

Coastal zone
management
in Louisiana

LOUISIANA COASTAL LAW

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LEGISLATION, LITIGATION AND LAW OF THE SEA

LEGISLATION - THE 1974 LOUISIANA SPECIAL SESSION

Providing emergency loans for Louisiana's hard pressed commercial shrimpers created quite a controversy in the Special Session which concluded November 5. Opponents argued that aid-to-shrimpers would generate pressure to aid other economically hard-hit groups.

Act 14 authorizes the Wildlife and Fisheries Commission (WFC) to guarantee up to 90% of a loan of up to \$5,000 for a commercial shrimper who has been unable to get a loan from either a private lender or the U.S. Small Business Administration. A special fund (the Commercial Shrimp Fisherman Loan Guarantee Security Fund) is created to back the loan guarantees. The program will be available until July, 1975, but total loans guaranteed cannot top \$5 million.

LEGISLATION - THE 1974 LOUISIANA REGULAR SESSION

Three coastal zone management (CZM) bills failed to get out of committee thus putting a CZM law off until at least 1975. The House Natural Resources Committee held hearings on CZM but decided more time was needed to review and consider the bills. Delaying consideration also avoided a showdown between the backers of the bills. Governor Edwards, though publicly committed to CZM, did not endorse a specific bill.

H.496 basically the same CZM program as proposed by the Louisiana Advisory Commission on Coastal and Marine Resources (LACCMR) (see LCL #14) was supported by various commercial fisheries, sportsmen, environmental and conservation groups and was backed by legislators primarily from the eastern part of the CZ. Numerous amendments were put on the bill to meet opposition raised by local government, farmers and foresters.

H.442 and S.210 (identical) would have established the Louisiana Coastal Commission (LCC) as the lead agency for CZM. They were backed by legislators from southwest Louisiana. (For the differences between 496 and 442 and the views of their supporters, see LCL #15).

S.746, introduced by Senator Nunez and members of the Joint Legislature Committee on Environmental Quality, would have re-activated LACCMR to work with legislative and executive committees charged with reorganizing state agencies in "finding a home" for CZM.

A bill will probably be introduced again in 1975. In the meantime, Louisiana has received funds under the Federal Coastal Zone Management Act for initial research and planning for a CZM program. The planning is being carried out as a joint effort by State Planning, Wildlife and Fisheries, Sea Grant, and Coastal Commission.

Recreation

The legislature attempted to upgrade the quality of the inadequate Louisiana state park system this year. Unfortunately, the park plan became a "pork-barrel" issue, which seems to have undone much of what the legislature tried to do.

Act 657 was to be a \$100 million bond issue - the breath of life for the state's parks and the keystone of the recreation package. But the legislators added funding for new parks or projects without making the necessary changes in other parts of the bill. As a result, it has been announced that the act ended up so poorly written that no bonds could be sold, thus the legislature will have to try again.

Act 314 establishes a system for classifying properties controlled by the Parks and Recreation Commission. The new system would categorize holdings as "preservation areas," "preservation sites," "commemorative areas," "parks," or "experimental sites."

Act 346 provides for the transfer of a 900 acre tract in Vermilion Parish to the Parks and Recreation Commission to become Cheniere-Au-Tigre State Park. The Commission has allocated \$3.5 million for development of the park as part of the first phase of a 15 year program.

Atchafalaya Basin

Act 587 preserves state ownership of islands and lands created in Atchafalaya Bay through rapid siltation from the Atchafalaya River. It declares that any lands created will belong to the state. Also, as a part of the program to develop the public use of the Atchafalaya Basin, the act sets aside the Bay as a permanent public wildlife and recreation area.

Act 581 authorizes the Atchafalaya Basin Commission to execute surface leases of 2 acre tracts of state lands in the basin for hunting, trapping, and various agricultural purposes. The leases can be granted only if the individuals seeking leases are the owner or lessee of permanent improvements on the tract.

Land Use

Act 99 authorizes Calcasieu, Beauregard and Allen Parishes to pass ordinances regulating disposal of industrial waste in areas primarily used for agricultural or residential purposes. This is another step in the fight against the disposal of toxic wastes in southwest Louisiana (see LCL's #11 & #12).

Act 141 makes it illegal for alligator and fur hunters and trappers to go onto marsh, low prairie or swamp lands without the owners consent to hunt with guns. This was permitted under existing trespass laws. Violators can be fined and imprisoned.

Act 497 permits any parish to create special districts for the purpose of preserving and developing recreational facilities, historic areas or central business districts.

Act 518 adopts the Southern Growth Policies Agreement which creates the Southern Growth Policies Board made up of representatives from the member southern states. The Board has the power to carry out studies and make recommendations on regional planning for multi-state policies and projects, including utilization of natural resources, and land use planning.

Act 678 creates the Capital Area Groundwater Conservation District to administer, conserve, and develop groundwater resources in East and West Baton Rouge, Point Coupee and East and West Feliciana Parishes. The bill requires well owners who use more than 50,000 gallons a day to register existing wells and apply for drilling permits for any new wells. The Board is empowered to issue spacing orders, apportion the available waters "justly" and "equitably," and prevent salt water intrusion, pollution or excessive drawdown which would be harmful to aquifers.

Environment

Most environmental legislation introduced failed to pass. A legislative package to restructure the state's water pollution control laws to enable the state, instead of the Federal Environmental Protection Agency, to administer the National Pollutant Discharge Elimination System failed. A similar fate came to a number of "bottle bills" prohibiting no deposit-no return beverage containers. However, a few bills did pass.

Act 146 added Ten Mile Creek in Rapides and Allen Parishes and the portion of the Calcasieu River in Rapides Parish to the Natural Scenic Rivers system.

Act 511 provided for an August 17th referendum in Concordia Parish to remove Cocodrie Bayou from the Natural & Scenic Rivers System to permit a drainage project which would allow the clearing of thousands of acres of forest areas for agricultural production. The proposition was voted down by a 2 to 1 margin after a strong effort by conservation and sportsmen organizations. This was the first legislative attempt to remove a stream from the Natural & Scenic Rivers System.

Act 432 establishes the Governor's Clean-Up and Beautification Project, consisting of a public education phase, a complete study of current litter laws resulting in a model comprehensive litter law, and a legislative package aimed at remedying solid waste disposal problems. The project is to be administered by the Governor's Council on Environmental Quality.

Energy

Act 50 revises and codifies Louisiana's case laws and statutes affecting mineral rights into a new Mineral Code. While the code does not change existing law except in certain details, it will control the rights and obligations of anyone owning mineral interests in the state.

Act 151 establishes the bidding procedures for the Mineral Board to contract out the storing, transporting, selling, refining, and using of the oil and gas taken as "in kind" royalties. This is an important "energy crisis" act for Louisiana.

Act 501 provides for the payment of "production incentives" of 7 1/2% of the gross value of oil produced as a means of increasing energy supplies. The Commissioner of Conservation will write the regulations and determine who is qualified to receive the incentives.

Act 611 looks to the future use of salt domes and depleted reservoirs for the storage of oil and gas by permitting the lease of state owned lands and waterbottoms for these purposes.

Wildlife and Fisheries

Acts 157, 223, and 717 revise the state laws on the powers of the Wildlife and Fisheries Commission and the regulation and control of fish, oysters and wild game and birds. Few substantive changes in the law were made. Unnecessary duplication was eliminated, some existing language was corrected and provisions were reorganized and renumbered. However, the bills also changed the name of the Department of Wild Life and Fisheries to the Louisiana Wildlife and Fisheries Commission. In doing so, they may be unconstitutional because of the status given to the Department of Wild Life and Fisheries by the present constitution. (Under the new constitution, which goes into effect January 1, 1975, the change is permissible.)

The bills did make a few other changes in the law. One important change was the elimination of the requirement that persons taking water from state-owned streams use approved screens on intake pipes to prevent the killing of fish. According to Wildlife and Fisheries sources, studies showed the screens were of little benefit and the administrative burden was excessive. Another change permits oystermen to have more than 2 dredges per boat if they obtain a license from WFC at a cost of \$25.00 per extra dredge.

Act 473, the Threatened and Endangered Species Conservation Act, declares that it is state policy to "conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of this state's economic and ecologic systems." This policy would be carried out by WFC through studies, regulations and acquisition of conservation areas.

Act 213 forbids the use of gill nets and seines as well as trammel nets in certain areas of Lake Borgne.

Act 214 specifies the areas in Breton Sound and the Chandeleur Islands where the use of any type of nets to catch speckled trout, redbfish and other edible fish is prohibited. The act exempts pompano nets as long as the user has obtained a special permit from the WFC.

Act 215 sets net mesh sizes based on whether used North or South of an East/West line and limits maximum length to 2,000 feet.

Act 216 sets license fees for basic resident hunting licenses at \$5.00 and for non-residents at \$25.00 for a season or \$10.00 per trip.

Act 490 gives WFC the authority to set special shrimp seasons for all or part of the inside waters of the state.

Act 571 & 689 establish special deer seasons for muzzleloaders and one-armed crossbow hunters.

Act 599 sets the license fee for resident trappers at \$2.00 and non-residents at \$200.00.

Act 616 & 617 change the dates of seasons on oysters taken from natural reefs. Natural reefs will be completely closed from May 21 to the Tuesday following Labor Day and closed to steam processors from the end of this period through December 31. Also the 3 inch size limit on oysters from natural reefs will apply all year except from January 1 through May 20.

Act 618 requires that the oyster boat registration numbers be painted in 8 inch letters so as to be easily visible from the air and that the dredging and tonnage licenses be attached to the side of the boat so as to be seen by WFC patrols.

Act 619 sets oyster dredge size at no less than 3 feet nor more than 6 feet wide but eliminates the 16 tooth law. Forbids any night dredging.

Act 510 authorizes WFC to seasons and limits on speckled trout and other fish in Calcasieu Lake if biologically needed.

Miscellaneous

Act 358 changes the name of the Deep Draft Harbor and Terminal Authority to the Offshore Terminal Authority and enlarges its powers to permit licensing and regulation of privately built and operated superports as well as those that might be run by the state. This will greatly increase Louisiana's likelihood of getting a superport as superport bills now pending in Congress would give preference to states with such a program. The bills would also permit much greater state-level control over any ports planned or built off the state's coast. (A future LCL will report on the law that passes Congress.)

Act 167 enables the Greater Lafourche Port Commission (GLPC) - with approval of the Governor and the Attorney General - to enter into agreement with the U.S. that the construction of jetties by GLPC wouldn't affect the location of the boundaries of Louisiana. Location of the boundary line has a direct effect on who receives oil-royalties from tidelands development. (If the agreement isn't signed, the necessary federal permits probably couldn't be obtained for the jetties)

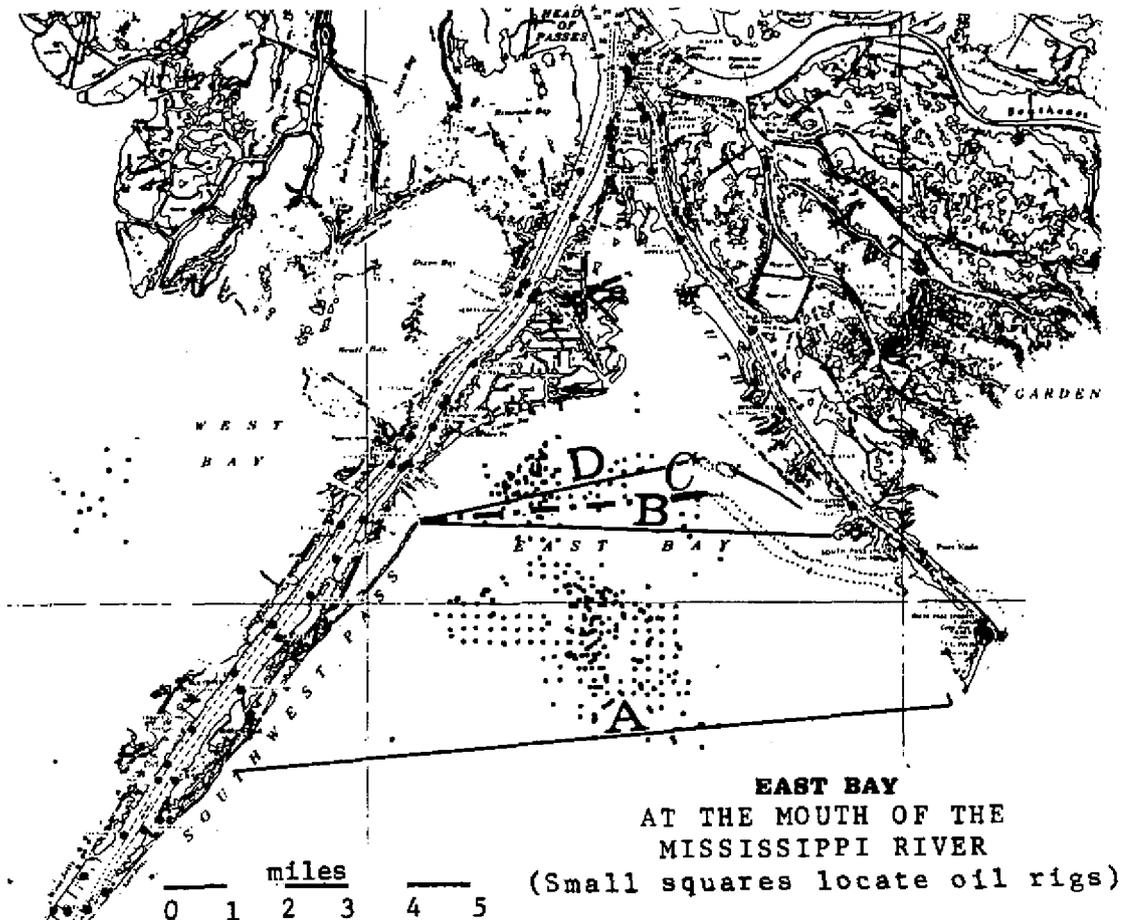
Act 378 establishes the Louisiana Archaeological Survey and Antiquities Commission which will have control over all archaeological treasures in the state and will supervise the salvaging or recovery of all such treasures including fossils, abandoned settlements, sunken ships, caves, etc. of historic value.

Act 625 ratifies the 1953 Sabine River Compact between Texas and Louisiana. The compact provides for the two states to work together in using and conserving the waters of the Sabine River.

LITIGATION - THE TIDELANDS REPORT

The final report of the Special Master to the U.S. Supreme Court on the continuing tidelands litigation has been issued. (see LCL #16 for a preliminary report.) The U.S. Supreme Court will hear further arguments soon and will render the final judgement.

Louisiana's lawyers were successful in getting the Master to award the state over 75,000 acres of waterbottoms worth hundreds of millions of dollars in oil and gas revenues. The primary issue before the Master was the location of the "baseline" from which to measure Louisiana's 3 mile territorial waters. Initially, the Master made two determinations - (1) that the baseline should follow the ins and outs of the coast rather than going in straight lines from point to point and (2) that Louisiana had not proved enough control over certain waters historically for them to be considered Louisiana territory. The issue was thus limited to whether several bodies of water should be "bays" according to international law. East Bay illustrates Louisiana's arguments and the Master's conclusions.



The 4 lines represent possible locations of the "closing line" (the "baseline" across the mouth of the bay from which 3 miles would be measured.) Louisiana argued for lines A & B (note how many more oil platforms would be in Louisiana territory under this interpretation). The Master rejected these because the water area they would enclose would not fit the legal definition of a bay. He did find that the water area landward of Line C (the dashed line) would be a legal bay. However, in doing so, the Master also decided that Cow Horn Island (the dotted outline at the eastern tip of Line C) ceased to exist after it disappeared from U.S. Government maps in 1969. Because of this Louisiana was awarded Line C until 1969 and Line D thereafter.

The Master also made decisions on the Ascension-Caminada-Barataria Bay complex, Atchafalaya Bay, Caillou Bay, Timbalier Bay, and in several areas near the mouth of the Mississippi. All the Master's findings are subject to change when the Supreme Court issues its final decision.

LAW OF THE SEA

LCL's H. Gary Knight was at the Caracas session of the Third U.N. Conference on the Law of the Sea which concluded without agreement on any substantive matter. It was hoped that major fisheries, pollution and mineral extraction problems would be addressed. However, the only 2 matters resolved were - 1) adoption of rules of procedure, and 2) selection of Geneva as the site of the 1975 session.

Why did the Caracas session fail?

(1) The conference was simply too large, both in terms of the number of participating states (138) and size of the agenda (25 items, over 100 sub-items), to function effectively as a negotiating and treaty writing forum;

(2) Unlike the draft treaty prepared by the International Law Commission for the 1958 and 1960 law of the sea conferences, there was no proposed single draft before the Caracas conference.

(3) Parkinson's Law ("work expands to fill the time available for its completion") was operative because the delegates knew that there would be one or more additional sessions in 1975 and were therefore under no pressure to conclude agreements at Caracas;

(4) Conference progress was deliberately obstructed by key developing nations who believe their bargaining position can best be served by forcing the major maritime powers into drastic concessions by delaying agreement; and

(5) There was an absence of high level political decisions on the major resource and national security questions before the Conference, thus leaving many delegations without the flexibility to conduct negotiations.

What will happen if substantial progress isn't made in 1975?

The U.S. will probably take 2 steps: 1) adopt a special 200 mile exclusive fishing zone around the U.S., and 2) pass an act regulating U.S. companies mining for hard minerals (mostly manganese nodules) in deep ocean waters. Bills establishing such regimes are now before Congress but are being held up to await the results of the LOS Conference. They may not be held up for long.

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