

# LOUISIANA COASTAL LAW

LCL 98, MARCH 2018



## BILLS PASSED IN THE 2017 FIRST EXTRAORDINARY, REGULAR, AND SECOND EXTRAORDINARY SESSIONS OF THE LOUISIANA LEGISLATURE AFFECTING COASTAL RESOURCE USE AND CONSERVATION

BY MICHAEL HEATON

All Acts are from the Regular Session unless otherwise indicated.

### Declared Disasters and Emergencies

#### ACT 30

HB 90

Representatives Danahay and Miller

(Enacts R.S. 42:1111.1; repeals 42:1123(36)). Allows public servants to accept certain donations and contributions from not-for-profit organizations following a gubernatorially declared disaster or emergency. Public servants may receive gifts or donations from non-profit organizations to offset losses associated with gubernatorially declared disasters or emergencies, so long as the value of such gifts or donations does not exceed twenty-five thousand dollars. The organization must then file a report with the Board of Ethics describing the disclosure.

#### ACT 41

HB 251

Representative Schexnayder

(Amends and reenacts R.S. 3:2452(B); enacts R.S. 3:2452(C)). Provides requirements for declaring an animal abandoned after a declared emergency. After a declared emergency, an animal shall be considered abandoned when it is receiving temporary shelter in a facility operated by the Department of Agriculture and Forestry and the owner has not claimed the animal within thirty days of the declared emergency and a reasonable effort has been made to contact the owner. At this point, the animal can be sold, donated, turned over to the nearest humane society or animal control agency, or otherwise disposed of as the person with custody of the animal may deem proper.

#### ACT 186

SB 109

Senator Claitor

(Enacts R.S. 9:5826 and 5827). Provides a clear termination of any suspension or extension of prescriptive and preemptive periods, which extinguish rights of action so that suits may no longer be filed after a certain length of time has elapsed, in response to the August 2016 flooding. Governor Edwards issued executive orders in the wake of the flooding that purported to suspend or extend these periods, so the legislature clarified that the suspension or extension began on August 12 and ended on September 30. The suspension or extension of the periods pursuant to the executive orders will be deemed to have run on the date calculated by Louisiana Civil Code Article 3472 or September 30, whichever is earlier.

#### ACT 219

HB 393

Representatives Connick, Marcelle, Armes, Berthelot, Billiot, Bouie, Carpenter, Carter, Foil, Harris, Havard, Hoffman, Ivey, Jordan, Lyons, Marino, Morris, Pope, Pylant, Richard, Schexnayder, Schroder, Stagni, Thomas, and Zeringue

(Amends and reenacts R.S. 22:1331). Provides certain homeowner insurance policyholders the option to exclude personal property coverage after a declared disaster. After a disaster has been declared by the governor or the president of the United States, any insurance company

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that issues a homeowner's insurance policy that includes personal property coverage in the affected area must give policyholders the option of a residential property policy that provides dwelling coverage without personal property coverage or an exclusion of personal property coverage. If the policyholder exercises either option, the insurer must calculate an appropriate reduction in premium that shall be returned to the policyholder.

#### **ACT 246**

SB 151

Senators White and Thompson

(Amends and reenacts R.S. 29:733 and R.S. 40:1379.1(F)). Creates the Emergency Management Assistance Compact (EMAC), between Louisiana and other states that have also enacted the Compact, providing for its responsibilities, powers, duties, functions, and liability. The Compact provides for mutual assistance between the states entering into it in managing declared emergencies or disasters. Currently, all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands are EMAC members.

#### **ACT 358**

HB 639

Representatives Schexnayder, Bagley, Berthelot, Billiot, Terry Brown, Carpenter, Chaney, Cox, Cromer, Dwight, Edmonds, Foil, Jimmy Harris, Havard, Horton, Howard, Ivey, James, Lyons, Pope, Reynolds, Seabaugh, Stokes, Thibaut, and Zeringue

(Amends and reenacts R.S. 47:242 and 293(10); enacts R.S. 47:53.5, 111(A)(11), and 287.71(B)(8)). Excludes certain income derived from disaster or emergency-related activities, such as repairing or rendering services to critical infrastructure like communication systems or support facilities, conducted during certain disaster periods, from state income tax. Nonresident businesses and individuals that perform disaster or emergency-related work during a declared state disaster or emergency period do not have to claim the income they receive for performing such work as gross income.

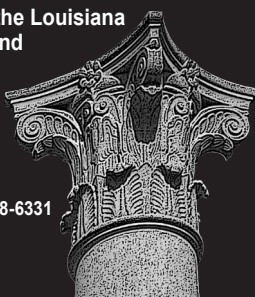
## **LOUISIANA COASTAL LAW**

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## **Fish, Fisheries, Oysters, Aquaculture**

#### **ACT 109**

SB 77

Senator Lambert

(Amends and reenacts R.S. 56:322.2(D)). Provides for commercial harvest of shad and skipjack; provides for seasons for the taking of shad and skipjack; provides limitations for the taking of shad as bait. Shad and skipjack can be taken after sunset and before sunrise during open season, but there shall be no commercial taking of shad or skipjack on Saturday or Sunday. Shad can be taken as bait, during closed or open season, if the gill net is under 150 feet long, no more than 50 pounds of shad are taken per day, and the gill net is attended at all times.

#### **ACT 153**

HB 475

Representatives Gisclair and Garofalo

(Amends and reenacts R.S. 56:332(N)(2)(c); enacts R.S. 56:332(N)(2)(d)). Authorizes the Wildlife and Fisheries Commission to prohibit crab traps in state-owned water bottoms during closed season. This statute is part of a statutory scheme that provides for a program to remove abandoned crab traps from state-owned water bottoms. The Commission may thus prohibit crab traps at any time crab harvest is closed for biological or technical reasons, such as gathering data. Prohibiting the traps allows the Commission to consider them abandoned and have them removed.

#### **ACT 160**

HB 674

Representative Gisclair

(Authorizes the use of certain property near Grand Isle for seafood research). Allows the Grand Isle Port Commission to use specified sections of water bottoms, water columns, and water surfaces for an off-bottom oyster culture project in cooperation with Louisiana Sea Grant.

#### **ACT 183**

SB 45

Senator Smith

(Amends and reenacts R.S. 22:2055(13); enacts R.S. 22:46(19)). Provides a general definition for "ocean marine insurance" in the General Definitions section of the Insurance Code and adopts this definition in a Definitions section elsewhere in this Code. Ocean Marine Insurance, under this definition, generally provides coverage for a range of legal liability associated with damage to vessels, persons, property, jewelry, bridges, tunnels, or other instrumentalities of transportation.

**ACT 222**

HB 474

Representative Garofalo

(Amends and reenacts R.S. 56:431.2(A)(1) and (B)(2); repeals R.S. 56:431.2(B)(3)(d) and (C)). Authorizes issuance of alternative oyster culture permit to a person holding an oyster lease on a privately-owned water bottom or a dual-claimed (unresolved title dispute between the state and a private party) water bottom. The department must determine areas that are unsuitable or inappropriate for alternative oyster culture activities because of unreasonable conflicts with other existing or anticipated uses of state waters and water bottoms.

**ACT 259**

HB 156

Representative Dwight

(Amends and reenacts R.S. 56:435.1(A) and 435.1.1(A)(2) and (C)). Eliminates all methods of harvest other than hand tongs for oyster harvest in Calcasieu Lake and Sabine Lake.

**ACT 404**

SB 207

Senator Allain and Representative Bishop

(Amends and reenacts R.S. 56:10(B)(1)(g); enacts R.S. 56:10(B)(16)). Directs the Department of Wildlife and Fisheries to use monies dedicated to the Saltwater Fish Research and Conservation Fund solely for the administration of the Louisiana Recreational Creel Survey (LACREEL) and the Recreational Offshore Landing Permit program (ROLP). If the department uses these monies in a prohibited way, the treasurer will not release any more monies credited to the Saltwater Fish Research and Conservation Fund until the department ceases its violation.

**Hunting****ACT 81**

HB 191

Representative Guinn

(Amends and reenacts R.S. 47:463.46(Section Heading) and (C)(2) and R.S. 56:10(B)(6)(b)(ii) and (10)). Renames the “Louisiana Quail Unlimited” special prestige license plate the “Louisiana Quail Forever” plate.

**Water, Waterways, Drainage****ACT 105**

SB 9

Senator Allain

(Amends and reenacts Civil Code Arts. 655 and 656). Clarifies dominant and servient estates with respect to the natural servitude of drainage. While the law has long been that the estate below is bound to receive the surface waters that flow naturally from the estate above, the legislature has now made clear that the lower estate is the servient estate and the estate above is the dominant estate.

**ACT 124**

HB 58

Representative Pugh

(Amends and reenacts R.S. 33:4169(C)). Provides relative to the collection of fees by Sewerage District No. 1 for Tangipahoa Parish. A municipality, parish, water district, or private water company operating a water system serving customers in the area served by Sewerage District No. 1 shall collect service charges imposed by the sewerage district. Tangipahoa Parish can enact enforcement ordinances for failure to pay these service charges.

**ACT 189**

SB 132

Senator White

(Amends and reenacts R.S. 56:1855(M)(2); enacts R.S. 56:1855(O)). Provides exceptions to the Louisiana Scenic Rivers Act that allow clearing and snagging and dredging operations for drainage purposes on the Amite, West Pearl, Tangipahoa, Tchefuncte, Bogue Falaya, Abita, and Comite Rivers, and Bayou Manchac.

**ACT 244**

SB 129

Senators Allain and Appel

(Amends and reenacts R.S. 9:1254(A)). Provides indemnification for damages upon entry into an enclosed estate by way of an existing waterway. This amendment makes clear that an individual who passes through neighboring property to access an enclosed estate via a waterway that he would not otherwise have access to must indemnify the neighbor for the damage he causes.

**ACT 245**

SB 150

Senators Chabert and Morrell and Representative Leger

(Amends and reenacts R.S. 47:6036(C)(1)(b), (G), (I)(1), and (2)(a); repeals R.S. 47:6036(C)(1)(b) and R.S. 47:6036(K)). Streamlines approval processes relative to the



Ports of Louisiana tax credits. Changes the overall credit caps to \$1.8 million per year, with total tax not exceeding the cost of the project. Extends the sunset date of the credit until July 1, 2021, instead of January 1, 2020. Removes an expired reporting provision.

### **ACT 263**

HB 533

Representatives Hunter, Bagneris, Bishop, Cox, Jackson, Marcelle, and Pierre and Senators Barrow, Boudreaux, and Claitor

(Enacts R.S. 40:1290.1-1290.4). Requires a collaborative effort between the Louisiana Department of Health, state and local agencies, technical experts, water utility system owners and operators, and community members to improve public drinking water quality. Tasks the Louisiana Department of Health with evaluating the issues and conditions of drinking water treatment and distribution in communities throughout Louisiana and developing a report including findings, recommendations, and proposed legislation, if necessary.

### **ACT 371**

HB 423

Representative Leopold

(Amends and reenacts R.S. 30:2074(B)(9)(a), (b), and (c); repeals R.S. 30:2074(B)(9)(d) and (e)). Authorizes the secretary of the Louisiana Department of Environmental Quality to establish and administer a water quality trading program. This trading program is designed to reduce discharges of pollutants into state waters. Louisiana DEQ will make regulations concerning the criteria under which credits may be certified, generated, quantified, and validated; geographical limitations on the use of credits; criteria for the monitoring, use, banking, term, enforcement, and sale of banked credits; requirements for the maintenance and submission of records concerning monitoring of pollutant levels, credit offset amounts, and banked credits; and all other necessary requirements.

### **ACT 382**

SB 148

Senator Chabert

(Enacts R.S. 34:3471-3483). Provides for a priority program for the deepening and dredging of waterways. Applications for funding of a waterway project may be submitted by governmental entities on a quarterly basis. The Office of Multimodal Commerce within DOTD shall review the applications within sixty days after their receipt by the office. Each quarter, the office must generate a prioritized list of projects based on the applications received during that quarter. The joint committee, after receiving this prioritizes

list and calling a public hearing, will accept, reject, or modify this list. The office will prepare an annual summary report with projections of state, federal, local, and private requirements for dredging and deepening waterways. Also establishes the Dredging and Deepening Fund. The sources of monies in this fund shall be legislative appropriations, grants, gifts, and donations; and the monies in the fund are available exclusively for waterway projects.

### **ACT 425**

HB 689

Representative Marcelle

(Amends and reenacts R.S. 38:3097.8; enacts R.S. 38:3097.3(G) and 3097.9). Requires semiannual ground water reporting and parliamentary procedures for certain ground water conservation districts and regional bodies. If the reports are not submitted in a timely manner, or do not include the required information, the Commissioner of Conservation is authorized to require monthly submissions of the reports until he is satisfied with the nature of the reports. Also requires that any governing authority of a ground water conservation district created by law or designated as a regional body must adhere to Open Meetings Law.

## **Minerals, Oil & Gas**

### **ACT 325**

SB 243

Senator Peacock

(Amends and reenacts R.S. 47:6035(A), (B)(2), (C)(1), (D), and (E); repeals R.S. 47:6035(C)(1) and (D)). Removes the refundability of the tax credit for conversion of vehicles to alternative fuel usage. Refundable tax credits are credits that are treated like payments, that can reduce tax liability to below zero so that the IRS owes a refund; but nonrefundable tax credits, like this one, can only be used to reduce tax liability to zero so that the IRS does not owe a refund. Reduces the credit rate for the conversion of vehicles and fueling equipment.

### **ACT 329**

HB 49

Representative Bishop

(Amends and reenacts R.S. 30:136.3(B)(1)). Provides for revenues to be credited to the Mineral and Energy Operation Fund. Adds non-judicial settlements to the sources of revenues paid into the fund.

**ACT 411**

HB 98

Representatives Bishop and Edmonds

(Amends and reenacts R.S. 30:87(A), (B), and (F)(1)(a) (introductory paragraph); repeals R.S. 30:87(D)). Provides relative to the applicability of oilfield site restoration fees. Repeals the provision that oilfield site restoration fees are proportional to severance tax collected on the production of the well.

**ACT 421**

HB 461

Representatives Bishop, Amadee, Bacala, Bagley, Barras, Broadwater, Chad Brown, Terry Brown, Connic, Coussan, Crews, Davis, Devillier, Dwight, Edmonds, Gisclair, Guinn, Hensgens, Horton, Jones, Nancy Landry, Magee, Miguez, Jim Morris, Pierre, Reynolds, Richard, Schexnayder, Schroder, Stagni, Stefanski, Talbot, Thibaut, and Zeringue, and Senators Chabert, Cortez, and Hewitt

(Amends and reenacts R.S. 47:633(7)(c)(iv)). Provides for severance tax exemptions for certain inactive and orphan wells. After the well has been inactive or had thirty days or less of production during the preceding two years, the severance tax rate drops to fifty percent. After the well has been designated an orphan well by the Department of Natural Resources for longer than sixty months, the severance tax rate drops to twenty-five percent.

**Coast****ACT 199**

HB 144

Representative Zeringue

(Amends and reenacts R.S. 49: 214.5.5). Clarifies modes of acquisition of immovable property by public entities for integrated coastal protection projects. No full ownership interest in property shall be acquired for integrated coastal protection through any method by the state of Louisiana, the Coastal Protection and Restoration Authority, a levee district, a levee authority, a sponsoring authority, a political subdivision, or any other state, local, or federal entity unless the interest is voluntarily offered and agreed to in writing by owners with at least seventy-five percent ownership in the property or such entity seeking to acquire the property proves by clear and convincing evidence that a full ownership interest is the minimum interest necessary to carry out the purposes of integrated coastal protection for the specific project for which it is acquired. Access rights, rights of use, and other property interests may not be granted in

perpetuity or longer than the length of the project unless such acquisition is voluntarily offered and agreed to in writing by owners with at least seventy-five percent ownership in the property.

**ACT 356**

HB 596

Representatives Leger and Bishop

(Amends and reenacts R.S. 49:214.6.2(A); enacts 49:214.7). Authorizes the use of outcome-based performance contracts by the Coastal Protection and Restoration Authority for integrated coastal protection. Such contracts may be used for financing to construct integrated coastal protection projects, if the cost of such projects is expected to significantly increase over time, if it is necessary to leverage future funds to construct more quickly, and if it is necessary to minimize risk to the authority. An outcome-based performance contract is one in which the owner contracts with an entity for results-based outcomes, with payment provided by an owner when a project has reached pre-determined results. These contracts may not be used for any integrated coastal protection project that is estimated to cost more than \$250 million or exceeds a contract term of twenty-five years. Before using such a contract, the authority must submit a proposed project along with the reason to use outcome-based performance contract to the board and shall report to the Senate Committee on Natural Resources and the House Committee on Natural Resources and Environment for review.

**ACT 357**

HB 618

Representative Garofalo

(Amends and reenacts R.S. 39:99.27(1), (4), (5), (10), (18), 99.30(A)(introductory paragraph) and (1), 99.38(A), (B), and (C), 99.41, and 99.42; enacts R.S. 39:99.27(19) through (28), 99.43, and 99.44). Authorizes the financing, purchasing, owning, and managing of payments from the Deepwater Horizon Natural Resource Damage Assessment and the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act.

**ACT 405**

SB 249

Senator Chabert

(Enacts 49:214.5.4(E)(5)). Provides for the disbursement of monies in the Coastal Protection and Restoration Fund for hurricane prevention purposes. Beginning with Fiscal Year

2022, a portion of the revenues received by the state from Outer Continental Shelf oil and gas activity shall be allocated solely for hurricane protection projects. Unless the state receives less than one hundred million dollars in any fiscal year, and in the absence of prior approval of the board and the Joint Legislative Committee on the Budget, the state must allocate a minimum of: forty percent for Fiscal Years 2022-2024, forty-five percent for Fiscal Years 2025-2027, and fifty percent for Fiscal Year 2028 and subsequent fiscal years.

## **Boards, Commissions, Districts**

### **ACT 185**

SB 103

Senator Riser and Representative Brown

(Amends and reenacts R.S. 56:722(A)(2) and 727).

Provides for adoption of rules and regulations for fish and game commissions. Prior to adoption of such rules and regulations, the commission must hold a public hearing conducted in accordance with Open Meetings Law where public comment and testimony is received. Also, if the Louisiana Wildlife and Fisheries Commission fails to take action on the proposed rules and regulations within 180 days after submission, the proposed rules are deemed adopted.

### **ACT 269**

HB 266

Representative Connick

(Amends and reenacts R.S. 38:330.1(C)(2)(a) and (b) and 330.12.1(C)(2); enacts R.S. 38:330.1(C)(2)(d) and (e)). Provides for nomination and term limits of committee members for the Southeast Louisiana Flood Protection Authority-East and the Southeast Louisiana Flood Protection Authority-West Bank. Nominating committee members are appointed for a term of eight years, a former nominating committee member may be reappointed to a nominating committee four years from the completion of a previous term, and service of four or more years of an unexpired term shall constitute a term. Makes clear that the nominating committee shall be considered a “public body” for the purposes of Open Meetings and Public Records law.

### **ACT 360**

HB 691

Representative Hodges and Senator Barrow

(Amends and reenacts R.S. 38:90.2(A), 90.4(A)(1) (introductory paragraph) and (B)(1), and 90.5(A); enacts R.S. 38:90.2(C)). Instead of the Louisiana Geological Survey reviewing and revising the statewide flood information database at least once every four years, now the Floodplain

Evaluation and Management Commission shall review the database at least once every five years. The Commission is made up of the Department of Transportation and Development, the Coastal Protection and Restoration Authority, the office of community development, the Governor’s Office of Homeland Security and Preparedness, a member from the Senate Committee and one from the House Committee on Transportation, Highways and Public Works, and the secretary of the Department of Wildlife and Fisheries.

## **Agriculture**

### **ACT 69**

HB 593

Representative Pugh

(Amends and reenacts R.S. 3:2358.1, 2358.2(B), 3258.3, 3258.7(A), and 2358.13; enacts R.S. 3:2358.4(D); repeals R.S. 3:2358.5, 2358.6, 2358.7(B), 2358.8, 2358.9, 2358.10, 2358.11, and 2358.12). Creates rules and regulations for the inspection and control of farm-raised turtles. Establishes a mechanism by which the commissioner shall adopt rules and regulations regarding breeding, disposal, raising, identification, inspecting, licensing, monitoring, sanitization, shipping or transporting, testing, and quarantine of farm-raised turtles or turtle eggs.

## **Miscellaneous**

### **ACT 5 (SECONDARY EXTRAORDINARY SESSION)**

HB 3

Representative Abramson

(Enacts the Omnibus Bond Authorization Act of 2017). Repeals all Acts, except any Act authorizing the issuance of refunding bonds and Act 41 of the 2006 First Extraordinary Session, providing for the issuance of general obligation bonds in the state which cannot be issued for the projects contemplated. Over a period of years, the legislature had enacted numerous bond authorizations for projects which now cannot be undertaken. Reauthorizes general obligation bonds of the state for projects deemed to be essential and authorizes new projects.

**ACT 10**

HB 289

Representative Thomas

(Enacts R.S. 22:41.2). Requires risk-bearing entities to transmit accurate contact information to the commissioner. Risk-bearing entities authorized by the commissioner must annually provide the commissioner with the name, mailing address, phone number, and e-mail address of each individual responsible for: receipt of and response to consumer complaints; receipt of rules, regulations, and other directives from the commissioner; receipt and filing of inquiries regarding financial condition or tax payments; and any other function the commissioner deems necessary to the exercise of his authority.

**ACT 29**

HB 89

Representative Davis

(Amends and reenacts R.S. 22:1662(2)). Allows non-licensed claims adjusters to adjust certain losses less than five hundred dollars. A person employed by an insurer may adjust a loss less than five hundred dollars, arising from a first-party claim under a property and casualty insurance policy, and authorize a payment for a loss for which there is a specified coverage limit of five hundred dollars or less.

**ACT 128**

HB 77

Representatives Berthelot and Bishop

(Amends and reenacts R.S. 30:2531(A)(2)(b) and (B)(2)(b) and 2351.1(D)(1)). Reduces fines but increases community service penalties for littering. Upon the second conviction for littering, the fine is now \$900 instead of \$1,000; however 20 hours of community service are required instead of 16. For a second and each subsequent violation, the person has a choice between the reduced fine or the increased community service. A first conviction for gross littering results in a fine of \$900 and 16 hours of community service instead of a fine between \$1,000 and \$2,000 and eight hours of community service.

**ACT 140**

HB 147

Representative Garofalo

(Amends and reenacts R.S. 33:1236(21)(b) and (30)(b)). Authorizes St. Bernard Parish to enact ordinances requiring property owners to remove deleterious growths, trash, debris, and other noxious matter and permits the parish to grant liens against property that do not do so. The parish also, at its option, may enact ordinances to add removal charges to the ad valorem tax bill of the property involved.

**ACT 228**

HB 608

Representative White

(Amends and reenact R.S. 56:1901, 1902(1), 1903, 1904(A), (B)(introductory paragraph), (C)(2), (D), (E), and (H), and 1907; enacts R.S. 56:1902(3) and 1904(C)(3), (I), (J), and (K)). Includes native plants in the species to be conserved by the Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries. Native plants are defined as plants occurring outside of cultivation, excluding species known to have escaped cultivation or introduced from outside of Louisiana since European colonization. Previously, this statutory scheme protected species of wildlife. This revision by the legislature gives comparable protections to native plants.





A new report from the Louisiana Sea Grant College Program (LSG) examines the growing conflict over public and private access claims to the state's coastal waters.

The report, *Preliminary Options for Establishing Recreational Servitudes for Aquatic Access over Private Water Bottoms*, was completed in early March. The document emanates from a 2017 legislative mandate (HR 178) that directed LSG to study and make recommendations on recreational access in coastal waterways. This ongoing conflict is primarily between private landowners and recreational fishermen, and it involves disputes over what water areas are considered private and what water areas are open for public access.

Jim Wilkins, Professor and Director of the Sea Grant Law and Policy Program, served as lead author of the study. "The coastal access conflict has been with us since the early 1970s" said Wilkins, "...but it has really ramped up in recent years."

A guiding principle imposed by the 2017 study resolution was to limit the analysis to voluntary actions that would not

impinge on individual property rights or impede commerce. In preparing the study, LSG convened stakeholder meetings with fishermen, landowners and state agencies to hear concerns and identify potential options.

The final report provides a general overview of the context, history and drivers of the coastal access issue; describes the process utilized for soliciting stakeholder input; and details economic and legal considerations for ten preliminary options that could be used to partially mitigate this conflict. Louisiana Sea Grant does not oppose nor endorse any of the options, said Wilkins, who describes the report as a compilation of "suggestions that stakeholders and policymakers can use in future discussions of possible solutions."

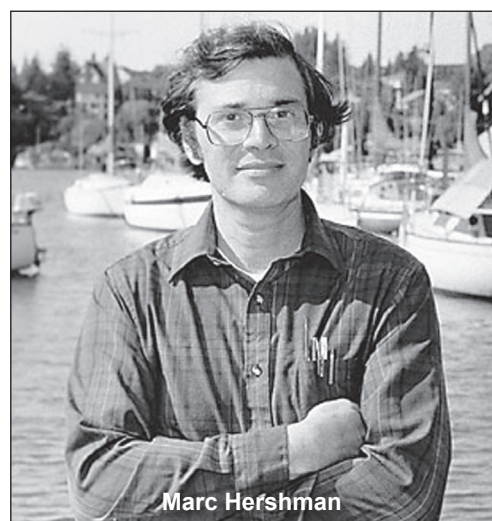
A full copy of the report and a list of frequently asked questions is available online at: [www.laseagrant.org/sglegal/publications/other/](http://www.laseagrant.org/sglegal/publications/other/).



## LEGAL PROGRAM PART OF LOUISIANA SEA GRANT'S 50 YEARS OF SERVICE

Louisiana Sea Grant (LSG) boasts the oldest legal program in the country, established in 1970. Originally, called the Louisiana Sea Grant Legal Program, today, its moniker is the Louisiana Sea Grant Law and Policy Program (SGLPP).

"In the beginning, the legal program was housed in the sub-basement of the old law building at LSU," said Mike Wascom, who served as the program's director from 1980



Marc Herschman

to 1998. Marc Herschman, who passed away in 2008, was the legal program's first director.

"The goal was to answer legal questions related to coastal and oceanic issues for state and local government agencies and the Louisiana public,"

Wascom said. "Marc's legal program was so successful it was copied by several other state Sea Grant programs over the years, and it has left its permanent imprint on Louisiana where it is still going strong nearly 48 years later."

"Marc's chief legal interest was laying the groundwork for the new Coastal Zone Management Program that had been passed by Congress in 1972," Wascom said. The SGLPP was instrumental in drafting the legislation that became the Louisiana Coastal Resources Management Program, assisting the Office of Coastal Management in legal matters, and it continues to work with state and local officials on issues concerning the Coastal Zone.

Louisiana's first coastal zone boundary was established in 1978 following multi-agency research which included Louisiana Sea Grant Legal and several years of political negotiations during which the SGLPP provided valuable legal information to lawmakers. State coastal zones stem from the federal Coastal Zone Management Act, which encourages and provides incentives for governing bodies to preserve, protect and, where possible, restore and enhance natural coastal resources such as wetlands, floodplains, beaches, barrier islands and coral reefs.



“During the 2009 state legislative session, a resolution passed asking the Coastal Protection and Restoration Authority to conduct a new science-based study on the adequacy of the 1978 inland Coastal Zone boundary,” said Jim Wilkins, SGLPP’s current director. “The purpose of the study was to determine if the boundary met current and future needs when it comes to managing, protecting and restoring our coast and serving its human inhabitants.”

The Louisiana Department of Natural Resources’ Office of Coastal Management took the lead on that study and worked with SGLPP staff, as well as others, to draft findings and recommendations on how to redefine the Coastal Zone and its boundaries. In 2012, the Louisiana Legislature redrew the state’s Coastal Zone based on the study and increased the management area by around 2,000 square miles.

“The changes more accurately reflect the most up-to-date scientific understanding of the functioning and complex systems that shape Louisiana’s Coastal Zone,” noted Wilkins. “Sea Grant Law and Policy was happy to participate in the Coastal Zone boundary study, as well as participate in other research on topics like recreational servitudes over private water bottoms or the state’s water laws.

“We’re a resource for state and local agencies, as well as coastal residents. We don’t advocate for one side or the other. We provide information and options when it comes to law and policy issues,” Wilkins said.

### **Advancing Fisheries Industries through Legislation**

Louisiana’s oyster farmers are free to experiment with different methods of growing the mollusks thanks to a law that opens state-owned waters to alternative oyster culture, including off-bottom techniques.

Working with attorneys for the state, SGLPP helped draft language that became Act 293 of the 2012 Regular Session of the Louisiana Legislature. The law allows the use of state water bottoms for alternative oyster culture as a legal use, lays out the process for obtaining permits and allows for alternative methods of oyster culture on qualified existing leases. In all, SGLPP spent ten years helping with legal issues and draft legislation that satisfied all parties – which included oil and gas companies, land owners, oyster growers and regulatory agencies – and simplified the permitting process.

Until the law was passed in 2012, oyster growers had to raise their crop the same way it has been done for thousands of years – on the water bottom and exposed to predators. With off-bottom culture, oysters are grown in mesh bags suspended from floats on the water surface or a cable between pilings. They’re protected from predators and can easily be exposed to air to help prevent disease and fouling.

“The off-bottom systems we’ve looked at for Louisiana are used commercially in other parts of the world,” said John

Supan, recently retired LSG Oyster Lab director. “People are making money with them, and they’re recovering more of the oysters they put in the water. One of my former graduate students conducted an industry survey and found, on average, less than 35 percent of the oysters planted using traditional methods make it to harvest. With off-bottom culture, every oyster you put into the water you get back, although with some mortality.”

“Louisiana and federal agencies charged with protecting natural resources and navigable waters were skeptical that farming oysters in any other way besides the traditional one was a good idea and could meet legal requirements” Wilkins said. “It took a lot of hard ground work by our team and the state attorneys to turn things around.”

### **Outreach to All**

Change is a constant for SGLPP. And since 1971, the program has been keeping Louisiana Sea Grant’s constituency apprised of changes in the law and issues affecting the state’s coast through the *Louisiana Coastal Law* (LCL) newsletter.

The newsletter was created to “develop a consciousness toward coordination and cooperation in using the coastal marshlands and estuaries of Louisiana and to explore the role of law in promoting coordination and cooperation,” the first issue stated. “We will act as a forum and information source for the continuing dialogue on the broader policy issues of managing resource use and activity in coastal Louisiana.”

The newsletter contains legal analyses of state and federal court cases and coastal issues currently affecting the state. And, it keeps readers up-to-day on recently enacted state laws and regulations.

“With technological advances and the flood of information available now, some newsletters of this type have gone completely to a digital platform. We publish the LCL digitally but realize there are still people who need and want a printed copy, so we still publish a paper version, as well. That is costlier, so our frequency has been reduced a little, but the LCL is still a valuable part of our program,” Wilkins said.

Along with the hardcopy version of *Louisiana Coastal Law*, email updates are available between printings. Copies of past email updates and the printed newsletter are available online at [www.laseagrant.org/sglegal/publications/](http://www.laseagrant.org/sglegal/publications/).

Other outreach publications produced by SGLPP are written for the typical coastal resident.

Hurricanes Katrina and Rita in 2005, followed by Hurricanes Gustav and Hurricane Ike in 2008, devastated much of coastal Louisiana. To help residents better weather hurricanes and tropical storms, SGLPP developed the *Louisiana Homeowners Handbook to Prepare for Natural Hazards*.

The handbook explains the forces of nature that act on structures during storms, including the dangers associated

with high winds, heavy rains and storm surge. It further lays out ways to gird a home against these forces to minimize or negate their effects, as well as information on how to reduce the human toll exacted by dangerous storms.

“There is information on preparing evacuation plans and kits, construction practices, retrofitting, shutter styles, insurance and emergency contact numbers. Basically, everything a homeowner needs to know in coastal Louisiana to be best prepared for coastal hazards,” said Melissa Daigle, resiliency specialist with SGLPP.

More than 19,000 copies of the handbook have been distributed. It also is available for download from [www.laseagrant.org/wp-content/uploads/LA\\_Homeowners\\_Handbook\\_v3.pdf](http://www.laseagrant.org/wp-content/uploads/LA_Homeowners_Handbook_v3.pdf).

### Education and Experience

As SGLP director, Hershman had a professorial appointment at LSU’s law school. Along with teaching land-use law, he created a coastal zone management law course which was open to law students and non-law graduate students alike – a truly multidisciplinary course. Wilkins continues that legacy and teaches the course today.

“The Coastal Zone Management course is a unique interdisciplinary experience for students interested in coastal natural resource and environmental management, law and policy. I teach the course with Paul Kemp, a coastal geomorphologist, to give the students insight into why resource management is based on scientific information as well as how it is managed from a legal perspective,” Wilkins said.

SGLPP’s education activities go beyond the classroom. Since its inception the SGLPP interns and externs program has provided more than 150 law school students from LSU, Southern and Tulane with hands-on, real-world experience on coastal and environmental issues.

Intern research projects cover a wide range of topics that affect one or more of LSG’s four focus areas: Healthy Coastal Ecosystems; Sustainable Fisheries and Aquaculture; Resilient Communities and Economies; and Environmental Literacy and Workforce Development. Some of those research projects are turned into articles for publication in the *Louisiana Coastal Law* newsletter. Some students also have written law review articles based on their work with SGLPP.

“At Louisiana Sea Grant, we were confronted with a wide spectrum of issues that at first glance did not mesh, but over time we learned the interdisciplinary nature of the issues surrounding the Louisiana coast. We saw firsthand how no single interest group could address issues without taking into account other groups,” said Beaux Jones, an SGLPP intern in 2009-10.

“This was a necessary lesson to learn and prepared me for my work with the state while I was an assistant attorney general serving as environmental section chief. While representing the State of Louisiana in environmental issues, I had to constantly recognize and understand the many different interest groups and parties affected by decisions made at the state level. Working for the Law & Policy Program taught me that I had to approach my job in a holistic manner that looks at the coast as a far-reaching, dynamic ecosystem with many lives and livelihoods at stake,” Jones said.

“The SGLPP internship is a tremendous opportunity for future lawyers to train under some of the best coastal law minds in the country and to develop the skills that may be otherwise ignored in a more traditional clerkship,” Jones added. “If I were making a hiring decision and the candidate was an SGLPP alum, they would move to the top of this list.”

Jones joined the New Orleans law firm of Baldwin, Haspel, Burke and Mayer in 2017.

SGLPP’s activities listed here are a fraction of the program’s overall impact during its nearly a half-century existence. We would like to hear of your experiences with Louisiana Sea Grant – which is celebrating its 50<sup>th</sup> anniversary in 2018 – and the Law and Policy Program. You can submit your comments to [www.surveymonkey.com/r/BLR3CG2](http://www.surveymonkey.com/r/BLR3CG2), as well as photos you want to share. Comments and photos will be featured during an anniversary event in the Fall of 2018, and also may be shared throughout the year online.

To learn more about the founding of Louisiana Sea Grant, visit <http://www.laseagrant.org/2018/lsg-marks-half-century/>.



## ANNOUNCEMENTS

### Legal Intern and Extern Positions Available

The Louisiana Sea Grant Law & Policy Program hires up to seven students year-round for intern (hourly wage) and extern (course credit) positions. These students act as research assistants for the staff attorneys, conducting research and producing documents on natural resource, ocean, and coastal law issues. If you know a law student who may be interested, please have them contact Melissa Daigle at [mtrosc2@lsu.edu](mailto:mtrosc2@lsu.edu) for more information.

### Climate and Resilience Community of Practice Registration Now Open

The 9<sup>th</sup> Annual Climate and Resilience Community of Practice Meeting will be held April 30 – May 1, 2018, in Port Aransas, Texas. General registration is only \$100, with \$50 registration for students and free registration for local government officials. More information can be found here: <http://masgc.org/climate-outreach-community-of-practice/annual-meeting-2018>



### 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](mailto:mtrosc2@lsu.edu).*

Visit our Website:

**[www.laseagrant.org/slegal](http://www.laseagrant.org/slegal)**





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