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# LOUISIANA COASTAL LAW



Each year numerous bills are introduced in the Louisiana Legislature which, if passed, would have significant effects on the state's coastal zone. In the 1977 regular session the three most important areas of legislation concerned coastal zone management, gill nets and the related area of fishery resource management, and energy regulation.

## COASTAL ZONE ACT

After numerous abortive efforts, coastal zone management became a reality in Louisiana on July 26 when Governor Edwards signed Act 705 of 1977. The new law incorporates almost all the recommendations made last March by the Louisiana Coastal Commission (see LCL No. 24). The Act creates a 21-member Coastal Commission composed of the Secretary of the Department of Wildlife and Fisheries, representatives from ten coastal parishes (Cameron, Vermilion, Iberia, St. Mary, Terrebonne, Lafourche, Jefferson, Plaquemines, St. Bernard, and Orleans), and ten members appointed by the governor. Six of the ten appointees must be residents of the coastal parishes, and one must be from St. Tammany Parish. The appointees are chosen to represent ten groups who have varying and competing interests in the coastal zone: the oil and gas industry; agriculture and forestry; commercial fishing and trapping; sport fishing, hunting, and outdoor recreation; ports, shipping, and transportation; nature preservation and environmental protection; coastal landowners; municipalities; producers of solid minerals; and industrial development. The Commission is to draw up broad standards and criteria which are to serve as minimum standards for state agencies and local governments which administer the program. Commission guidelines are subject to approval by the Joint

Legislative Committee on Natural Resources.

The Act requires state agencies, such as the Office of Conservation, Department of Wildlife and Fisheries, and the Office of Forestry, to develop management plans for the uses which they presently control. Local governments are authorized to develop plans in their discretion to control activities such as dredging and land uses, but local plans cannot conflict with programs developed by the state agencies. Both state agencies and local governments are to establish permitting systems if they establish a coastal zone management program, and can issue general permits if an independent review of each occurrence of a particular use appears unnecessary. However, a new section provides that any further regulation of Louisiana wetlands will be in proportion to the Corps of Engineers' relinquishment of permitting and regulatory authority in Louisiana's wetlands. Congress is presently considering amendments to the Federal Water Pollution Control Act which would allow states with approved regulatory programs to assume some of the Corps' permitting authority. (To be examined in an upcoming LCL.)

The Act seeks to preserve the status quo by providing that the construction, maintenance, repair, and normal use of any non-industrial structure is not a "use" when these activities take place on high grounds or on lands which have already been drained and filled. The original bill also excepted fast lands and lands used for agriculture, tree farming, and fish farming, and these exceptions were expanded in committee to include hunting, trapping, fishing, single-family home or camp construction, construction and maintenance of navigational aids, repairs and maintenance on existing structures, emergency construction, construction of small, private recreational docks, and construction of protective bulkheads for single-family residences.

The Act is a result of several years of disagreements and compromises and for that reason seems to have few ardent supporters. Moreover, there is presently some question whether the coastal zone program will receive federal approval, which would suspend all the Act's provisions except the advisory functions of the Commission. A disapproval of the Act might constitute a failure to make "adequate progress" for purposes of fourth year planning grants under the Coastal Zone Management Act, and might also affect the state's participation in the grant and loan program of the Coastal Energy Impact Program passed during the Ford Administration (see LCL No. 25).

The Act appears to contain several deficiencies which may prevent its approval by the federal government. Perhaps the most controversial issue in the coastal zone management struggle has concerned the location of the zone's boundary. Although several division lines have been suggested (see LCL No. 24), the Coastal Commission recommended the most restrictive definition -- the three-mile boundary. The House of Representatives, prompted by legislators from the New Orleans area, amended the boundary to include Lake Pontchartrain and the parishes surrounding it, but this expansion was rejected by the Senate and the final bill reflected the Commission's recommendation. The Act may also be faulted for failing to provide for areas of unique biological or ecological importance since the only area of "particular concern" it designates is the superport and its onshore facilities (superport activities are specifically excluded from the Act's requirements). Criticism has also been voiced over the emphasis which the Act places on the development and enhancement of multiple uses of the coastal zone. Another possible weakness is that the Act makes the adoption of management plans discretionary with the local governments and then fails to provide any statewide review of the management plans adopted by the local governments, as required by the federal Act. The Act may also violate the spirit if not the letter of the federal CZMA by incorporating a provision which declares that the expropriation of privately owned property is unnecessary for the purposes of coastal zone management.

## GILL NETS

A second issue of great controversy in this session of the Legislature has involved the regulation of the monofilament gill net, which is considered one of the most effective methods of taking fish. Numerous bills to ban or restrict the device were introduced, but attention quickly focused on HB1117 which eventually became Act 653 of 1977.

The new law designates a line which roughly parallels the Intracoastal Waterway from Texas to Mississippi. The Act also includes Lakes Pontchartrain, Calcasieu, and Sabine as restricted waters. The Act then proceeds to use this boundary as a dividing line for minimum mesh requirements for gill nets, trammel nets (which trap fish in pockets formed by their layers of netting material) and seines (which entrap fish when the net ends are closed).

Monofilament gill nets and trammel nets, which are made from single, untwisted synthetic filaments, are completely banned from all waters south of the boundary line, as well as from the waters of Lake Pontchartrain, Lake Maurepas, Lake St. Catherine, Lake Calcasieu, Toledo Bend Lake, and the portion of the Calcasieu Ship Channel which adjoins the lake. In addition, no seine, trammel net, or gill net can be longer than 1,200 feet, a reduction from 2,000 feet permitted under the old law. All violations are to be punished by a \$500 mandatory fine and revocation of all fishing and gear license for one year. The Act's effective date is not until April 1, 1978, and as a result all gill net licenses are extended without additional charge to that date.

A separate section of Act 653 creates new limits on the daily catch of speckled trout and red drum, two species which were in the center of the gill net controversy since many opponents of the device contended that the recent decreases in trout and red drum catch were attributable to gill netting. No more than 50 speckled trout or red drum can be caught in one day, and a person may have a maximum of two days' catch in his possession. The new law also provides that only two red drum over 36 inches in length may be kept each day.

## ENERGY

A third area of particular concern to the Legislature this year was the status of Louisiana's energy resources. One persistent fear that has arisen due to the depletion of natural gas is that Louisiana's reserves will be sold off at low prices to mostly out-of-state users and that when the state has to turn to other energy sources, the price will be much higher than it was for natural gas. Two acts of the 1977 regular session seek to remedy this problem.

### NATURAL GAS

Act 650 regulates the minimum price of intrastate first sales of new natural gas. The Act only covers new natural gas, which includes all gas discovered after July 20, 1977, (the Act's effective date), except gas already sold or to be sold under contracts executed prior to this date, and only regulates the first sale of such gas, which is defined to include all transfers of ownership from the producer. Two methods for establishing a minimum price are established, and the price is to be set at the lesser of the two figures.

The first method involves determining what the Average Refiner Cost of Imported Crude Petroleum (ARC) is for a certain period through statistics supplied by the Federal Energy Administration. This cost is then used as a base cost for a certain number of British Thermal Units (BTU). For example, if one barrel of oil selling for \$15 contains approximately 5,800,000 BTU's, 1,000 cubic feet of natural gas containing about 1,000,000 BTU's should sell for 10/58 or 17% of the barrel of oil, or for \$2.60. (Present prices range from \$1.75 to \$2.25 for 1,000 cubic feet.)

The alternate method of establishing the minimum price requires the examination of the price of first sales made by producers of a comparable size during the first three months of the previous six months. For example, for a February sale, the records of sales prices for September, October, and November of the preceding year would be the basis for calculating a minimum price.

Under either method the contract price remains the same for one year and may then be reestablished at the lower of the two prices arrived at then. The Act requires that copies of all contracts be filed within 30 days of their execution with the Assistant Secretary for the Office of Conservation in the Department of Natural Resources. This same official has broad enforcement powers to administer the price regulations and may subpoena witnesses, take testimony, and require the production of records at inquiries. He is also permitted to reduce the minimum price if the set price is so high as to make the gas unmarketable.

The greatly increased price is hoped to cause increased production and to make Louisiana purchasers the most desirable customers of the gas industry. However, the increase will be passed on to customers by gas-using industries operating in the state. The Act will also affect Louisiana consumers who will pay more for gas to heat and cool their homes. And whether the desired result will be achieved is somewhat questionable, especially in light of a recent ruling by a judge of the Federal Power Commission decreeing a possible complete curtailment of natural gas supplies to Louisiana industries and utility generating plants in case of another emergency this winter.

### COAL PIPELINES

Under the Carter Administration's energy plan, some Louisiana industries may be required to convert their facilities to the use of coal. Act 561 provides a regulatory scheme for coal or lignite slurry pipelines, a method of transporting pulverized coal or lignite suspended in water. The Act authorizes pipeline owners who have obtained state licenses and permits from the Department of Natural Resources to expropriate property in corridors (maximum width 15 feet) and to lay, maintain, and operate the pipeline and any necessary telegraph and telephone lines. Only one pipeline can be placed in a corridor unless the company can secure the former landowner's permission to lay more.

The Act contains numerous clauses protecting the interests of Louisiana citizens. Two important provisions protect landowners against the pipeline companies.

The first states that if the pipeline is not built because the pipeline promoters cannot obtain the required state or federal permits, the promoters cannot force land-owners to refund their money and cannot use the land for any other purpose. A second protection provides that the land-owner may sue the pipeline company if it uses any land outside the pipeline corridor and can recover five times the square foot value of the expropriated land multiplied by the number of square feet trespassed upon.

The Act also gives the Department of Natural Resources the authority to forbid the use of any Louisiana water to transport the coal unless it determines that the area's water supply will not be adversely affected. Local authorities can require a public hearing if they disagree with a decision to use area water.

### MISCELLANEOUS

Other Acts affecting Louisiana's coastal zone are:

Act 140, for the first time defines a slat trap.

Act 146, prohibits oyster dredges on the natural oyster reefs in Lake Calcasieu.

Act 193, prohibits the storage or disposal of radioactive materials or waste in salt domes.

Act 194, permits the use of seines and hoop nets in the Vermilion River where it forms the boundary between Lafayette and St. Martin Parishes.

Act 197, requires heads to be kept on turkeys and deer until dressed.

Act 234, authorizes a property owner to grant servitudes for educational, charitable, or historical purposes.

Act 310, permits the practices of falconry and raptor.

Act 344, changes the fox from an out-law quadruped to a protected one.

Act 549, increases the penalties for shrimping with doublerig trawls in inside waters during the closed season.

Act 565, creates the Atchafalaya Delta Wildlife Management area from land formed by accretion in Atchafalaya Bay.

Act 600, requires tags for all sacked or containerized oysters caught for sale. Untagged oysters will be deemed to be from polluted waters and can be seized by health authorities.

Act 604, adds water structures, dams, and weirs to the list of water outlets which cannot be obstructed with seines, gill nets, or by other means.

Act 742, requires everyone who sells crabs to purchase a commercial crab fishing license.

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