



Louisiana Sea Grant Legal Program

Louisiana Coastal Law Email Update Service Issue #24, December 2006

Cases

St. John the Baptist Parish v. State Department of Wildlife and Fisheries

Lutcher & Moore Cypress Lumber Company, Ltd., granted a servitude to the St. John the Baptist parish to construct a drainage canal. After construction in 1952, the lumber company executed five campsite leases along the canal. In 2001, the lumber company notified the camps that their leases would not be renewed as the land was being donated to the Department of Wildlife and Fisheries. The department ordered the camp owners to remove the camps. The hunting clubs who owned the camps donated whatever interest they had in the camps to the parish and the parish brought this suit to prevent the destruction of the camps. The court found that the parish had no rights in the camp leases as required to enjoin the state from dismantling the camps.

St. John the Baptist Parish v. State Department of Wildlife and Fisheries, 2006 WL 295638 (La. 5th Cir. October 17, 2006).

News

Governor Blanco Settles Lawsuit Over Offshore Drilling

On October 24, 2006, Governor Kathleen Blanco agreed to settle the lawsuit over offshore drilling. While the settlement requires that the federal government study the environmental impact of oil and gas exploration on the coast, there is no guarantee that Congress will invest in coastal restoration. Blanco said the decision to settle is an important step in making the federal government recognize the impact of offshore oil and gas activity on the state's coast.

Source: *Blanco Settles Lawsuit*, The Advocate (October 25, 2006) (on file with the LSGLP).

Sewage May Save Coast

The New Orleans Sewage and Water Board is pursuing a \$40 million project to pump tens of millions of gallons of treated sewage into coastal marshland near Bayou Bienvenue. Proponents of the plan believe that the wetlands would benefit from the nutrient-rich wastewater, which would accelerate plant growth. The treated sewage has been deemed safe for both humans and wildlife. While there are other similar projects, this one would be the largest of its kind. The sewage that would be diverted is currently pumped into the Mississippi River.

Source: Matthew Brown, *Sewage may be Coast's Savior*, The Advocate (October 16, 2006) (on file with the LSGLP).

Draft Coastal Protection Plan Presented To The Public

On November 29, 2006, the public had an opportunity to comment on a plan for coastal protection from hurricanes. Once the plan is finalized, it will be presented to the Army Corps of Engineers so that it can be included with the Corps' recommendations. The state plan utilizes "multiple lines of defense," including putting a floodgate at the Rigolets, abandoning increased levee protection of much of Lower Plaquemines Parish for the sake of protecting areas farther up river, closing the Mississippi River-Gulf Outlet, and building or raising many levees stretching along the West Bank in the New Orleans area and extending around Houma to Morgan City. The comments received at the meeting will be used to write the final plan, which will be presented for state Legislature approval in April 2007.

Source: Mark Schleifstein, *State Finishes Draft Plan to Protect Coast*, The Times-Picayune (November 28, 2006) (on file with the LSGLP).

Work On Prien Point Oyster Reef Underway

In an effort to form a marine community, 2,200 cubic yards of oysters were moved from the Gulf of Mexico to an old reef on Prien Point. The Department of Wildlife and Fisheries hopes that the oysters will draw in big fish and encourage a healthy ecosystem. Additionally, the oysters will filter water and reduce the energy from waves. The project is funded by a grant from the Gulf of Mexico Foundation.

Source: Richard Burgess, *Live Oysters are Secret Ingredient of Prien Point Project*, The Advocate (October 21, 2006) (on file with the LSGLP).

Plan Reduces Red Snapper Quotas

Due to the desirability of red snapper and possible population collapse, federal regulators intend to cut quotas by almost 30 percent next year. The new regulations, which would have to go through the notice and comment process, are already receiving criticism from fishing interest groups. The new rules would drop the annual quota to 6.5 million pounds, which is 2.6 million pounds less than the current quota. Recreational fishers will be limited to two fish per day and would be allotted about half of the total quota, while commercial fishers would be barred from fishing once their allotment of the quota is reached. As of this time, the shrimp industry, which many say is one of the major causes of the red snapper decline, will not be subject to any new restrictions. National Marine Fisheries Service agents believe that the new restrictions allow them to reach the 2032 deadline for rebuilding stocks.

Source: Matthew Brown, *Plan to Cut Red Snapper Quotas Draws Intense Opposition*, The Times-Picayune (October 24, 2006) (on file with the LSGLP).

Mississippi May See Change in Permit Regulations

The U.S. Army Corps of Engineers has recently proposed a relaxation of restrictions regarding the filling in of wetlands, in hopes that it would speed recovery from Hurricane Katrina. The proposal would allow property owners and developers to avoid the conventional permit process for any projects that fill up to five acres of "low-quality" wetlands in six Mississippi counties. Additionally, landowners would not have to give public notice for the project. Environmentalists, many of whom were shocked by the proposal, are concerned that these small impacts will cumulatively be very damaging.

Source: Mike Stuckey, *Army Corps Proposes Easing Gulf Wetlands Rule*, MSNBC (October 19, 2006) (on file with the LSGLP).

Plan for Liquefied Natural Gas Port Sees Little Opposition

McMoRan Exploration Co.'s proposed liquefied natural gas port is seeing virtually no opposition due to changes in design. The port, which would be located 16 miles east of the mouth of the Mississippi River, would utilize a closed-loop warming system rather than the open-loop system originally proposed. The change will result in a \$30 million modification cost and \$25 million a year in lost profits.

Source: *Liquefied Gas Port Plan Advances*, The Advocate (October 8, 2006) (on file with the LSGLP).

Concern Over Deep-Sea Trawling

The United Nations Division for Ocean Affairs and Law of the Sea recently released a draft version of an ongoing review of fishing practices in the deep ocean. This part of the sea, which lies beyond the jurisdiction of any individual nation, is a very vulnerable habitat. Of particular concern is the practice of bottom trawling, which occurs when heavy gear is dragged across the seafloor. The draft of the review urges preventative measures, including in some cases a moratorium on the practice, which can cause irreversible damage to sea-floor ecosystems.

Source: *U.N. Review Shows Need to Halt Destructive Fishing Practices*, Conservation International (July 14, 2006) (on file with the LSGLP).

Bush Administration Supports United Nations On Bottom Trawling Issue

In response to the recent concerns in the United Nations relating to bottom trawling, President Bush said in a memo that the U.S. would work with other countries to halt destructive fishing practices on the high seas. The memo directed the State and Commerce departments to oppose any fishing practices that cause long-term destruction to fish stocks or habitats.

Source: Ken Coons, *Bush Administration Backs High Seas Bottom Trawling Restrictions*, Seafood.com News (October 4, 2006) (on file with the LSGLP).

Trees A New Source of Hurricane Information

New research shows that rain which falls during a hurricane has a different oxygen isotope content than other rain, resulting in a "chemical signature" imprint in tree rings. The signal is picked up in the cellulose, which reveals the frequency, but not the intensity, of hurricanes. Scientists suggest that this new information could extend the hurricane record back another 400 years. The only known gaps found in the record occurred when there was a period of drought.

Source: John Roach, *Over 200 Years of Hurricane Data Recorded in Trees, Study Says*, National Geographic News (September 18, 2006) (on file with the LSGLP).

Fishing Of Older, Stronger Fish Could Increase Chance Of Collapse

In a study conducted by the California Cooperative Oceanic Fisheries Investigations, researchers found that fishing puts fish populations at greater risk of collapse. The risk is increased when the older, stronger, and larger fish of a particular species are removed through fishing. These fish are more likely to survive ecological change and more active in reproduction. The younger, weaker fish left behind are less capable

of surviving natural changes in the ecosystem. This can cause population fluctuations, which increases the risk of collapse. The 50-year long study, which was conducted in the California Current, looked at the larval abundance of both fished and non-fished species. The results indicate that fisheries need to be managed in a way that takes into account a certain age structure in the stock.

Source: *Study Urges Protection of Big Fish*, Environmental News Service (October 18, 2006) (on file with the LSGLP).

Groups Seek Ban On Bluefin Fishing

Two environmental groups, Earthjustice and Blue Ocean, filed suit against the federal government after rejection of their petition to close a portion of the Gulf of Mexico to fishing during bluefin spawning periods. The groups are concerned that overfishing will lead to a population collapse. However, federal fisheries managers argue that bluefin are already highly protected, pointing to the direct fishing ban for bluefin in U.S. waters to support their argument.

Source: *Environmental Groups Sue to End Bluefin Tuna Fishing in Gulf*, The Advocate (November 8, 2006) (on file with the LSGLP).

Invasive Snail Discovered In Gretna

Eight adult channeled apple snails and several egg masses were found in the Verret Canal. The snails, which grow up to four inches in diameter, devour aquatic plants and can cause serious destruction to aquatic habitats. The Verret Canal and surrounding water bodies will be surveyed in order to establish to extent of the infestation.

Source: *Channeled Apple Snail can Hurt Marine Life*, The Advocate (November 6, 2006) (on file with the LSGLP).

Final Boat Removed From Land In Alabama

The private Bush-Clinton Katrina fund gave \$1.6 million to help Alabama remove shrimp boats left stranded on land after Hurricane Katrina. Attempts were made to contact FEMA to help with the boat removal situation, but there was no timely response. The final boat was removed in September 2006. Hundreds of boats are still left on land in both Mississippi and Louisiana.

Source: Brian Kern, *Final Alabama Shrimp Boat Left Stranded by Katrina Rescued after going Around FEMA*, Seafood.com News (October 25, 2006) (on file with the LSGLP).

Wings Over Wetlands Focuses On Conservation

The Wings Over Wetlands project, which was launched on November 20, 2006, focuses on enhancing information and coordinating measures to conserve sites used by many threatened water birds. The project is the largest of its kind and includes all of Africa and Europe, Southwest Asia, the Middle East and Central Asian states, Greenland, and the Canadian Archipelago. The goal of the project is to conserve migratory water birds through the conservation of their habits, which, due to migration patterns, spans multiple countries.

Source: *Wings over Wetlands Project Takes Flight*, Environment News Source (November 27, 2006) (on file with the LSGLP).

Tropics the Center Of Biodiversity

A new study of bivalves, including clams, scallops, and oysters, show that the tropics both create more new species and preserve more old species than other parts of the world. The study, which tracked more than 150 bivalve lineages, found more than twice as many lineages started in the tropics than at higher latitudes. Additionally, while 107 varieties went extinct at higher latitudes, only 30 bivalve varieties went extinct in the tropics. The research team will now use the findings to argue for more conservation efforts for the area.

Source: *Biodiversity Created and Preserved in Tropics*, Environment News Service (October 6, 200) (on file with the LSGLP).

Dead Zone Encouraged By Fertilizers

In a study based on data gathered in 2001, scientists argue that the heavy use of fertilizers, which contain nitrogen and phosphorus, are encouraging the dead zone at the mouth of the Mississippi River. The nutrients are coming down the river faster than phytoplankton can consume them, resulting in the dead zone.

Source: *Phosphorus Found to be Another Culprit in Gulf of Mexico's 'Dead Zone,'* National Science Foundation (November 15, 2006) (on file with the LSGLP).

Number Of 'Dead Zones' Increases

United Nations experts have found that the number of dead zones found in seas and oceans throughout the world has risen more than one-third in the past two years. Blooms of phytoplankton, which feed off nutrients, cause dead zones. While nutrients occur naturally in water, these blooms are primarily caused by run off composed of fertilizer, sewage, animal waste, and fossil fuel burning. The phytoplankton die, sink to the bottom, and are consumed by bacteria. The bacteria use oxygen in the water, and in dead zones the oxygen use is so high that other organisms, including fish, oysters, and sea grass, cannot survive. While some of the dead zones only last part of the year, the dead zone found in the Gulf of Mexico lasts year round, being fed by fertilizer and nutrients released by the Mississippi River.

Source: John Heilprin, *U.N. Says Number of Ocean 'Dead Zones' Rise*, Environmental News Network (October 20, 2006) (on file with the LSGLP).

Louisiana Register

Emergency Rules – Department of Agriculture and Forestry, Office of the Commissioner Chloramphenicol in Crabs and Crabmeat – Testing and Sale

Because of the risks associated with the broad-spectrum antibiotic chloramphenicol, the commissioner has set regulations for crab and crabmeat sold in the state. This emergency rule sets out the number of samples that are to be taken from each batch, depending on the weight of the batch. Any person who brings crab or crabmeat into the state is required to test following the guidelines in this rule.

Chloramphenicol in Crabs and Crabmeat – Testing and Sale, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610emr.pdf>.

Emergency Rules – Department of Agriculture and Forestry, Office of the Commissioner
Chloramphenicol in Shrimp and Crawfish – Testing and Sale

European Union inspectors recently found chloramphenicol residue in shrimp and crawfish from China. Because of the health risks involved with chloramphenicol, the commissioner has adopted rules governing the testing of shrimp and crawfish. The sample necessary to take from each batch is based on batch weight. These rules are to be followed by anyone bringing shrimp or crawfish into the state.

Chloramphenicol in Shrimp and Crawfish – Testing and Sale, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610emr.pdf>.

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

Because of the risks associated with the broad-spectrum antibiotic fluoroquinolones, the commissioner has set regulations for seafood sold in the state. The FDA has not yet established a safe level, tolerance level, or safe concentration for fluoroquinolones. Therefore, the tolerance level is set at zero. Under the rule, seafood is defined as being any edible freshwater or saltwater fish or shellfish, whether whole, portioned, processed, and any product containing seafood. The emergency rule sets out guidelines for the sample necessary for testing and other requirements for testing. Anyone bringing seafood into the state must follow the guidelines.

Fluoroquinolones in Seafood, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610emr.pdf>.

Emergency Rules – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
2006 Commercial King Mackerel Season

The commercial king mackerel season will be closed from October 6, 2006 – June 30, 2007.

2006 Commercial King Mackerel Season, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610emr.pdf>.

Notice of Intent – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Coastwide Nutria Control Program

In this notice, the commission sets out guidelines for nutria control under the Coastwide Nutria Control Program. The goal of the program is to encourage the harvest of up to 400,000 nutria each year from coastal Louisiana. The incentive payment will be set by the Coastal Wetlands Planning, Protection, and Restoration Act Task Force.

Coastwide Nutria Control Program, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610NOI.pdf>.

Notice of Intent – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
Public Oyster Seed Grounds – Little Lake

This notice of intent authorizes the Secretary of the Department of Wildlife and Fisheries to take any all necessary steps to promulgate a final rule concerning the public oyster seed grounds.

Public Oyster Seed Grounds – Little Lake, 32 La. Reg. 10 (October 20, 2006). See: <http://www.doa.louisiana.gov/osr/reg/0610/0610NOI.pdf>.

Notice of Intent – Department of Wildlife and Fisheries, Office of Fisheries
Invasive Noxious Aquatic Plants

The Department of Wildlife and Fisheries intends to promulgate rules to control, eradicate, and prevent the spread or dissemination of all invasive noxious aquatic plants within the state. Under the rule proposed, no person will be able to import into Louisiana noxious plants listed without a permit issued by the Secretary of the Department of Wildlife and Fisheries or his designee.

Invasive Noxious Aquatic Plants, 32 La. Reg. 11 (November 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0611/0611NOI.pdf>.

Notice of Intent – Department of Wildlife and Fisheries, Wildlife and Fisheries Commission
White Lake Wetlands Conservation Area

The Department of Wildlife and Fisheries intends to promulgate a rule to use as the general framework for the public use of consumptive resources of the White Lake Wetlands Conservation Area for the 2006-2007 season.

White Lake Wetlands Conservation Area, 32 La. Reg. 11 (November 20, 2006). See:
<http://www.doa.louisiana.gov/osr/reg/0611/0611NOI.pdf>.

Federal Register

Rules and Regulations – 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

The National Marine Fisheries Service (NMFS) issued this final rule, which establishes a 10-year moratorium on issuance of Federal Gulf shrimp vessel permits and requires a royal red shrimp endorsement for those vessels with such shrimp. Additionally, some vessels selected by the NMFS will be required to carry observers and/or install an electronic logbook provided by NMFS.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico, Amendment 13, 71 Fed. Reg. 186, 56039 (September 26, 2006).

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 26

The National Marine Fisheries Service (NMFS) issued this final rule, which establishes an individual fishing quota program for commercial red snapper in the Gulf of Mexico. Participants will receive percentage shares of the commercial quota of red snapper based on specified historical landings criteria. The shares will be transferable.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26, 71 Fed. Reg. 225, 67447 (November 22, 2006).

Notice and Comment – Department of Commerce, National Oceanic and Atmospheric Administration

Sea Turtle Conservation; Activities Related to Fishing

The National Marine Fisheries Service (NMFS) is seeking public review and comment of support for the Strategy for Sea Turtle Conservation in Relation to Atlantic and Gulf of Mexico Fisheries. The goal of the comments is to ensure that NMFS has the most accurate and up-to-date scientific, commercial, and anecdotal information available. Comments should be sent to: Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, NMFS 1315 East-West Highway, Silver Spring, MD 20910, by January 8, 2007.

Sea Turtle Conservation; Activities Related to Fishing, 71 Fed. Reg. 216, 65473 (November 8, 2006).