LSGLP).

Federal Study Shows Reduced Water Flow not Harming Fish

A recent study by the U.S. Fish and Wildlife Service shows that the Corps' water release plan for Florida's Apalachicola River does not pose "inordinate harm" to gulf sturgeon and freshwater mussels. The biological opinion, however, does admit that two or three of the mussel species will suffer some loss under low-flow conditions. The opinion requires the Corps to implement additional measures to reduce loss across all species. Alabama, Georgia, and Florida have been battling over management of the water for approximately twenty years. In the most recent complaint, filed on September 6, 2006, Florida argued that the biological opinion does not meet the requirements of the Endangered Species Act in terms of preventing extinction and facilitating species recovery.

Source: Daniel Cusick, *Water: Army Corps River Management Poses no Threat to Florida Species*, FWS Says, Greenwire (September 7, 2006) (on file with the LSGLP).

Old Oil Rigs May Become Coral Reefs, Wind Turbines, or Fish Farms

Congress is considering a bill that would create a new federal program, run by the U.S. Department of the Interior, which could turn old or abandoned oil platforms into fish farms, artificial reefs, or platforms for offshore wind energy turbines. Under the measure, Congress would allow oil companies to forgo most of the cost of dismantling rigs, resulting in savings of as much as \$ 5 million per large platform.

The proposal, however, has drawn criticism. Critics claim that fish farms would fail due to destruction caused by hurricanes, pointing out the failure of fish farms in both Louisiana and Texas as representative of what could happen. Additionally, Louisiana and Texas officials are afraid that the program would negatively impact the two state rigs-to-reef programs. Currently, under the state programs, rigs are turned into artificial reefs, and the oil company has to pay half of any savings realized to the state. So far, Louisiana has brought in approximately \$28 million from the program. Another concern of state officials is

that the state will lose control over how many artificial reefs are allowed and what areas are suitable for the project.

Source: Matthew Brown, *Plan to Redo Old Rigs Snags Support*, The Times-Picayune, (August 7, 2006) (on file with the LSGLP).

Exit Holes in Nets Reduce Bycatch

A recent U.N. study showed that shrimp fishing nets with holes can reduce unintentional catches of fish and turtles by as much as 70 percent. The nets contain metal grilles that, while allowing shrimp to pass into the net, block larger animals and direct them to either a hole on the side or near the front.

Source: *Shrimp Nets with Exit Holes Reduce Bycatch, UNEP Study Shows*, Greenwire (August 8, 2006) (on file with the LSGLP).

Chains Now Required on Scallop-Dredging Boats

A new federal rule requires commercial scallop fishers to attach vertical and horizontal chains to the bottom of their boats. Federal and industry officials hope the chains, which will be large enough for scallops to pass through, but not large enough for turtles, will reduce turtle bycatch. However, conservation groups such as Oceana believe that the chains might increase turtle fatalities and instead advocate closing certain parts of the fishery during sea turtle migration.

Source: Allison A. Freeman, *Turtles: New Rule Requires Protective Gear on Scallop Dredges*, Greenwire (August 28, 2006) (on file with the LSGLP).

Fishing May be Allowed in Turtle Sanctuary

The National Marine Fisheries Service is considering allowing drift-gillnet boats to fish off the coasts of California and Oregon, which has been closed for five years to protect the Pacific leatherback turtles. While environmentalists are concerned that allowing fishing in the 180,000 square foot area could cause the leatherback to become extinct, some scientists believe that allowing fishing in the area would not harm the leatherbacks.

Source: Allison A. Freeman, *Endangered Species: NMFS Considers Allowing Fishing in Turtle Sanctuary*, Greenwire (August 3, 2006) (on file with the LSGLP).

Magnuson-Stevenson Act Compromise May See Floor Vote

House Resource Committee Chairman Richard Pombo (R-Calif.) hoped to see his bill amending the Magnuson-Stevenson Fishery Conservation and Management Act come to the House floor by the end of September. The compromise features many key conservation provisions, including requiring fishing councils to end any overfishing within two years and reducing the number of cases for exemptions from meeting deadlines from three to one. The one exemption allowed by the amendments is for situations where the Commerce secretary makes "substantial changes" to the rebuilding targets.

Source: Allison A. Freeman, *Fisheries: Pombo Wants a Floor Vote on Magnuson Compromise*, E & E Daily (September 5, 2006) (on file with the LSGLP).

Marine Fish Conservation Network Urges Opposition to Magnuson Amendments

The Marine Fish Conservation Network, composed of more than 190 environmental organizations, commercial and recreational fishing associations, and marine science groups urged lawmakers to oppose Representative Pombo's amendments to the Magnuson-Stevenson Act. The group's primary concern is that the exemption to the deadline to rebuild dwindling stock will result in a continual resetting of the time clock, as there is no fixed limit to the number of exemptions that can be granted.

Source: Allison A. Freeman, *Fisheries: Oceans Advocates Signal Thumbs Down on Magnuson Deal*, E & E Daily (September 7, 2006) (on file with the LSGLP).

Magnuson-Stevenson Act Rewrite Delayed

The Magnuson-Stevenson Act amendment proposal by Rep. Richard Pombo will not come before the House in September, as Pombo tries to gain more support for the bill. Even though Pombo hoped the rewrite would appeal to more ocean advocates, both environmental and fishing advocates spoke out against the proposal. Additionally, according to Karen Steuer of the National Environmental Trust, Congress is being cautious about rewrites of the Magnuson-Stevenson Act as some are unclear as to how the bill would impact commercial fishers and the environment.

Source: Allison A. Freeman, *Fisheries: Pombo Delays Bills to Rally More Support for Magnuson Rewrite*, E & E Daily (September 8, 2006) (on file with the LSGLP).

Regional Fishermen Concerned about Red Snapper Populations

Commercial fisherman Russell Underwood is part of a group of fishers who are encouraging the government to take action in protecting the populations of fish along the Gulf Coast, including the red snapper. Fishermen are concerned that size restrictions, bycatch, and deep-water catching are wasting valuable resources. After the Gulf of Mexico Fishery Management Council failed to take action on the issue, federal officials said they could soon step in by instituting regulations to reduce both the fishing of red snapper and the bycatch created by shrimp trawls. Fisheries managers have proposed reducing the size restriction and shutting out shrimp trawls from areas where snapper assemble.

Source: Matthew Brown, *Feds May Intervene on Red Snapper*, The Times-Picayune (August 21, 2006) (on file with the LSGLP).

Concerns About the Future of Aquaculture

The Food and Agriculture Organization (FAO) is concerned that the aquaculture industry will not be able to meet the increasing demand for fish. While farmed fish constitutes 43 percent of fish consumed, this number is expected to increase. Researchers at the FAO worry that the industry will not be able to overcome the challenges and meet the greater demand. Challenges the industry face include lack of investment capital for producers in the developing world, shortage of land and freshwater, rising energy costs, environmental impact, and future supplies of fishmeal used for livestock feed.

Source: *Aquaculture Key to Meeting Demand for Fish*, Environmental News Service (September 5, 2006) (on file with the LSGLP).

Support Grows for Fish Industry Quota System

Congressional implementation of "individual transferable quotas" (ITQs) is gaining support throughout the fisheries industry. ITQs are permits that give the holder a right to a certain number of fish during certain

times of the year. Similar to emission credits, the ITQs can be sold, purchased, bequeathed, leased, or left unused to allow fish to swim freely. Supporters believe that the ITQ system will not lead to depletion of fish stocks, as is being seen with the use of total catch quotas.

Source: *Fisheries: Quota Permits May Hold Key to Sustainable Industries*, Greenwire (September 5, 2006) (on file with the LSGLP).

Marine Havens in California

After a 12-hour hearing, the California Fish and Game Commission unanimously voted to create a network of marine havens off the state's coast. The twenty-nine marine areas, which cover approximately 200 square miles, will become "no fishing zones." Implementation of the hybrid plan created by the commission will begin sometime next year. While some environmentalists believe the plan is not strict enough, fishers feel the plan places a too-heavy burden on an already strained industry.

Source: *Fisheries: California Creates Marine Heaven in Central Coast Waters*, Greenwire (August 16, 2006) (on file with the LSGLP).

Bills on Wetlands, Coastal Mapping Clear House

On September 12, 2006, the House voted on H.R. 5539, which provides grants to protect, restore, and enhance wetlands. The bill authorizes approximately \$175 million to be distributed by the U.S. Fish and Wildlife Service (FWS) between 2008 and 2012. The FWS would be able to give the money to state and local governments and nonprofits groups that participate in wetlands conservation work. The bill passed without debate under suspension of the rules.

The House also considered H.R. 479, which would remove a 10-lot development in Walton County, Florida, from protection under the Coastal Barrier Resource System. Even though FWS opposed the bill, it cleared the House.

Source: Lauren Morello and Lucy Kafanov, *Water: House to Consider Wetlands, Coastal Mapping Bills*, E & E News PM (September 11, 2006) (on file with the LSGLP) and *E & E Daily, Water: Wetlands, Coastal Mapping Bills Clear House* (September 13, 2006) (on file with the LSGLP).

Coastal Dead Zone off Coast of Oregon

Oregon's coastal dead zone, discovered in 2002, appears to have become longer, thicker, and more oxygen deprived over the last four years. The camera crew of a recent dive saw evidence of the impact on life forms that usually thrive in the area, including dead crabs, worms, and anemones. Researchers believe that the dead zone is attributable to global warming rather than river run-off. The dead zone is created by large algae blooms, which upon dying sink and decompose, removing oxygen from the water and upper layer of sediment.

While some scientists are worried that the changes from 2000 and 2001, during which the area hosted a thriving reef community, are permanent, others believe it is too soon to tell if the reef's health is getting worse. However, even these scientists agreed that if the dead zone is getting worse, the changes to the coastal environment would be very important.

Source: Peter N. Spotts, *In Oregon, A Close-up Look into a Coastal Dead Zone*, The Christian Science Monitor (August 25, 2006) (on file with the LSGLP).

Company Runs Tests in Anticipation of LNG Port off Coast of Massachusetts

In hopes of building a liquefied natural gas port off of the coast of Massachusetts, Excelerate Energy LLC conducted tests at its natural gas processing ship in the Gulf of Mexico to see if noises created from the process disturb marine animals. Excelerate hopes that the studies will convince environmentalists and fisherman in the New England region that a similar system off the Massachusetts' coast would not harm marine life. Environmentalist and fisherman are concerned that the project could kill thousands of fish and harm the overall ecosystem.

Source: *LNG: New England Officials Explore Gulf of Mexico-style Offshore Processing Project*, Greenwire (August 14, 2006) (on file with the LSGLP).

Work On Many New Orleans Levees Has Yet To Begin

The Corps has not yet started work on many New Orleans levee projects, even though they received approximately \$1 billion in March. Projects include raising sinking levees and finishing hurricane protection. According to Dan Hitchings, the Corps' civilian overseer of post-Hurricane Katrina levees repairs and upgrades and chief of Task Force Hope, the delays are attributable to the scale and complexity of the decision-making, the problem-solving, and the documentation involved.

Source: *Army Corps: Agency has yet to Start Many Key New Orleans Levee Projects*, Greenwire (August 14, 2006) (on file with the LSGLP).

Louisiana Senators Stall Flood Insurance Bill

U.S. Senators Mary Landrieu and David Vitter are concerned that the Senate bill (S. 3589) to overhaul the National Flood Insurance Program will force many of their constituents to forego flood insurance due to the costs. The Senate bill calls for a 25 percent increase in premiums for severe repetitive loss properties, capped at market rates. Landrieu and Vitter favor a similar House bill (H.R. 4973), which allows only for a 15 percent annual increase and does not apply to repetitive loss properties. Additionally, both senators would like the language of the House bill regarding increases in coverage limits to be added to the Senate bill. Landrieu and Vitter have been in discussion with Senate Banking Chairman Richard Shelby (R-Ala.) about a possible compromise.

Source: Bruce Alpert, *Flood Insurance Bill Falters: Landrieu, Vitter Fret About Costs Increases*, The Times-Picayune (September 13, 2006) (on file with the LSGLP).

Federal Register Notices

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

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 18A

The National Marine Fisheries Service (NMFS) issued this final rule in order to implement Amendment 18A to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. Some of the changes include prohibiting vessels from keeping reef fish caught according to the recreation size and possession limits if there are also commercial quantities of reef fish on board and prohibiting the use of Gulf reef fish as bait in the exclusive economic zone of the Gulf of Mexico, with exceptions for using dwarf sand perch. Vessels with Federal commercial permits are now required to have an NMFS-approved monitoring system. Vessel operators must follow sea turtle and smalltooth sawfish release protocols. Additionally, vessel owners must apply for a permit every year instead of every two years.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 18A, 71 Fed. Reg. 153, 45428 (August 9, 2006).

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

Endangered and Threatened Wildlife; Sea Turtle Conservation

This final rule implemented new sea turtle conservation measures. All vessels that have a sea scallop dredge and that are required to have a Federal Atlantic sea scallop fishery permit must modify their dredge(s) to include a chain mat when fishing in the following area: south of 41 degrees 9.0' N. latitude from the shore to the outer boundary of the Exclusive Economic Zone. The goal of the changes is to reduce mortality and injury to sea turtles caused by scallop dredge gear.

Endangered and Threatened Wildlife, Sea Turtle Conservation, 71 Fed. Reg. 156, 50361 (August 25, 2006).

Proposed Rule – Department of Commerce, National Oceanic and Atmospheric Administration

Consideration of Marine Reserves and Marine Conservation Areas Within the Channel Islands National Marine Sanctuary

The National Oceanic and Atmospheric Administration proposes to establish a network of marine zones within the Channel Islands National Marine Sanctuary. These areas, containing approximately 232 square miles, would have additional regulations to further protect the biodiversity of the sanctuary.

Consideration of Marine Reserves and Marine Conservation Areas within the Channel Islands National Marine Sanctuary, 71 Fed. Reg. 155, 46134 (August 11, 2006).

Proposed Rule – Department of Commerce, National Oceanic and Atmospheric Administration

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26

If implemented, Amendment 26 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico would establish an individual fishing quota program for commercial red snapper. Participants would receive percentage shares of the commercial quota, and the shares would be transferable. The goal of the program is to provide long-term economic viability from red snapper.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26, 71 Fed. Reg. 164, 50012 (August 24, 2006).

Notices – Environmental Protection Agency

Gulf of Mexico Program Office Funding Opportunity

Approximately \$3 million may be awarded to eligible applicants under this announcement for projects that improve the health of the Gulf of Mexico. Qualifying projects should address the following: improving water quality and public health, priority coastal habitat protection/recovery, more effective coastal environmental education, improved habitat identification/characterization data and decision support systems, and strategic nutrient reductions.

Gulf of Mexico Program Office Funding Opportunity, 71 Fed. Reg. 115, 34606 (June 15, 2006).

Notices – 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 and Reef Fish Fishery in the Gulf of Mexico

Neil Allen, on behalf of the Georgia Aquarium, applied for an exempted fishing permit in order to collect a limited number of grouper, snapper, tilefish, sea bass, jacks, spadefish, grunts, porgies, mackerel, cero, cobia, dolphin fish, spiny lobster, little tunny, and triggerfish. The fish collected will be put on display at The Georgia Aquarium in Atlanta.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States and Reef Fish Fishery in the Gulf of Mexico, 71 Fed. Reg. 130, 38628 (July 7, 2006).

Notices – 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

Scott Baker, on behalf of the North Carolina Sea Grant Extension Program, submitted an exemption fishing permit in order to collect limited numbers of black sea bass. The fish collected are to be used in a study to quantify fish size selectivity and determine regulatory discard mortality rates.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States, 71 Fed. Reg. 148, 43715 (August 2, 2006).

Louisiana Register Notices

Emergency Rules – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
2006 Fall Inshore Shrimp Season

The 2006 fall inshore shrimp seasons opened as follows:

- In Shrimp Management Zone 1, the season opened at 12 noon on August 21, 2006.
- In Zone 2, from the eastern shore of South Pass of the Mississippi River to the Atchafalaya River Ship Channel at Eugene, the season opened at 12 noon on August 14, 2006.
- In Zone 2, from the Atchafalaya River Ship Channel at Eugene Island to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, the season opened at 12 noon on August 21, 2006.
- In Zone 3, the season opened at 12 noon on August 21, 2006.
- The closing date is set for December 18, 2007, at official sunset, in all areas except in the open waters of Breton and Chandeleur Sounds, which will close at 6 a.m. on March 31, 2007.

2006 Fall Inshore Shrimp Season, 32 La. Reg. 8 (August 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0608/0608emr.pdf>.

Emergency Rules – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
2006-07 Oyster Season

The oyster season in the primary public oyster seed grounds east of the Mississippi River opened one-half hour before sunrise on September 6, 2006 and are scheduled to close one-half hour after sunset on September 27, 2006. This area will reopen one-half hour before sunrise on November 13, 2006. Certain areas of the Hackberry Bay Public Oyster Seed Reservation listed in the rule were open only from September 6, 2006, to September 8, 2006.

2006-07 Oyster Season, 32 La. Reg. 8 (August 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0608/0608emr.pdf>.

Rules and Regulations – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Saltwater Sport and Commercial Fishery: Spotted Seatrout Management Measures

This rule modifies the recreational daily take and possession limits for spotted seatrout in areas of Cameron and Calcasieu Parish. The limit of fish is set at fifteen, regardless of where they are taken. No more than two fish can exceed 25 inches.

Saltwater Sport and Commercial Fishery: Spotted Seatrout Management Measures, 31 La. Reg. 6 (June 20, 2006). See <http://www.doa.louisiana.gov/osr/reg/0606/0606RUL.pdf>.

Rules and Regulations – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Shrimping Closed Season, Vessel Monitoring System

Under this rule, persons who are subject to monitoring under the Shrimping Vessel Monitoring System include anyone subject to a court order and anyone having two or more convictions during the preceding five-year period for harvesting shrimp during the closed season. These persons are not permitted to be present on any vessel harvesting or possessing shrimp or any vessel that has any trawl, skimmer, or butterfly net on board, unless the vessel has a vessel monitoring system (VMS). The VMS must be approved, fully functional, and operating. Specific requirements for the VMS are presented in the rule.

Shrimping Closed Season, Vessel Monitoring System, 32 La. Reg. 7 (July 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0607/0607RUL.pdf>.

Notices – Department of Environmental Quality, Office of the Secretary, Legal Affairs Division
Wetlands Assimilation

Rulemaking procedures have begun to amend the Water Quality regulations, LAC 33:IX.1105, 1109, and 1113. Studies over the past ten years in wetlands across southern Louisiana show that controlled discharge of treated municipal wastewater into the wetlands helps control subsidence and increases wetland productivity. The proposed rule sets out to establish protective wetlands criteria and designated uses for wetlands that may receive treated wastewater flow. Section 1109(C)(4)(c) provides that wastewater discharges may be proposed for any defined type of wetland as long as the discharge will not cause impairment of the wetland or applicable general and site-specific criteria. Section 1113(B)(13) states that “the discharge area shall have no more than a 20 percent reduction in the rate of the total above-ground wetland productivity over a five-year period,” as compared to a nearby wetland area that is not impacted by effluent addition.

Wetlands Assimilation, 32 La. Reg. 8 (August 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0608/0608pot.pdf>.

Potpourri – Office of the Governor, Oil Spill Coordinator’s Office
Freshwater Bayou Crude Oil Discharge of June 21, 1997, Final Settlement Agreement

The Vermillion Parish Coastal Marsh Natural Resource Restoration Agreement has been finalized and is available to the public as of September 20, 2006. The agreement was created to address natural

resource damage claims connected to the June 21, 1997, discharge of crude oil into a coastal marsh near Freshwater City, Louisiana.²

Freshwater Bayou Crude Oil Discharge of June 21, 1997, Final Settlement Agreement, 32 La. Reg. 8 (August 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0608/0608pot.pdf>.

² For further information about the agreement, contact Charles K. Armbruster at 225-219-5800 or by email at charles.armbruster@la.gov. The final agreement can be viewed at <http://www.losco.state.la.us>, and requests for copies should be sent to Charles K. Armbruster, Louisiana Oil Spill Coordinator's Office, 150 Third Street, Suite 405, Baton Rouge, LA 70801.