

## Protection of Shipwrecks in Louisiana and Federal Waters

by **Ryan M. Seidemann**

### Introduction

Recently, the Louisiana Sea Grant Legal Program (LSGLP) was presented with a question regarding the rights of salvors to shipwrecks. This request for information, as well as the recent interest of other Sea Grant programs in shipwrecks<sup>1</sup> has prompted LSGLP to examine federal law regarding shipwreck protection. Additionally, because of the fact that the only known colonial period shipwreck in Louisiana waters was discovered by a fisherman,<sup>2</sup> a consideration of Louisiana law on the protection of shipwrecks seems prudent.

### State Waters

Shipwrecks located on the bottoms of state water bodies are subject to the control of the federal government under the Abandoned Shipwrecks Act of 1987 (ASA).<sup>3</sup> Briefly, the ASA vests all property interests in abandoned shipwrecks within state waters in the United States.<sup>4</sup> Congress has transferred those property rights to the individual states.<sup>5</sup> Individuals that locate such resources in Louisiana are urged to contact the State Historic Preservation Officer with information.<sup>6</sup> The Louisiana legal scheme,<sup>7</sup> established pursuant to the authority vested in the State under the ASA, makes it unlawful for private individuals to disturb such resources.<sup>8</sup>

### Federal Waters

Compared to the protection afforded to shipwrecks and other archaeological resources located in state waters, the protection of such resources found in federal waters is less clear. Nevertheless, several pieces of legislation may help to protect such sunken resources: the National Historic Preservation Act (NHPA), the National Monuments Act (NMA), the Marine Sanctuaries Act (MSA), and the Archaeological Resources Protection Act (ARPA).

Under the NHPA, 16 U.S.C. 470 *et seq.*, if a shipwreck is a known site, it may be listed on the National Register of Historic Places (National Register). If listed on the National Register, a salvor could assert no "finders-keepers" property interest in the wreck. Under the NMA, 16 U.S.C. 433, any individual "who shall appropriate, excavate, injure, or destroy a historic or prehistoric ruin or monument, or object of antiquity" located on land owned or controlled by the United States government (without permission) shall face criminal charges. It is unclear, under the language of this statute, if federal water bottoms are included in the term "land." It is possible that this law may apply to sunken vessels, but due to the ambiguity of the term "land," it is not likely. Under the MSA, 16 U.S.C. 1433 *et seq.*, if the area in question is located in a marine sanctuary, the

federal government holds title to all archaeological remains on the ocean floor. No "finders-keepers" property interest could be asserted to archaeological remains on the ocean floor in these areas. Under ARPA, 16 U.S.C. 470 *et seq.*, archaeological resources located on land belonging to the United States government are protected by criminal and civil penalties. This law has been applied to the protection of shipwrecks in the case of *Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel*.<sup>9</sup> However, if a wreck is located on the Outer Continental Shelf, ARPA does not apply (16 U.S.C. 470bb). Fines for violations of this statute may be as much as \$10,000. Imprisonment for up to one year is also a possibility for a violation of ARPA. Multiple or substantial violations can result in fines of up to \$100,000.

In addition to these legislative protections of shipwrecks, several other protections have been created jurisprudentially in recent years. These cases can be divided into two categories: property assertions by sovereign nations and property assertions by insurance companies. In the recent case of *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel or Vessels*,<sup>10</sup> the Kingdom of Spain filed a claim against a salvage company in Virginia, asserting ownership over two vessels, one which sank in 1750 and one in 1802. Although the court found that Spain

had expressly abandoned the 1750 wreck, the 1802 wreck had not been abandoned. This ruling gave title to the 1802 wreck to Spain, thus costing Sea Hunt the fruits of their salvage operations and reducing their take to a salvage fee.

There are several examples of cases involving insurance companies with prior property interests in sunken vessels. The basic scenario typically involves a nineteenth or twentieth century wreck that had been insured. When the ship went down, the insurance company paid on the policy held by the then-owners of the ship. By subrogation, the insurance company then becomes owner of the ship and/or its cargo. When the ship is later discovered by salvors, the insurance company files an ownership claim against the salvors. Such claims have been successful in the recent past. In *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co.*,<sup>11</sup> the court held that the insurance companies involved had not abandoned their interests in the gold aboard the wrecked vessel worth approximately one billion dollars. Although this case did not go so far as to award the cargo to the insurance companies, it recognized their property interest in the cargo of a 135-year old shipwreck. The case was remanded for ultimate decision as to the disposition of the cargo. Similar cases have seen agreements reached between the insurance companies and the salvors, allowing salvage work to proceed.<sup>12</sup> The only way that an insurance company or a sovereign nation can lose ownership in a shipwrecked vessel is by express abandonment.<sup>13</sup>

### Conclusion

Within Louisiana's state waters, the protection of the historic integrity of shipwrecks from would-be salvors is absolute. All such work must be done with State approval and permits. However, the vague scope of the protections for such resources in federal waters presents a situation whereby archaeological resources may not be afforded the protection they require. "The archaeological record, that is, *in situ*<sup>14</sup> archaeological materials and sites, archaeological collections, records and reports, is irreplaceable."<sup>15</sup> This irreplaceable resource constitutes a common link to humanity's past and must be carefully protected for the knowledge and understanding of future generations. Congress should seriously consider promulgating legislation that protects archaeological resources in federal waters to the extent that the ASA protects them in state waters.

<sup>1</sup> See e.g., *Wisconsin's Great Lakes Shipwrecks*, <http://seagrant.wisc.edu/shipwrecks> for information on the Wisconsin Sea Grant's recent support of underwater archaeology.

<sup>2</sup> In 1979, a Texas shrimper, trawling off the coast of Cameron Parish, Louisiana, identified several copper ingots in his nets. This find led to the ultimate discovery and excavation of the 1766 wreck of the Spanish merchant vessel, El Nuevo Constante. Charles E. Pearson and Paul E. Hoffman, *The Last Voyage of El Nuevo Constante: The Wreck and Recovery of and Eighteenth-Century Spanish Ship Off the*

*Louisiana Coast* xv (Louisiana State University Press 1995).

<sup>3</sup> 43 U.S.C. 2101-2106. Other submerged archaeological resources on state water bottoms are covered by La. R.S. 41:1604. This is important because, due to the rising sea level along the Gulf of Mexico coast since the last Ice Age, many Native American terrestrial sites are now submerged.

<sup>4</sup> 43 U.S.C. 2105(a).

<sup>5</sup> 43 U.S.C. 2105(c).

<sup>6</sup> Jason R. Harris, *The Protection of Sunken Warships as Gravesites at Sea*, 7 Ocean & Coastal L.J. 75 (2001).

<sup>7</sup> La R.S. 41:1604(9) and 1605.

<sup>8</sup> La. R.S. 41:1605(B). This also applies to agencies and political subdivisions of the State. Such disturbance can only occur when permitted by the Secretary of the Department of Culture, Recreation and Tourism.

<sup>9</sup> 568 F.Supp. 1562, aff'd. 758 F.2d 1511 (1983).

<sup>10</sup> 221 F.3d 634 (2000).

<sup>11</sup> 974 F.2d 450 (1992)

<sup>12</sup> See e.g., *Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be the "Lady Elgin,"* 755 F.Supp. 213 (1991).

<sup>13</sup> *Zych*, 755 F. Supp. at 214. Abandonment must be specifically and expressly stated. Sea Hunt, *supra*, n.9 at 644.

<sup>14</sup> *In situ* means in its original position. This typically refers to the original location of an item found archaeologically in the ground or on the sea bed.

<sup>15</sup> Society for American Archaeology, *Principals of Archaeological Ethics, Principle No. 1: Stewardship*. <http://www.saa.org/Aboutsaa/Ethics/prethic.html>, accessed Oct. 25,

## **History of the Wax Lake Controversy**

**by M. Blake Kramer**

Louisiana Sea Grant Legal Program is currently following a dispute that has arisen between the State of Louisiana and Miami Corporation over the ownership of

the bed of Wax Lake. In the current controversy, Miami Corporation claims Wax Lake as holder of a title deed, and the State of Louisiana claims Wax

Lake under Constitutional and Civil Code authority.

Wax Lake was omitted from the first surveys by the U.S. Deputy Surveyor.<sup>1</sup> The surveys

were protracted over the Wax Lake area with the entire region being designated as nothing but sea marsh.<sup>2</sup> This omission led to the land encompassing Wax Lake being patented out by the State in 1901 with no mention of any navigable water bodies. The land was and later sold to the Miami Corporation.

Over the years, Wax Lake has undergone major physical changes, mostly due to accretions that have built up in several locations along the lake. These accretions are largely the result of the dredging of the Wax Lake Outlet Channel through the middle of the lake itself.<sup>3</sup> These accretions, now claimed by Miami Corporation, have become prime spots for hunting and fishing, and several camps have been constructed on them.<sup>4</sup> These accretions are a major source of the current controversy. The State holds the position that landowners, such as Miami Corporation in this situation, have no alluvial rights, so the accretions in question do not become the property of the adjacent riparian landowner.<sup>5</sup>

It is a widely accepted rule in Louisiana that the state holds ownership of the bottoms of all navigable water bodies, including lakes. The ownership of these lake bottoms up to the mean high-water mark was acquired by the State of Louisiana by way of its inherent sovereignty when it was admitted into the Union by the Congressional Act of 1812.<sup>7</sup> State ownership of the beds of navigable lakes has been affirmed by Louisiana jurisprudence and codified in Article IX, Section Three of the Louisiana Constitution, Article 450 of the Civil Code, and Revised Statutes 9:1101, 9:1107-1109, and 41:1702.<sup>8</sup>

For this ownership to be lost to private parties, specific events must occur, especially in cases where the State might seek to sell or otherwise alienate navigable water bottoms to another party. Paragraph Three of Article IX of the Louisiana Constitution adopted in 1921 states, “[t]he legislature shall neither alienate

nor authorize the alienation of the bed of a navigable water body, except for the purposes of reclamation by the riparian owner to recover land lost through erosion.”<sup>9</sup> The constitutional prohibition strengthened existing Louisiana policy embodied in the Civil Code, Revised Statutes, and judicial decisions. Any attempted alienations of public property before 1921 would have had to expressly overrule existing law or be otherwise exempt from it. The Constitutional provisions of 1921 absolutely prohibits the legislature and its agents from alienating navigable water bottoms except in limited instances.

Thus under the current law, any attempted alienation of a



navigable lake bottom must be done with the underlying purpose of allowing a riparian owner to reclaim eroded lands. Any time the State alienates a piece of land, navigable water bottoms that happen to lie on land included in the transaction must be excluded from the transfer unless the legislature was specifically aware of its existence and meant to alienate it for the reclamation purposes of Article IX of the Louisiana Constitution. The legislative intent required by the Louisiana Constitution makes it impossible for the legislature to accidentally alienate a navigable water bottom. Before the prohibitions of Article IX of the 1921 Constitution, the Public Trust Doctrine embodied in the Civil Code, Revised Statutes, and court decisions would seem to have

required the express intent to override the statutory prohibitions protecting public trust property. Such express intent is lacking in the transfer of the land encompassing Wax Lake.

The policy reasons for holding this view become even more obvious when examined in light of the Public Trust Doctrine. Generally presented, the doctrine states that natural resources are to be considered as held in trust for the people of the state so that they may use and enjoy them free from obstruction or interference.<sup>10</sup> This includes the right of the public to enjoy each of these public trust resources for public purposes. Navigable water bottoms are included among public trust lands.<sup>11</sup>

To concede Miami Corporation ownership of the Wax Lake bed will be interpreted by many as an alienation of public trust lands without legislative authorization and without the specific purpose required by the legislature in violation of the Louisiana Constitution.<sup>12</sup> The resolution of this issue has serious implications for the State's management of public trust land, for the public's right of access to public trust land, and for the effect of the Constitutional provisions designed to protect the public's interest in Louisiana's natural resources.

<sup>1</sup> Charles St. Romain, Chief of Titles and Surveys, personal communication. July 25, 2002.

<sup>2</sup> *Id.*

<sup>3</sup> Letter from Bobby M. Freyou, Chief of Titles and Records Section, to Oray Savior. November 3, 1982.

<sup>4</sup> Letter from Roger G. Vincent, Jr., Miami Corporation, to L.J. Louviere. September 22, 1994.

<sup>5</sup> *Esso Standard Oil Company v. Jones*, 233 La. 915 (1957); *Amerada Petroleum Corp. v. Case*, 210 La. 630 (1946).

<sup>6</sup> E.g., La. Civil Code Art. 450, ¶ 2.

<sup>7</sup> The Act states, “. . . the river

Mississippi and the navigable . . . waters leading into the same, and into the Gulf of Mexico, shall be common highways, and for ever free . . .”

<sup>8</sup> E.g., *State v. Bozeman*, 156 La. 635 (1924).

<sup>9</sup> La.Const. Art. IX, ¶ 3.

<sup>10</sup> *Save Ourselves, Inc. v. La. Environmental Control Commission*, 452 So.2d 1152 (La. 1984). See also James G. Wilkins & Michael Wascom, *The Public Trust Doctrine in Louisiana*, 52 La. L. Rev. 861, 862 (1992).

<sup>11</sup> Civil Code Article 450 clearly

lists navigable water bottoms among those resources to be held in the public trust.

<sup>12</sup> This is the “reclamation” referred to in La. Const. Art. IX, ¶ 3.

## Draft Code of Conduct for Responsible Aquaculture by Marcelle C. Shreve

“Aquaculture is the cultivation of aquatic animals and plants in controlled or selected environments for commercial, recreational, or public purposes.”<sup>1</sup> According to the National Aquaculture Act of 1980 (NAA), “it is in the national interest, and it is the national policy, to encourage the development of aquaculture in the U.S.”<sup>2</sup> While the Department of Agriculture is the lead agency, the Act also charges the Departments of the Interior and Commerce with implementing the National Aquaculture Development Plan.<sup>3</sup> With this congressional mandate, the Department of Commerce (DOC) has created a vision and mission for U.S. aquaculture which entails assisting “in the development of a highly competitive, sustainable aquaculture industry in the U.S. that will meet growing consumer demand for aquatic foods and products that are of high quality, safe, competitively priced and are produced in an environmentally responsible manner with maximum opportunity for profitability in all sectors of the industry.”<sup>4</sup> One of the objectives of this mission is to create a Code of Conduct (hereinafter Code) for responsible aquaculture in the U.S. Exclusive Economic Zone by 2002.<sup>5</sup>

On August 23, 2002, the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) under the DOC, released the Draft Code of Conduct (hereinafter the Draft Code) and made it available on the NMFS web site with a request for public comments.<sup>6</sup> While creating the draft, NMFS

petitioned for assistance the various Sea Grant college programs; federal and state agencies; nongovernmental organizations; and other partners. Also, six regional workshops were held in 2000 where stakeholders provided their input. The Draft Code was also influenced by the Code of Conduct for Responsible Fisheries of the United Nations Food and Agriculture Organization in 1995, and the Holmenkollen Guidelines for Sustainable Aquaculture from the Second International Symposium on Sustainable Aquaculture in 1997.<sup>7</sup> Publication of the final Code is due in December 2002.<sup>8</sup>

The nature of the Draft Code is broad, providing general guidelines that allow for a balance between conservation and economic growth.<sup>9</sup> It is directed towards anyone who is engaged in aquaculture and while the Code is not law, compliance is encouraged.<sup>10</sup> The purpose of this voluntary Code is to “temper progress with responsibility and encourage good stewardship of all living and non-living marine resources found offshore” while supporting aggressive development of aquaculture.<sup>11</sup> The Draft Code has seven objectives: promote the contribution of aquaculture to seafood supplies; promote marine stewardship; establish principles for offshore aquaculture; provide standards of conduct for the sector; provide guidance; serve as an instrument of reference; and facilitate cooperation.<sup>12</sup>

The Draft Code begins with

the legal and administrative frameworks in which aquaculture development should be regulated and urges cooperation between agencies and coastal states.<sup>13</sup> It describes efficient permitting and zoning and minimizing adverse impacts when siting locations.<sup>14</sup> The document also describes the fiscal environment proclaiming aquaculture development as the responsibility of the private sector, assisted by federal policy.<sup>15</sup> The Draft Code adopts “the guiding principle of a precautionary approach combined with adaptive management to achieve sustainable development in offshore waters.”<sup>16</sup> According to the Draft Code, stakeholders should conserve biodiversity and carefully regulate non-indigenous and genetically altered species.<sup>17</sup> Also, a system of monitoring should be enforced, not only by federal and state authorities, but also voluntarily through self-regulation.<sup>18</sup>

The Draft Code includes guidelines for responsible aquaculture at the production level, “to minimize potential harm to the environment and to ensure its sustainability.”<sup>19</sup> Voluntary best management practices; record keeping; prevention of escapes and endangerment to other species; product quality and safety; management of aquatic health; research and development; and public education and outreach are outlined to conclude the Draft Code.<sup>20</sup>

The entire text of the Draft Code can be found online at:

<http://www.nmfs.noaa.gov/trade/AQ/AQCode.pdf>

<sup>1</sup> Draft Code of Conduct 1.

<sup>2</sup> PL 96-362, 16 U.S.C.2801, *et seq.*

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.nmfs.noaa.gov/trade/DOCAQpolicy.htm>, accessed August 29, 2002.

<sup>5</sup> *Id.*

<sup>6</sup> 67 C.F.R. 54644-5

<sup>7</sup> Draft 2. See also <http://www.fao.org/FOCUS/E/fisheries/sustaq.htm>, accessed November 12, 2002.

<sup>8</sup> 67 C.F.R. 62019-01

<sup>9</sup> Draft 3.

<sup>10</sup> *Id.*

<sup>11</sup> Draft 2.

<sup>12</sup> Draft 4.

<sup>13</sup> Draft 6.1; 6.2.

<sup>14</sup> Draft 6.3.2; 6.3.4; 6.3.3.

<sup>15</sup> Draft 6.4.

<sup>16</sup> Draft 6.5.

<sup>17</sup> Draft 6.5.2; 6.5.3.

<sup>18</sup> Draft 6.5.6.

<sup>19</sup> Draft 6.6.

<sup>20</sup> Draft 6.6.

## Update on *SWANCC v. United States Army Corps of Engineers* by Carolyn Dupuy

In *SWANCC v. United States Army Corps of Engineers*<sup>1</sup> the Seventh Circuit Court of Appeals required SWANCC to obtain a permit under the Clean Water Act (CWA) to fill in a man-made wetland area designated as a migratory bird habitat. The Supreme Court reversed the decision leaving open a critical issue — what is the extent of the federal government’s jurisdiction over isolated wetlands? Some analysts have suggested that the decision could mean that the CWA can no longer serve as a basis for federal regulation of isolated wetlands. On the other hand, the decision may stand for the rule that the federal government’s jurisdiction over intermittent and ephemeral streams and waters that pass through man-made conveyances and wetlands adjacent to these waters may be reduced or eliminated. Legislation is currently under consideration, which would clarify the meaning

of the decision and federal jurisdiction over isolated waters. Under the Clean Water Authority Restoration Act of 2002 (S. 2780; H.R. 5194), the Federal Water Pollution Control Act (33 U.S.C. 1362) would be amended to redefine which bodies of water the federal government controls. The term “waters of the United States” would replace “navigable waters.” Currently, “navigable waters” is only defined as “waters of the United States and territorial seas.”<sup>2</sup> No further definition of “waters of the United States” is given. The new term “waters of the United States” would include: “all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all

impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.”<sup>3</sup> The replacement of “navigable waters” with “waters of the United States” would clarify the problem of interpretation. Under this new legislation, all waters are under federal jurisdiction to the fullest extent of Congress’s legislative power under the Constitution. The Senate bill (S. 2780) is currently under review by the Committee on Environment and Public Works and the House bill (H.R. 5194) is under review by the Subcommittee on Water Resources and Environment.

<sup>1</sup> 121 S.Ct. 675, 531 U.S. 159, 148 L.Ed.2d 576 (2001).

<sup>2</sup> 33 U.S.C. 1362(7).

<sup>3</sup> H.R. 5194, §4.

## Louisiana Nonindigenous Aquatic Species Advisory Task Force

The most recent *Louisiana Coastal Newsletter*<sup>1</sup> featured an article that discussed the potential impact of non-indigenous species on the Louisiana environment. This article highlighted efforts by the Louisiana Sea Grant Program and the Louisiana Department of Wildlife and Fisheries to coordinate a centralized response mechanism to these outside threats. In response

to the efforts of these agencies, Governor Foster issued an Executive Order (Executive Order MJF 02-11) on June 4, 2002, which formed the Louisiana Non-Indigenous Aquatic Species Advisory Task Force. The twenty-nine person Task Force, represented by state officials, research scientists, and affected members of the public has been charged with,

among other things, the duty of compiling information to be used in the “prevention, containment, control, and/or eradication of non-indigenous aquatic species in a manner that protects, preserves and/or restores native ecosystems.” Additionally, the Task Force is to identify a means of coordinating the efforts of the numerous agencies across the

state that deal with non-indigenous species. The Task Force is expected to submit a preliminary report of their findings by the end of the year, followed by a final report on July 1, 2003.

One of Governor Foster's directives to the Task Force that will facilitate communication and coordination among State agencies is to draft a Non-Indigenous Aquatic Species Management Plan. The plan will cover many species and pathways and will have a multi-goal, multi-phase approach to management. The plan will outline

a response process and encourage the use of the best available technology or control method. The management plan will use as a blueprint the Guidelines for State and Interstate Aquatic Nuisance Management Plans and will suggest strategies not only to prevent the introduction and spread of non-indigenous aquatic species, but also to control efforts to reduce their impact.<sup>2</sup> The Louisiana Sea Grant Legal Program is actively involved in this endeavor and is assisting the Task Force in drafting the management plan. The first

draft of the management plan is due in the summer of 2003, and after a public comment period and revision process, the Task Force hopes to have the management plan available in 2004. For more information, please visit <http://anstaskforce.gov> and <http://www.cbr.tulane.edu/is/>.

<sup>1</sup> *ICL* Vol. 80, p.5.

<sup>2</sup> Guidance for State and Interstate Aquatic Nuisance Management Plans, <http://anstaskforce.gov> (accessed December 19, 2002).

## **Governor's Advisory Commission on Coastal Restoration and Conservation Created During the First Extraordinary Legislative Session**

Act Number 114 was enacted during the 2002 First Extraordinary Session within the Office of the Governor. The legislature, recognizing the overwhelming importance of a stable coastline, created the Commission on Coastal Restoration and Conservation (the Commission) to receive information from the various people and organizations whose feedback is a crucial part in the fight to restore Louisiana's quickly deteriorating coast.

The Commission is composed of thirty-one members, twenty-two from each of the following: academic community, business and industrial community, nonprofit corporation community, conservation community, agricultural community, governing bodies of political subdivisions of the state, energy production and distribution community, and fishing community

(one commercial, one recreational). The Governor also appointed one member from the oyster industry, two members to represent ports and related industries, and six members appointed at large. The remaining membership shall be composed of the President of the Senate (or his designee), Speaker of the House of Representatives (or his designee), and the chairmen of the House and Senate Committees of Natural Resources. In addition to the above members, the Governor or the Commission may ask that employees of federal agencies that work with coastal restoration to participate with the Commission but will have no voting power.

Duties of the Commission include advising the Governor on the "status and direction" of the state's coastal restoration plan,

encouraging cooperation among the different levels of government concerning coastal restoration, identifying and helping resolve conflicts regarding coastal restoration, locating funds for restoration programs, and reviewing various programs and making recommendations on how to improve them. The Commission must report by March 1 of each year to the legislature and the Governor on the "progress, challenges, and recommendations concerning policy and possible legislation for the coastal restoration and conservation plan."<sup>1</sup>

<sup>1</sup> Act No. 114, §214.13(7), available online at [http://www.legis.state.la.us/leg\\_docs/021ES/CVT5/OUT/0000JJ16.PDF](http://www.legis.state.la.us/leg_docs/021ES/CVT5/OUT/0000JJ16.PDF).

## **Status of the Oceans: Two Reports Portray a Grim Picture of the Future**

"The oceans are in trouble. Our coasts are in trouble. Our marine resources are in trouble...all, perhaps, in serious trouble."<sup>1</sup> Such is the status of the oceans according to the Chairman of the U.S.

Commission on Ocean Policy in a letter to the President in September 2002. The U.S. Commission on Ocean Policy was formed pursuant to the Oceans Act of 2000<sup>2</sup> and is charged with

reviewing federal ocean-related laws and programs and making recommendations to the President and Congress for "a coordinated and comprehensive national ocean policy."<sup>3</sup> The

Commission recently submitted a report to the President and leading members of Congress<sup>4</sup> detailing the results of nationwide hearings on problems affecting the oceans and means by which these problems can be addressed. Generally, testimony before the Commission at public hearings over the past year has revealed several substantial issues affecting the oceans. Much of the testimony suggests that the provisions of the Coastal Zone Management Act are no longer adequate to manage the impacts of increased coastal populations and pollution. Other testimony insists that scientific information regarding problems caused by overfishing have been and continue to be ignored, casting doubt on the sustainability of our fishing industries. Yet, further information shows that nonpoint source pollution has become the major cause of ocean pollution. Testimony also cited over-regulation, coupled with a lack of comprehensive management of ocean-related regulations as a significant problem in effectively balancing the protection of marine resources with the responsible use of these resources. Methods suggested, by the public testimony, to overhaul the United States' approach to ocean policy include creating a "new ocean governance regime"<sup>5</sup>; increase funding and support for the education of the Nation's youth on the importance of ocean conservation; and creating an international data-sharing network on ocean related issues, modeled on meteorological networks currently in operation. These issues, among others detailed in the report, will be considered in the Commission's development of an ocean policy over the next few months for presentation to the Nation's lawmakers. In addition to presenting this report, the Commission has already made several recommendations to lawmakers regarding pressing ocean issues. Perhaps the most important of these is the Com-

mission's resolution "that the United States of America immediately accede to the United Nations Law of the Sea Convention."<sup>6</sup> The Convention, created by the United Nations in 1982, represents a unified international voice on ocean policy with a set of minimum protection standards for ocean resources for signatory nations, acceptance of which the Commission holds as essential "to maintain [the United States'] leadership role in ocean and coastal activities."<sup>7</sup>

The Pew Oceans Commission also recently released a report that details the results of a scientific examination of the effects of fishing on marine ecosystems in the United States. Although the results of this study are not surprising, they are important and warrant a brief review. The Pew Commission report found that nearly one-third of the fisheries stocks in the United States are overfished or are experiencing overfishing. This is causing declining reproduction rates among numerous species. The long-term impacts of this activity threatens the extinction or near extinction of valuable food sources. The authors of this report insist that the scientific community needs to stop quibbling over difficult issues such as whether climate or anthropogenic changes are adversely affecting marine ecosystems, instead, focus more on means of cutting down known impacts such as overfishing. "While it is academically interesting, the continued debate over which is more important only delays implementation of precautionary policy that acknowledges the inherent variation and unpredictability in marine ecosystems."<sup>8</sup>

One interesting area of the Pew Commission report discusses the impacts of bycatch on the overall marine ecosystem. The authors state that the effect of bycatch "on ecological communities is proving more substantial" than was once thought.<sup>9</sup>

Interestingly, one of the more substantial bycatch problems comes in the form of gear lost at sea that continues to collect marine life long after it has been abandoned. The authors point out that the United States has a history of inadequate regulation in the area of bycatch and call for a revamping of the relevant legislation.

Although the Commission on Ocean Policy report and the Pew Commission report both portray a bleak picture of the current status and future of the oceans and marine life, the reports also suggest substantial policy and practical standards that should be seriously considered in order to save these invaluable resources.

<sup>1</sup> U.S. Commission on Ocean Policy (U.S.C.O.P.), *Developing a National Ocean Policy* 1, (U.S.C.O.P.2002), available in PDF format online at [http://www.oceancommission.gov/documents/midterm\\_report/ReportCovREV10\\_01\\_02.pdf](http://www.oceancommission.gov/documents/midterm_report/ReportCovREV10_01_02.pdf).

<sup>2</sup> P.L. 106-256, <http://www.oceancommission.gov/documents/oceanact.pdf>.

<sup>3</sup> [www.oceancommission.gov](http://www.oceancommission.gov), revised October 10, 2002.

<sup>4</sup>The report was submitted to the Dennis Hastert, Tom Daschle, Richard Gephardt, and Trent Lott.

<sup>5</sup> U.S.C.O.P., *supra*, n.1 at 12.

<sup>6</sup> U.S.C.O.P., *supra*, n.1 at 15. The United Nations Convention on the Law of the Sea can be found online at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/UNCLOS.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS.pdf).

<sup>7</sup> U.S.C.O.P., *supra*, n.1 at 15.

<sup>8</sup> Paul K. Dayton, Simon Thrush, and Felicia C. Coleman, *Ecological Effects of Fishing in Marine Ecosystems of the United States* 7 (Pew Oceans Commission 2002), available online at [http://www.pewoceans.org/reports/POC\\_EcoEffects\\_Rep2.pdf](http://www.pewoceans.org/reports/POC_EcoEffects_Rep2.pdf).

<sup>9</sup> Dayton et al., *supra*, n.8 at 16.

**2002-2003 First Extraordinary Session  
2002-2003 Regular Legislative Session  
of the Louisiana Legislature  
by Cassie Hebert**

This annual Legislative issue of Louisiana Coastal Law is devoted to summarizing acts and resolutions enacted during the Regular and Extraordinary Sessions of the Louisiana Legislature. Legislation having a general impact on Louisiana coastal resources and environment is covered. Further information about these laws or resolutions can be obtained by contacting the Sea Grant Legal Program.

**2002-2003 First  
Extraordinary Session**

HCR No. 19  
Faucheux

Due to its lack of state park facilities and recreational opportunities, Louisiana ranks last in the demand and need of such when compared to other southern states. Therefore, the legislature requests that the Office of State Parks of the Louisiana Department of Culture, Recreation, and Tourism, and the Louisiana Department of Wildlife and Fisheries develop a plan for successfully establishing state parks with rental cabins in a significant number of the state's wildlife management areas.

HCR No. 24  
Faucheux

After the donation of a tract of acreage by the Mellon Foundation to the Louisiana Department of Wildlife and Fisheries, creation of the Maurepas wildlife management area began. Since then, this area has been known to be a successful hunting ground. In accordance with the WMA, deer hunting with dogs has long been a pastime for this state. Therefore, the legislature urges and requests that the Wildlife and Fisheries Commission adopt rules and regulations allowing deer hunting using dogs in the Maurepas Wildlife Management Area.

HCR No. 25  
Faucheux

Since the creation of the Maurepas WMA, the commission and the department maintain a longstanding policy of refusing private leases within these management areas. They are requiring camp owners to

remove their camps by July 1, 2002 or face demolition. Due to the great amount of time the private individuals have invested to the area, the legislature requests that the Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries allow these individuals to continue to use their existing camps on the Reserve Relief Canal and Mississippi Bayou in the WMA until July 2002.

HCR No. 44  
Faucheux

One of the biggest tourist attractions in south Louisiana is the beauty of its waterways and wetlands. Many view it by way of the area containing the tributaries and canals leading to the Blind River. Tourists utilize airboat tours to observe the beauty of such an area. However, current regulations of the Department of Wildlife and Fisheries prohibit air boat tours of the Maurepas WMA including the canals leading to the Blind River. Therefore, the legislature urges and requests the Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries to study the possibility of allowing the use of air boats in the WMA.

HR No. 9  
Downer

Since the Louisiana alligator industry plays an important role in Louisiana's economy, bringing in fifty-four million dollars annually, the Louisiana Department of Wildlife and Fisheries has developed an alligator conservation program. This program educates the public and

staffs adequate personnel. The Louisiana Legislature established a four dollar tag fee and label fee for each raw alligator skin to be shipped in order to fund the program. The revenue collected from the fees is placed in the Louisiana Alligator Resource Fund. The Louisiana Legislature then created the Fur and Alligator Advisory Council to be responsible for reviewing and approving programs funded by the Louisiana Alligator Resource Fund. The Council has complete authority. Therefore, the House of Representatives of Louisiana Legislature requests that the Wildlife and Fisheries Commission not reduce any fees that fund the Louisiana Alligator Resource Fund without approval of the Louisiana Fur and Alligator Advisory Council.

HR No. 18  
Faucheux

(Duplicate of SR No. 30)  
Since the donation of the property, now known as the Maurepas WMA, to the Louisiana Department of Wildlife and Fisheries, private leases within the WMA have been forbidden. However, the camp owners have recently donated their interest in these camps to St. John the Baptist Parish, and the parish council has accepted the donation with the intent to lease the camps. Therefore, the House of Representatives of the legislature of Louisiana urges the Wildlife and Fisheries Commission and Department of Wildlife and Fisheries to allow St. John the Baptist Parish to lease existing camps in the Maurepas WMA.

HR No. 26

Faucheux

(Duplicate of SR No. 28)

The newest Wildlife Management Area is the Maurepas WMA. Its primary natural geological feature is the bald cypress-tupelo gum swamp, but it also manifests two major Louisiana highways: Interstate 10 and Airline Highway. Recently, state and local governments have been considering construction of a new route for truck traffic through the area extending from the interstate to the industrial operations along the river. However, a major concern of the health of the wetlands is that of natural flow of water. The construction of such a new route could disrupt such a flow. Thus, the House of Representatives of the Louisiana Legislature urges and requests the Department of Wildlife and Fisheries not to oppose the construction of a new route within the Maurepas WMA, but to ensure that natural drainage through the WMA is sustained.

HR No. 31

Flavin

(Duplicate of SR No. 35)

Due to excessive rain over the past few months, oystermen in Cameron and Calcasieu parishes have not had time for their usual tonging activities. This has caused a great deal of financial difficulty for the oystermen of this area. Therefore, the House of Representatives of the Louisiana Legislature urges and requests that the Louisiana Wildlife and Fisheries Commission extend the oyster season in Calcasieu and Cameron parishes for two additional weeks, until May 15, 2002.

SCR No. 30

Carter, Cazayoux, Riddle, and Sen. Hines and Marionneaux

Act 920 of the 1999 Regular Session of the Legislature authorizes the state master plan for the Atchafalaya Basin that includes a multi-disciplined approach to preserve and enhance the Atchafalaya Basin. Act 920 also allows inclusion of additional proposals to the plan, provided that the total expenditure of state funds over a fifteen-year

period does not exceed eighty-five million dollars. However, a proposal must be studied for one year and must meet the appropriate justifications of the plan for that proposal to be included. Thus, the parishes of Avoyelles and Pointe Coupee submitted proposals for inclusion in the plan hoping that it would be studied for one year. The legislature then resolved the proposals to be studied for the one-year period, provided that the proposals would not cause the total expenditure of funds to exceed the maximum amount.

SR No. 22

Beard

At a recent meeting of the LA Wildlife and Fisheries Commission, it proposed deer hunting dates that do not correspond to years past. In fact, it is a dramatic shift and resulted in a great deal of confusion amongst hunters. One dramatic shift is that of archery season in Area 6. Whereas it once opened on October 1 and closed at the end of January, it is now proposed to open on November 1st and close on February 2nd. Area 6 hunters are not happy with the proposed 2002 deer season. Thus, the Senate of the Legislature of Louisiana urges and requests that the Louisiana Wildlife and Fisheries Commission void the proposed deer season in Area 6 and maintain it as has been in the past years.

Act No. 12

SB No. 7; Baldone and Sen. Dupre Authorizes the Terrebonne Parish School Board, by execution of the presiding officer, to lease certain property in Terrebonne Parish to the Department of Wildlife and Fisheries.

Act No. 32

SB No. 42; Wright and Sen. McPherson and Ellington Directs and authorizes the office of state lands, on behalf of the state of Louisiana, to transfer certain property in Catahoula Parish to the Department of Wildlife and Fisheries. These lands will then be considered an inclusion of the

Dewey W. Wills Wildlife Management Area.

Act No. 55

HB No. 12

(Duplicate of SB No. 102); Montgomery and Sen. Malone (Enacts R.S. 38:2607)

Instills authority in the Wildlife and Fisheries Commission to prohibit the recreational and commercial use of nets and traps for fishing purposes in Cypress Bayou Reservoir and Black Bayou Reservoir. Also, the board of commissioners of both the Cypress-Black Bayou Recreation and Water Conservation District must maintain public access.

Act No. 66

HB No. 39; Gary Smith and Daniel (Enacts R.S. 56:1855 (L))

Authorizes the Department of Wildlife and Fisheries to allow certain activities, such as channelization, clearing and snagging, and channel realignment, on Bayou Trepagnier in St. Charles Parish that are in accordance with the state and federal remediation and restoration plan developed for the bayou.

Act No. 77

HB No. 50; Baldone, et al.

(Amends and reenacts R.S. 56:643 (B))

Permits nonresident military personnel on active duty in Louisiana to purchase a recreational hunting and fishing license at an equal fee charged to Louisiana residents but only upon proof of a valid military id from the U.S. armed forces. The Louisiana resident who is issued a military id card representing his active duty, however, shall receive hunting and fishing licenses at a charge of five dollars.

Act No. 112

HB No. 169; Reprs. LeBlanc and Faucheux

(Reenacts and amends R.S. 25:1223.1(A) and 1224(A)(10); enacts R.S. 25:1222(C), 1223(A)(3), and 1224(A)(14); creates Part II, Chapter 26, Title 25)

Abolishes the Atchafalaya Trace advisory board; provides for the duties and authorization of the Atchafalaya Trace Commission; creates the Atchafalaya Trace Heritage Area Development Zone. The Commission is intended to assist the development of "heritage-based cottage industries," which are small businesses harnessing the Atchafalaya Trace's cultural or natural resources. This assistance may be in the form of organizational assistance or tax credits.

Act No. 114

HB No. 174; Dewitt, et. al. and Sen. Chaisson, Dupre, Gautreaux, and McPherson (Enacts R.S. 36:4(Y) and Subpart B-1 of Part II of Chapter 2 of Title 49 of the LA R.S. of 1950) to be comprised of R.S. 49:214.11 through 214.15)

Creates the Governor's Advisory Commission on Coastal Restoration and Conservation and provides the duties, powers, and functions of such. It also states the terms in which the elected commission will remain in office.

Act No. 134

HB No. 97; Rep. Damico (Reenacts and amends R.S. 30:2011(D)(22)(c), 2014(D), 2195(B), and 2289.1(D)) Authorizes an increase of fees paid to the Environmental Trust Fund for various accreditations and licenses.

Act No. 143

HB No. 164; Reprs. Daniel and Dewitt (Enacts R.S. 31:149.3) Provides that mineral rights will not prescribe on land condemned or expropriated by the government or a nongovernmental entity as long as the title remains with that entity.

Act No. 163

HB No. 156; Hill and Thompson and Sen. Hines (Enacts R.S. 36:509(R) and Part XXV of Chapter 13 of the LA R.S. of 1950) Comprised in an area of Allen Parish, a site for a lake will be selected. The area will thereby be created as a recreation and water conservation and reservoir district known as the "Allen Parish Reservoir District."

## 2002-2003 Regular Session

SCR No. 13

Gautreaux et al.  
Recently, testing for chloramphenicol by the Louisiana Department of Agriculture and Forestry on crawfish and shrimp for Louisiana and China has been conducted. Traces of chloramphenicol have been detected in the crawfish and shrimp of Chinese origin. Chloramphenicol is an antibiotic that has been banned in the U.S. for use on animals raised for human consumption because it can cause fatal aplastic anemia. For the well-being of the citizen of this state, the legislature urges the commission of agriculture to require that all shrimp and crawfish meet standards relating to chloramphenicol prior to sale in Louisiana which are consistent with those standards promulgated by the U.S. Food and Drug Administration.

SCR No. 14

Murray and Sens. Gautreaux and Lambert  
On February 14, 2002, President George W. Bush introduced his plan to respond to the challenges arising from global changes in the climate. Since then, many states are taking significant actions toward climate changes in conjunction with the President's Climate Change Policy Initiatives. Pursuant to the President's mandate, this resolution creates a study commission to develop a strategy for the timely implementation of the President's Global Climate Change Policy Initiatives in Louisiana. It also gives the authority to certain members and lists their duties.

SCR No. 17

(Duplicate of SR No. 36)  
Dupre  
Due to the shrimping industry being one of the mainstay's of coastal Louisiana's economic prowess, the legislature creates the South Central Louisiana Shrimp Fisherman's Legislative Advisory Committee to study and

monitor the shrimp industry and to make recommendations to the Legislature of Louisiana and to the Wildlife and Fisheries Commission on matters pertaining to the management and development of the shrimp industry in Louisiana.

SCR No. 31

(Duplicate of HCR No. 42)  
McPherson et al.

Until the fall of 2000, the Department of Wildlife and Fisheries contained within it a hunter education and certification program. It was administered by the information and education section. In the fall of 2000, the information and education section was dismantled, and hunter education and certification was placed under the administration of the enforcement division. It would seem more logical to have the office of wildlife to administer the education program. Therefore, the legislature directs the secretary of the Department of Wildlife and Fisheries to place the administration and coordination of the hunter certification and education program under the office of wildlife.

SCR No. 39

Pierre and Sen. Romero and Ullo  
Louisiana law in R.S. 49:213.1 provides for the creation, duties, and responsibilities of the Wetlands Conservation and Restoration Authority. Under the provisions of R.S. 49:213.6, the plan is to serve as the state of overall strategy for conserving and restoring coastal wetlands through the construction and management of coastal wetlands enhancement projects. Thus, the legislature approves the Coastal Wetlands Conservation and Restoration Plan for Fiscal Year 2002-2003, as adopted by the Wetlands Conservation and Restoration Authority.

SCR No. 56

Dartez and Smith and Sen. Gautreaux  
Act No. 920 of the 1999 Regular Session provides for the development and implementation of a

state master plan to preserve and protect the Atchafalaya Basin. As enacted by Act 920, R.S. 30:2000.9(C) provides that any proposal to include a project not already in the state master plan be first reviewed, studied, and analyzed due to a request provided in a concurrent resolution of the legislature. Pursuant to this particular statute, citizens of St. Mary Parish are in want of consideration for inclusion. Therefore, the legislature authorizes the Atchafalaya Basin Research and Promotion Board, other state entities, to conduct a one-year review, study, and analysis of certain projects submitted by St. Mary Parish for inclusion in the state master plan.

SCR No. 62

Romero

The Legislature of Louisiana urges and requests that both the executive assistant of Coastal and Marine Activities, office of the governor, and the director of the Atchafalaya Basin Program conduct an evaluation, with the assistance of appropriate federal and local partners including representatives of governmental and non-governmental entities, of proposed projects and planned actions within the basin for the purpose of improving water quality in the Atchafalaya Basin.

HCR No. 8

Baudoin and Sen. Ullo

In relation to Senate Concurrent Resolution No. 13, the Legislature of Louisiana memorializes the U.S. Congress to assist the Federal Trade Commission, the Food and Drug Administration, and the U.S. Department of Agriculture in protecting our unsuspecting citizens from buying and inadvertently consuming shrimp, prawns, or crawfish containing chloramphenicol residue. The legislature does this because of such panic that it may cause if a citizen were to ingest such an antibiotic. Because of September 11 and continuing threat of agroterrorism, many citizens may completely stop buying crawfish, shrimp, and other seafood, further devastating Louisiana's economy. Louisiana's crustaceans are safe.

HCR No. 26

Montgomery

Commends American Electric Power, the Conservation Fund, and the U.S. Fish and Wildlife Service for their commitment to environmental stewardship, protection of endangered habitats, and sequestration of carbon at the Catahoula Lake National Wildlife Refuge.

HCR No. 60

Beard

Due to Louisiana losing over 25 acres\* of land from the coast each year, the state will attempt to prevent or slow down coastal loss through the coastal reclamation program. Through this program, new vegetation will be planted and the soils of the wetlands enriched so that vegetative growth will be sustained. A method to enforce the vegetative growth is by using compost blends such as sugarcane by-products and waste, which is very abundant in Louisiana. Therefore, the legislature urges and requests the Department of Natural Resources to implement a program to use compost blends, including sugarcane compost, as part of the coastal reclamation program.

SB No. 6

Barham

Adds Coastal Conservation Association to the list of organizations receiving an exemption from state and local sales and use taxes.

HSR No. 8

Faucheux

House of Representatives of the Louisiana Legislature requests the House Committee on Ways and Means to study the feasibility of authorizing the Board of Commerce and Industry to enter into tax credit contracts with coastal restoration manufacturing establishments, and to report its findings prior to the 2004 Regular Session.

HCR No. 75

Beard

Due to the increase of inmates in the population of correctional

facilities, an increasing strain has been placed on the wastewater treatment plants of such facilities. Therefore, the legislature requests that the Department of Environmental Quality and Department of Public Safety and Corrections, Correction Services, to examine alternative wastewater treatment facilities for prisons and alternatives for operation of those facilities and to report their findings to the House Committee on the Environment and the Senate Committee on Environmental Quality prior to the convening of the 2003 Regular Session.

Act No. 75

(Duplicate of HB No. 241); Downer et al, and Sen. Chaisson, Dupre, et al.  
(Enacts R.S. 56:506 and repeals R.S. 56:505)

Repeals the severance tax on saltwater shrimp taken in Louisiana waters and enacts an excise tax applicable to such shrimp and on any shrimp imported into Louisiana. It also authorizes the Wildlife and Fisheries Commission to adopt rules and regulations for the enforcement and administration of the excise tax along with providing the penalties for violation of the tax.

Act No. 86

(Duplicate of SB No. 18); Murray and Thompson and Sen. Romero  
(Adds Article VII, Section 21 (J) of Louisiana Constitution)

Exempts from ad valorem taxation drilling rigs used exclusively for the exploration and development of minerals outside the territorial limits of the state in Outer Continental Shelf waters which are within the state for the purpose of being stored, stacked, converted, renovated, or repaired, and any property incorporated in or used in the operation of such drilling rigs.

\*This figure is erroneous, it should be presented in square miles.

## Announcements

### New Legal Coordinator

Erinn Neyrey resigned her position as Louisiana Sea Grant Legal Coordinator earlier this year. We regret losing her and know that she will be an asset to the Baton Rouge law firm of Taylor, Porter, Brooks & Phillips. Lisa C. Schiavinato has accepted the position as our new Legal Coordinator. Lisa is a 2001 graduate of the Levin College of Law at the University of Florida. During her J.D. coursework, Lisa specialized in environmental and land use law. During law school, Lisa worked as a law clerk for the Florida Department of Transportation. After law school, she worked for the Hillsborough County Attorney's Office. Lisa's research interests include aquaculture, fisheries law, wetlands, coastal law, and coastal zone management. We are pleased to welcome Lisa to the LSGLP and are confident that her abilities and experiences will benefit the program.

### LCL E-mail Update Service

Four times a year, the Louisiana Sea Grant Legal Program disseminates an e-mail/web based update to our biannual newsletter. The updates cover environmental law news relevant to the LCL's audience as well as summaries of recently introduced environmental legislation and recent court case decisions. To sign up for the LCL E-mail Update Service, send an e-mail to [lisas@lsu.edu](mailto:lisas@lsu.edu).

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