

LOUISIANA COASTAL LAW

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BILLS PASSED IN THE 2019 REGULAR SESSION OF THE LOUISIANA LEGISLATURE AFFECTING COASTAL RESOURCE USE AND CONSERVATION

BY LOUISIANA SEA GRANT INTERNS

*Bills Passed in the 2019 Regular Session of the Louisiana Legislature
Affecting Coastal Resource Use and Conservation*

Fish, Fisheries, Oysters, and Aquaculture

Act 87

HB 120

Representative Ryan Bourriaque

The Act provides for a transfer of any money left in the Shrimp Trade Petition Account to the Shrimp Marketing and Promotion Fund. The money is then only allowed to be used for reasons outlined in the law for the Shrimp Marketing and Promotion Fund.

Act 144

HB 142

Representative Leopold

(Amends and reenacts R.S. 56:433.1(A)(1)). The Act does not change the substance of R.S. 56:433.1(A)(1), which covers oyster seed ground vessel permits. The amendments, however, do provide additional recognized methods of oyster harvesting in the permit process. If a fisherman is taking oysters for commercial purposes from the public natural reefs or the oyster seed grounds or reservations, the vessel must have an oyster seed ground vessel permit. These amendments provide that the cost of the permit is \$250 resident/\$1000 nonresident if a fisherman is using a single scraper, tongs, or hand removal to collect the oysters (previously, only single scraper vessels were eligible for this price category). The Act also adds the language “or any other legal method of harvest” to the \$500 resident/\$2000 nonresident permit category, which previously only included vessels that harvest oysters

using a double scraper. All revenue from purchased permits will go to the Public Oyster Seed Ground Development Account, R.S. 56:434.1.

Act 74

HB 355

Representative Gisclair

(Amends and reenacts R.S. 56:332(B), (F), and (H)).

This Act makes several changes to R.S. 56:332, which covers collection of crabs and related penalties. First, the amendments add the prohibition of keeping or selling of any immature female crabs to the prior restriction on collection of adult female crabs in the berry stage (carrying eggs or young attached to their abdomen). Such crabs must be returned unless it is an immature female crab in the premolt stage and is being held for processing as a soft-shell crab or is about to be sold to a processor for this purpose. The amendment provides that a legally licensed commercial crab fisherman may have the incidental take of immature female crabs as not to exceed five percent of the total number of crabs in his possession. To determine if the fisherman is within the incidental take limit, this Act provides for the process that will be used to determine if a crate is in violation. In order to determine if a violation has occurred, an enforcement agent will take a random sample of fifty crabs from each crate, or a group of crabs equivalent to one crate. Of each crate, if

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it is found that there are more than five percent of crabs in the specified stages, then the crate will be in violation. Any crabs that are in a work box, defined in R.S. 56:8, are not subject to this restriction while held on the vessel and the fisherman is actively fishing.

These amendments also address the theft of crab. The revised statute previously only addressed the theft of crab traps. Under the revisions, both the theft of a crab trap or the theft of crabs from within a crab trap are class four violations. In addition to those penalties assessed as a class four violation, the amendments provide for additional penalties. For the first violation, the license for the crab trap gear will be suspended or revoked for a year, beginning on the date of the conviction. No new license will be allowed to be issued during the suspension period. Additionally, during this period, the violator is allowed to be on a vessel actively commercially harvesting or processing crabs as long as the vessel is using a vessel monitoring system that is accessible to the department pursuant to R.S. 56:424.1(B). Anyone found to be in violation of these regulations will participate in a minimum of forty hours of community service. If possible, the hours will be made to be served by participating in the crab trap removal program or in a litter reduction community service program.

Under a second violation of the subsection, the violator's crab trap gear license will be suspended or revoked for three years beginning on the date of the conviction. No new license can be issued during this time. Consistent with the first violation, the violator may be on a vessel that has a monitoring system accessible to the department as described above. For the second violation, the violator will perform a minimum of ninety hours of community service, again either in the crab trap removal or litter reduction community service programs.

Under a third violation, the violator's gear license will be suspended or revoked for ten years from the date of the conviction, with no new license allowed to be issued during this time. For a third time violation, the violator is not allowed to be on any vessel commercially harvesting

or processing crabs. The violator will have to participate in a minimum of one hundred twenty hours of community service, served by either participating in removal of abandoned crab traps or litter reduction community service programs.

The next section of the amendments establish additional penalties associated with class four violations. With the first conviction of class four violation in this section, the violator will also perform forty hours of community service either by removing abandoned crab traps or litter removal community service program. Under a second conviction, in addition to class four violation penalties, the court will revoke the violator's license for one year, during which no new license shall be issued. The violator may be on a vessel that has crabs as long as the vessel is quipped with and using a monitoring system as mentioned above, but this monitoring system must be accessible to the Department of Wildlife and Fisheries pursuant to R.S. 56:424.1(B). The violator will also be sentenced to forty hours of community service, either removing abandoned crab traps or litter removal. Under a third conviction of class four violation, the violator's license will be suspended for three years, with no new license issued during that time. The violator may be present on a crab vessel pursuant to the terms above. The violator will have to perform ninety hours of community service in trap removal or litter reduction community service program. Lastly, under a fourth conviction of a class four violation, the violator's license will be revoked for ten years, during which no new license shall be issued to the violator. During this time, the violator may be present on a crab vessel pursuant to the terms above. The violator will perform one hundred twenty hours of community removing abandoned crab traps or litter.

Act 48

SB 65

Senator Lambert

(Amends and reenacts R.S. 56:332(K)). This Act clarifies that at least one escape ring must be located in the lower chamber, no farther than one mesh length from the trap floor, and two escape rings in the upper chamber of a crab trap flush with the baffle. Each crab trap shall have a minimum of three escape rings and must be placed on the vertical outside walls. The Act also adds that beginning on July 1, 2022, all escape rings in crab traps cannot not be farther than one mesh length from the corners of the trap.

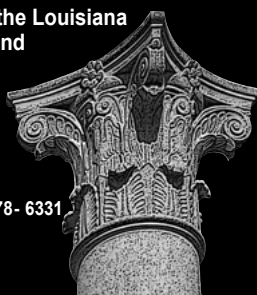
The Act adds that the rings attached to the trap can be made from a material of an equal or smaller diameter than the wire strands of the trap.

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Act 293

HB 86

Representative Brown and Senators Riser and Thompson

(Amends and reenacts R.S. 56:8(16)(b)). This Act adds a new class of persons that fits under the definition of “bona fide resident” for the purpose of purchasing a hunting or recreational fishing license. This new class includes anyone with a Louisiana driver’s license or special identification card who has served or was honorably discharged from the armed forces of the United States or who was part of a reserve component of the armed forces, including the National Guard.

Waters, Waterways, Drainage**Act 200**

SB 231

Senator Lambert

(Amends and reenacts R.S. 38:3071(B), 3072(A), and the introductory paragraph of 3074(A)). This Act applies to the Capital Area Groundwater Conservation District. The Act adds Ascension Parish to the groundwater conservation district (which also includes East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana). The Members of the board of commissioners are appointed by the governor and each appointment shall be submitted to the Senate for confirmation. These amendments remove the requirement that the board consist of seventeen members.

Minerals, Oil, & Gas**Act 350**

SB 115

Senator Ward and Representative Morris

(Amends and reenacts R.S. 31:164, 166, and 175). This Act changes the amount of undivided interest that co-owners must own in order to grant a valid mineral lease from 80% to 75% interest in the land. The same change has been made for the required amount to be owned in order to get a mineral servitude.

Act 193

SB 180

Senator Allain

(Amends and Reenacts R.S. 30: 86(E)(2) and (5) and the introductory paragraph of R.S. 30:93(A) and enacts R.S. 30:86(G) and 93(A)(4)). Under this amendment, money in the Oilfield Site Restoration Fund may now only be disbursed and expended upon the approval from the Oilfield Site Restoration Commission (the amount, not to exceed \$950,000 each fiscal year, has not changed). The amendment also provides for the disbursement and expense of funds for any costs that are associated with an emergency as defined by R.S. 30:6.1, unless it has been directed specifically by the commission not to expend money in the fund for response to such emergency. When an emergency is declared, the assistant secretary will notify the commission, which will meet within 90 days. At this meeting, the commission can decide if funds will be dispersed from the fund for the emergency. If funds are spent from the fund, the department must seek to recover those funds from the responsible party within six months of the initial expenditure.

Act 403

SB 242

Senator Allain

(Enacts R.S. 30:127(H)). This Act provides a provision for security interests on royalties from any gas and oil that is produced on state lands. The State Mineral and Energy Board may now include in any lease that is entered into by the state, state agency, or political subdivision after July 31, 2019, a clause that grants a continuing security interest for payment and performance of the obligation to pay any royalties or other sums of money that may be due under the lease. The state may subordinate this security interest in any amount that is in excess of the royalties and other sums, to the security interest of one or more of the lenders. The board shall submit the proposed clause to the House Committee on Natural Resources and Environment and the Senate Committee on natural Resources for review at least 30 days or more prior to entering into the lease in which they plan on using that clause.

Boards, Departments, Commissions, & Other Agency Matters

Act 139

HB 84

Representative White

(Amends and reenacts R.S. 34:851.32(A)(1), (B), and (C) and R.S. 56:10.2) This Act changes where the funds to the state of Louisiana from motorboats and sailboat's registration fees are deposited. Funds will continue to be credited to the Bond Security Redemption Fund; however, any remaining funds, after all due and payable obligations have been satisfied, will go to the Conservation Fund of the Louisiana Wildlife and Fisheries Commission. The amount that will go to this fund will be equal to the amount paid for fees for motorboat and sailboat registrations.

Revenues derived from the registration fees paid to the Conservation Fund will be made available for the purpose of providing funding for the administration and enforcement for the above provisions, or for any other purpose as determined by the Louisiana Wildlife and Fisheries Commission.

Additionally, any funds to the state of Louisiana that comes from fees paid for houseboat registration will also go to the Bond Security and Redemption Fund. The remaining funds in this account, after all due and payable obligations have been satisfied, will go to the Derelict Houseboat Fund Account. This amount will be equal to the amount obtained through fees for houseboat registration.

Finally, the amendments change the Derelict Houseboat Fund to a special statutorily dedicated fund account known as the Derelict Houseboat Fund Account. This Act removes the requirement that revenues of this account be subject to the same requirements as other revenues in the Conservation Fund mentioned earlier on in this Act. The Act adds that the money in the Derelict Houseboat Fund Account is now subject to legislative appropriation and will be labeled as fees and self-generated revenue, but only for the purpose of reporting in the areas of executive budget, supporting documents, and general appropriation bills.

Act 97

HB 125

Representative Lyons

(Amends and reenacts R.S. 30:2025(D)(1)). This Act provides for the changes in the enforcement of environmental violation. Prior to these amendments, the secretary could adopt regulations and rules establishing a program for an expedited enforcement for minor violations of the subtitle.

Under this Act, moderate violations may also now be handled the same way. The provisions of this section only apply to minor or moderate violations, resulting in an assessment, not to exceed \$3,000 per violation or an aggregation of \$5,000 per violator.

Act 378

HB 170

Representative Jones

(Amends and reenacts R.S. 40:1665.2(B)(2) and (4)). R.S. 40:1665.2 provides the for the financial security of surviving spouses and children of law enforcement officers. The Act adds cadets participating in the Louisiana State Police Training Academy on or after July 1, 2018, and cadets that are participating in the Department of Wildlife and Fisheries Enforcement Training Academy, on or after July 1, 2018, to the list of law enforcement officers that are eligible for the benefits provided in this statute.

Act 180

SB 30

Senator Ward

(Amends and reenacts R.S. 34:1221(A), 1223(A), and 1224 (A), and repeals Chapter 29 of Title 34 of the Louisiana revised Statutes of 1950, comprised of R.S. 34:2451 through 2458). This Act is relative to ports, harbors, and terminal districts. The number of members on the Greater Baton Rouge Port Commission has been changed from 15 to 17 members in order to add representation of Pointe Coupee Parish to the commission. The two new commissioners will be appointed by the Governor from a panel of six names submitted by the legislative delegation of the parish of Pointe Coupee.

Act 64

HB 67

Representative Gregory Miller

(Amends and reenacts R.S. 34:2472(A) and 2473(F) (3)). This Act amends the governing structure of the South Louisiana Port Commission. Prior to this amendment, the commission was governed by a president and vice-president. This Act changes the wording to provide for governance by a chairman and a vice-chairman.

Agriculture

Act 353

HB 106

Representative McFarland

(Amends and reenacts R.S. 3:3601(B)(2) and (3)). This Act expands the meaning of agricultural land to include forest and timber land, for the purpose of protecting these lands from diminution in value by providing certain safeguards as a remedy for the diminution that is caused by governmental entities. The Act also includes forest and timber operations in with the agricultural operations that need to be protected from any nuisance actions.

Disasters & Flooding

Act 151

HB 205

Representative Hilferty and Senators Appel and Bishop

(Amends and reenacts R.S. 38:330.12.1 and (A)). This Act renames the Non-Flood Protection Asset Management Authority to the Lakefront Management Authority. There are no other changes.

Wildlife Resources

Act 7

HB 123

Representative Hill

(Amends and reenacts R.S. 44:4(45)). This Act exempts information relative to certain activities associated with stock and breeding alligators under the Public Records Law. Under the list of exemptions that this chapter does not apply to, this Act adds information that is relative to activities that are associated to egg collection, stocking, captive breeding, or farming inventory of alligators. The prior exemption of information related to the shipment of alligators or alligator skins domestically, nationally, or internationally still remains.

Act 53

SB 100

Senators Allain and Peacock

(Amends and reenacts R.S. 56:116.1(B)(3) and to enact R.S. 56:116.1(D)(3) and (4)). This Act provides an exception to the taking of wild quadrupeds that allows for

the taking of outlaw quadrupeds on private property by means of an automatic loading or hand-operated repeating shotgun (generally, game birds and wild quadrupeds are not allowed to be taken in this manner). In addition, the Act adds that notwithstanding paragraph (B)(1) of the section, outlaw quadrupeds can be taken while riding or standing in a moving land vehicle as long as the person(s) are on private property.

Act 305

HB 269

Representative Zeringue and Senator Thompson

(Amends and reenacts R.S. 56:251(A)(2)(a)(i) and repeals R.S. 56:251(A)(2)(a)(ii)). This revised statute discusses the two different alligator hunting licenses that a resident or nonresident must carry with them. This Act expands the time when the license must be present on the hunter from just while they are hunting, to now include whenever the hunter is either hunting or also taking alligators. Additionally, the revisions removed the requirement that an assistant to the alligator hunter also carry a license.

Public Health

Act 372

HB 335

Representative Gisclair

(To enact R.S. 40:5.5.4) This Act requires that any restaurant that uses menus and sells these products, must display on the menu the country in which the particular seafood product came from, or at the least that the product was imported. This notice is required to be written in a size that is not smaller, and is of same shade and font as the seafood product that it goes with. Additionally, this notice must be right next to the listing of the item. The notice is allowed to be paper clipped to the menu if it is not listed directly on the menu, as long as it meets all of the font requirements listed above.

Restaurants that do not use menus as standard practice but sell these foreign products are allowed to post a sign to the main entrance of the restaurant that states that there are certain shrimp and crawfish being sold there that have been imported from outside of the United States. The requirements for the sign are that it is at least eighteen inches tall and eighteen inches wide. The sign must be written in English and the letters can be no smaller than one

inch. The placement of the sign must be an open area and in a conspicuous position, and cannot be less than thirty-six inches from the floor, in order to be visible to all guests.

Any violation of this will be considered a violation of the state sanitary code. The Louisiana Department of Health will communicate all of these rules to be in accordance with the Administrative Procedure Act.

For a more detailed discussion of this Act, please see the article on it in this newsletter.



LOUISIANA WATERSHED INITIATIVE

BY: MATTHEW GREENE

In 2016, Louisiana experienced historic flooding that sent shockwaves through every level of government and exposed weaknesses in how the state dealt with flood management. The main flooding occurred over a three-day period in August 2016. The Weather Channel estimated the floods produced four trillion gallons of water in just three days, enough to fill six million Olympic-sized swimming pools.¹ Louisiana Economic Development issued a report on the economic impact of the flood and calculated \$8.7 billion in damages as a result of the flooding.²

In response, Louisiana Governor John Bel Edwards sought to end the reactive model of flood relief and create a proactive approach to flood mitigation. This approach started with the development of hydraulic and hydrologic models³ to predict water movement along with the development of watershed coalitions. A watershed is simply the “land that water flows across or under on its way to a stream, river, or lake.”⁴ Having a watershed coalition makes sense because water does not have political boundaries -- it flows across parish and state lines. To achieve sensible flood mitigation decisions, all entities within each watershed have to be on the same page.

After the flooding in 2016, Governor Edwards encouraged state agencies to coordinate programs with flood mitigation as the primary goal.⁵ Soon thereafter, the Coastal Protection and Restoration Authority (CPRA) published their “Flood Risk and Resilience Program” framework.⁶ Around the same time, parish and state entities worked together to develop watershed coalitions throughout Louisiana.⁷ In 2017, the Louisiana Office of Community Development (OCD) and the Department of Transportation and Development (DOTD) started to develop models of the Amite Watershed.⁸

In May 2018, Gov. Edwards issued Executive Order JBE18-16, which created the Council on Watershed Management (“the Council”).⁹ The Council included multiple state agencies¹⁰ that were tasked with the goal of achieving “the development and implementation of a statewide, watershed-based floodplain management program through close collaboration and coordination” with state agencies.¹¹ In August 2018, Governor Edwards announced the launch of the Louisiana Watershed Initiative, which was described as a “continuation of the planning, coordination, and collaboration across various federal, state, and local agencies in direct response to the historic flooding events of March and August 2016.”¹² The Louisiana Watershed Initiative is the Council’s “programmatic arm” and works with local governments to establish ways in which those governments can coordinate efforts within their own watershed region.¹³ This long-term strategic approach to flood mitigation is a clear pivot from business as usual in Louisiana.¹⁴ Instead of injecting capital into uncoordinated projects and retroactively addressing flood damage in Louisiana, the Watershed Initiative proactively mitigates flood risk through the use of predictive models that produce objective information in order to make organized efforts to fund flood mitigation projects throughout the State of Louisiana.

On the Louisiana Watershed Initiative’s website, the Council has listed six key areas¹⁵ to focus on long-term improvement in the state of Louisiana. First, the Council looks to develop hydraulic and hydrologic models in order to provide more objective information to base decisions on.¹⁶ Second, the Council aims to have active engagement from all entities involved in the process. Third, the Council wants individual jurisdictions to create standards that are in line with Louisiana’s objectives. Fourth, the Council plans to create and implement a framework for the efficient allocation of flood mitigation funds now and in the future. Fifth, the Council is determined to equip each watershed region with the capability and skills to be able to address issues such as floodplain policy development, flood protection, or waterway maintenance. And finally, the Council aims for cohesion amongst watershed regions and state entities.¹⁷

A comprehensive overhaul of the flood mitigation system in Louisiana is an expensive endeavor. The initial funding for this project will come from the federal government. As part of the federal Bipartisan Budget Act of 2018, the U.S. Department of Housing and Urban Development (HUD) allocated \$1.2 billion to Louisiana in order to advance Louisiana’s flood mitigation efforts.¹⁸ The \$1.2 billion allocation will fund the collection of data, development

of hydraulic and hydrologic models, and future flood-protection projects.¹⁹ HUD did issue guidelines for the allocated money; most importantly, the state is required to spend at least fifty percent of the funds on the ten parishes²⁰ designated as the highest impacted areas of the 2016 floods.²¹

The federal guidelines also required that Louisiana submit an action plan by February 3, 2020 in response to the guidelines HUD imposed on the \$1.2 billion allocation.²² In preparation for the action plan submission, the Louisiana OCD held four public hearings in 2019, two in September and two in October.²³ On September 25, 2019, the Council on Watershed Management unanimously approved of Louisiana's draft action plan.²⁴ The HUD mandated public comment period for the proposed action plan began on October 16, 2019 and ends on November 29, 2019.²⁵

Louisiana's draft action plan lays out a proposed budget for the \$1.2 billion in funding. Forty-seven percent of the funding will be allocated to local and regional watershed projects and programs, twenty-seven percent will be allocated to state projects and programs, and twelve percent will be allocated to watershed monitoring, mapping, and modeling. The remaining fourteen percent of the budget will go to non-federal cost share assistance, administrative costs, and local assistance.²⁶ Within this budget structure Louisiana will meet the HUD requirement of fifty percent, or \$606,958,500, allocation to the most impacted or distressed areas associated with the 2016 floods.²⁷

In a committee meeting at the Louisiana State Capitol on September 4, 2019, Pat Forbes, executive director of the Louisiana OCD, laid out the potential action plan timeline. Forbes and the OCD plan on having a final action plan submitted to HUD at some point during 2019, even though the deadline for the action plan submission is not until February 3, 2020.²⁸ After the submission of the action plan, HUD will have a sixty-day review period. Optimistically, Louisiana and the federal government will have a \$1.2 billion grant agreement executed by the spring of 2020, and a line of credit established by summer of 2020.²⁹

¹ <https://weather.com/news/news/louisiana-floods-by-the-numbers>

² http://gov.louisiana.gov/assets/docs/RestoreLA/SupportingDocs/Meeting-9-28-16/2016-August-Flood-Economic-Impact-Report_09-01-16.pdf

³ *Hydraulics* is defined as the study of the mechanical behavior of water in physical systems. In engineering terms, hydraulics is the analysis of how surface, and/or surface flows move from one point to the next. Hydraulic analysis is used to evaluate flow in rivers, streams, storm drain networks, water aqueducts, water lines, sewers, etc.

Hydrology is defined as the circulation of water and its constituents through the hydrologic cycle, or the quantification of flows that are ultimately produced by precipitation. It deals with precipitation,

evaporation, infiltration, groundwater flow, surface runoff, streamflow, and the transport of substances dissolved or suspending in flowing water. In the field of storm water engineering, hydrology typically refers to the rate of precipitation, quantity of water, rate of surface runoff and timing of its arrival at a point of interest.

⁴ <http://www.watershedcoalition.org/watershed-program-overview/what-is-a-watershed/>

⁵ <https://www.watershed.la.gov/about>

⁶ <https://coastal.la.gov/our-plan/2017-coastal-master-plan/flood-risk-and-resilience-program/>

⁷ <https://www.watershed.la.gov/about>

⁸ *Id.*

⁹ <https://www.doa.la.gov/osr/other/JBE%202018/JBE18-16.html>

¹⁰ Office of Community Development (OCD), Coastal Protection and Restoration Authority (CPRA), Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), Department of Transportation and Development (DOTD), Department of Wildlife and Fisheries (DWF)

¹¹ <https://www.doa.la.gov/osr/other/JBE%202018/JBE18-16.html>

¹² <http://gov.louisiana.gov/index.cfm/newsroom/detail/1566>

¹³ <https://www.watershed.la.gov/news/press-releases/hud-officials-issue-guidance-for-louisianas-1-2-billion-flood-mitigation-allocation>

¹⁴ <https://www.brproud.com/news/local-news/gov-edwards-unveils-the-states-watershed-initiative/>

¹⁵ <https://watershed.la.gov/assets/docs/LWI-Vision-White-Paper-9-6-19.pdf>

¹⁶ Although there is no indication that decisions "must" be based on these models, the Louisiana Watershed Initiative website says they plan to use the models for land use, policy decision making, and project evaluation.

¹⁷ <https://watershed.la.gov/assets/docs/LWI-Vision-White-Paper-9-6-19.pdf>

¹⁸ <https://www.watershed.la.gov/news/press-releases/hud-officials-issue-guidance-for-louisianas-1-2-billion-flood-mitigation-allocation>

¹⁹ *Id.*

²⁰ Acadia, Ascension, East Baton Rouge, Lafayette, Livingston, Ouachita, St. Tammany, Tangipahoa, Vermillion, and Washington.

²¹ <https://files.hudexchange.info/resources/documents/FR-6109-N-02-CDBG-Mitigation-Notice.pdf>

²² <https://www.watershed.la.gov/news/press-releases/hud-officials-issue-guidance-for-louisianas-1-2-billion-flood-mitigation-allocation>

²³ <https://www.watershed.la.gov/news/press-releases/state-announces-public-hearings-seeks-public-input-on-plan-to-spend-1-2-billion-in-flood-mitigation-funds>

²⁴ <https://www.watershed.la.gov/news/press-releases/state-posts-draft-action-plan-for-spending-1-2-billion-in-flood-mitigation-funds>

²⁵ <https://www.watershed.la.gov/news/press-releases/state-accepting-public-comments-on-proposed-action-plan-for-spending-1-2-billion-in-flood-mitigation-funds>

²⁶ <https://www.doa.la.gov/OCDDRU/Action%20Plan%20Amendments/Mitigation/2019-09-25%20CDBG-MITAP-ACTION%20PLAN%20Posted.pdf>

²⁷ *Id.*

²⁸ file:///Users/LSGStudent/Downloads/2019-09-04_CPRA_FEMA_AGCfinal_-_Pat_Forbes.pdf

²⁹ *Id.*



NEW RESTAURANT DISCLOSURE LAW: Act 372

Governor John Bel Edwards signed HB 335 into law on June 19, 2019, enrolling it as Act 372.¹ Act 372 requires any food service establishment that serves imported shrimp or crawfish to post a notice that informs patrons that the seafood has been imported from a foreign place.² According to the bill, “the state recognizes that serious risks to public health may be posed by antibiotics, radiation and numerous toxins found in seafood products... that originate outside the United States.”³ The Louisiana Legislature states that its intent with this bill is to protect Louisiana consumers from potential health risks associated with seafood products that are imported from foreign countries.⁴

LSU Research on Foreign Seafood

In response to the increasing concern of risks associated with foreign seafood, Louisiana Sea Grant and LSU AgCenter’s fisheries specialist, Dr. Julie Lively, and LSU doctoral student, Murshida Khan, conducted research into antibiotic and microbial residue on imported shrimp.⁶ Khan’s research demonstrated antibiotic and microbial residue was found on imported shrimp purchased at various markets and grocery stores in Baton Rouge during winter 2016 and spring 2017.⁷ For antibiotic residue tests, thirty of the forty-two samples were positive for nitrofurantoin, two for malachite green, three for oxytetracycline and seven for fluoroquinolone.⁷ Nitrofurantoin, oxytetracycline and fluoroquinolone are antibiotics. Malachite green is an antimicrobial used in aquaculture.⁸

Khan also discovered sulfite residue on all imported shrimp samples, with the exception of those from Ecuador.⁹ Sulfite residue was below U.S. Food and Drug Administration limits, but it was not included on the packages’ ingredient lists as required by law.¹⁰ “While we knew a common reason for import rejection at customs is antibiotic contamination, we never expected to find this many samples readily available for purchase in Baton Rouge to test positive,” said Lively. “It was also really concerning for anyone with a sulfite allergy or health trigger that most of the shrimp was exposed to sulfite at some point, but not labeled.”

More than 90 percent of the seafood consumed in the United States is imported from other countries.¹¹ Shrimp is the leading fresh or frozen product imported to the U.S., accounting for about 33 percent of all seafood imports by weight.¹² The average American eats 4.4 pounds of shrimp and a total of 16 pounds of seafood annually.¹³

Application and Enforcement of Act 372

In keeping with the Legislative intent to protect consumers against risks, Act 372 applies to “food service establishments,” which is further defined in Louisiana Revised Statute 40:5.5.¹⁴ Under this Statute, a food service establishment is considered to be any business that “prepares food for human consumption, either for individual service or for a group of people, whether consumption is on or off the premise and regardless if there is a charge for the food.”¹⁵ The following are not considered “food establishments”:

- (1) private homes, for food individually served or prepared for consumption;
- (2) private clubs, for food prepared for exclusive member consumption;
- (3) religious or charitable food sales;
- (4) an establishment that heats or prepares boudin or sausage;
- (5) a bar or lounge that serves beverages only;
- (6) temporary and seasonable establishments;
- (7) and bed and breakfast operations.¹⁶

In order to comply with Act 372, food service establishments that use menus must put notice of the use of imported shrimp or crawfish on the menu.¹⁷ The notice must:

- (1) include the country or origin of that particular seafood product, or at least note that the product was imported;
- (2) be the same size or larger, and in the same shade and font, as the product listing on the menu; and
- (3) be posted directly next to the listing of the item.¹⁸

This notice may be attached by a paper-clip onto the menu, rather than physically printed onto the menu itself, as long as all of the requirements relating to content, proximity to the menu item, and font size are met.¹⁹

Food service establishments that do not use menus must post the notice on a sign at their main entrance.²⁰ This notice must:

- (1) state that there are certain shrimp and crawfish sold within that have been imported from outside of the United States;
- (2) be at least 18 inches tall, and 18 inches wide;
- (3) be written in English with letters no smaller than on inch;
- (4) be placed in an open area;
- (5) be in a conspicuous position; and
- (6) cannot be less than 36 inches from the floor, in order to be visible to all guests.²¹

Violations of Act 372 will be enforced by the Louisiana Department of Health and will be treated as a violation of the state sanitary code.²² Enforcement of Act 372 began on September 1, 2019, to allow food service establishments time to obtain updated menus.²³

¹ Louisiana State Legislature, <http://legis.la.gov/legis/BillInfo.aspx?i=236118> (last visited Sep. 18, 2019).

² H.B. 335, 2019 Leg., Reg. Sess. (La. 2019).

³ H.B. 335, 2019 Leg., Reg. Sess. (La. 2019).

⁴ *Id.*

⁵ Murshida Khan, *Quality of United States and Bangladesh Shrimp Due to Growth and Post-Harvest Practices*, (2018), https://eos.ucs.uri.edu/seagrant_Linked_Documents/lsu/Khan_diss.pdf.

⁶ *Id.* at xi.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ H.B. 335, 2019 Leg., Reg. Sess. (La. 2019).

¹⁵ LA. STAT. ANN. § 40:5.5 (2004).

¹⁶ *Id.*

¹⁷ H.B. 335, 2019 Leg., Reg. Sess. (La. 2019).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Louisiana Sea Grant Law and Policy Program, Act 372: *Restaurant Notice of Foreign Seafood*, Louisiana Direct Seafood (Jul. 10, 2019) <https://louisianadirectseafood.com/act-372-restaurant-notice-of-foreign-seafood/>



TWO LSU STUDENTS NAMED KNAUSS FELLOWSHIP FINALISTS

Connor Fagan, a May 2019 graduate of the LSU Paul M. Hebert Law Center and a former Louisiana Sea Grant legal intern, is one of two Louisiana State University students named a 2020 Knauss Fellowship finalist. The other student is Lauren Bonatakis, a Master of Science student in the School of Renewable Natural Resources.



Connor Fagan

“In 2005, the muddy 17th Street Canal poured into my home,” said Fagan. “At that time, the causes of Hurricane Katrina were foreign to me, but the societal costs to the City of New Orleans were clear even then. It was not until five years later that I learned

about climate change, sea level rise and warming induced tropical depressions. As a New Orleanian, environmental policy is personal to me.”

During his junior year at Rhodes College in Tennessee, Fagan worked for Memphis Area Legal Services where he learned firsthand how federal housing and environmental laws impact communities. While completing his Bachelor of Arts degree at Rhodes, Fagan earned an environmental minor.

“In my final year at Rhodes College, I worked as a teaching intern with the Teton Science Schools in Jackson Hole, Wyoming,” he said. “There, I infused environmental science into camping trips in Yellowstone National Park where I led Baltimore high-schoolers, many of whom had never been outside of Baltimore before. After being blown away by the Tetons and their weeks of place-based learning, many students wrote in their journals that they wanted to be scientists.

“My path to applying for the Knauss Fellowship has been filled with these and many other lessons. Through learning from these moments, I have become a multifaceted researcher, policy advocate and teacher in my own right. I aim to continue to do so in Washington,” he added.

Last summer, Fagan sat the Colorado Bar Exam, which is accepted in the District of Columbia. He then worked as a law clerk with Van Ness Feldman, an environment/energy firm in Washington, D.C., before he becomes a Knauss Fellow in February 2020.

Sponsored by the National Sea Grant College Program, the John A. Knauss Fellowship matches graduate students with an interest in ocean and coastal resources and national policy affecting those resources with hosts in federal legislative or executive branch offices for one year. In November, finalists traveled to Washington, D.C., to determine in which offices they will work. Fagan will work at the Marine Mammal Commission. Fellowships will begin Feb. 1, 2020.

Fellowship applications are submitted through local state Sea Grant programs – such as Louisiana Sea Grant.



ANNOUNCEMENTS

The Louisiana Sea Grant Law & Policy Program is in the process of collecting law student resumes to interview for our 2020 Law Student Intern positions. If you know of a law student who is interested in working for us, have them contact Melissa Daigle at mtrosc2@lsu.edu. Our interns can earn course credit or an hourly wage and work on a wide range of coastal and environmental topics.

Applications for the Knauss Fellowship are due February 21, 2020. This fellowship is designed for students interested in marine and coastal issues and enrolled in a master's, doctoral, or professional graduate degree program. It provides an opportunity for a unique one-year experience in the legislative or executive branch of the federal government in Washington, D.C. For more information, contact Niki Pace at nlpace@lsu.edu.

Louisiana Sea Grant would like to congratulate all prior legal interns that graduated in May of 2019. We wish you all the best as you begin your careers!

LCL E-mail Update Service

The Louisiana Sea Grant Law & Policy Program disseminates an e-mail/web-based update to our biannual newsletter four times a year. These updates cover environmental law news relevant to the LCL's audience, summaries of recently introduced environmental legislation and regulations and recent court decisions. To subscribe to the LCL E-mail Update Service, send an e-mail to mtrosc2@lsu.edu.

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