

LOUISIANA COASTAL LAW



CONTENTS:

1980 REGULAR SESSION OF THE
LOUISIANA LEGISLATURE P.1
LCRP GAINS FEDERAL APPROVAL . . . P.6

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1980 REGULAR SESSION OF THE LOUISIANA LEGISLATURE

EDITORS' NOTE

The 1980 session of the Louisiana Legislature resulted in the enactment of a number of laws dealing with wildlife and fisheries, the environment and natural resources. These laws went into effect on September 12, 1980. In this issue of "Louisiana Coastal Law", we present brief explanations of legislation in these areas that we feel will be of interest to our readers. Further information about any of the laws or resolutions discussed in this issue - or copies of them - may be obtained by contacting the Sea Grant Legal Program, 52 Law Center, L.S.U., Baton Rouge, LA 70803. (504) 388-5931.

With this issue we welcome the Managing Editor of the Louisiana Coastal Law for the 1980-81 academic year; Mr. Delos Flint, a Senior at the L.S.U. Law School.

WILDLIFE AND FISHERIES

With respect of fish and shellfish, most of the attention this year was focused on oysters. Several new laws deal with oyster leasing. Act 193 provides for rounding off the acreage covered by an oyster lease to the nearest full acre for the purpose of calculating the rate of rental for the lease. Act 200 provides for the procedure to be followed for initial application for an oyster lease while Act 198 provides that the holder of an oyster lease will have the first right of renewal of that lease. Act 201 provides that an initial oyster lease continues for a period of 15 years and shall thereafter carry the first right of renewal for successive periods of 15 years each, as long as the lease is capable of supporting oyster populations. The act also establishes the procedure for renewal of

oyster leases. Act 197 allows the use of an oyster dredge smaller than 3 feet by an oyster fisherman in certain situations.

Stiffer penalties are set out for the unlawful packing or taking of oysters from leased grounds in Louisiana, and for violations of Louisiana oyster laws and regulations in Act 202. Act 203 requires the Department of Wildlife and Fisheries to compensate a leaseholder for the required abandonment or surrender of oyster leases upon declaration of the leased area as a seed ground. Finally, Act 199 restates prior law requiring oyster lessees to operate their leases under the laws of the state and the regulations of the Wildlife and Fisheries Commission. It also substitutes the word "Department" in several places for the word "Commission" to reflect current operating practices, and provides that the lessee stake off and mark the waterbottoms leased to him.

The only law dealing with shrimp this session was Act 817 which provides that during the May shrimp season, no one can use a trawl that has a mesh size of less than 5/8" bar or 1 1/4" stretched for taking salt water shrimp. Act 604 raises the daily catch limit for striped bass from two bass to five bass.

Two new laws deal with alligators. Act 590 raises the alligator catch limit for non resident alligator hunters from one per season to three per season. Act 591 changes the former requirement that every person having raw alligator hides in their possession after the close of an open season must file a report on the hides to the Wildlife and Fisheries Commission. The new law requires that only alligator hide buyers and dealers having raw hides in their possession must file with the Department instead of the Commission.

Act 594 changes the former requirement that dealers in furs and alligator skins make their records available to audit by the Wildlife and Fisheries Commission within 90 days after the close of each trapping season to a requirement that the records be made available to the Department of Wildlife and Fisheries within 60 days after the close of the season. Act 596 provides for the holding in captivity during the open trapping season of non-game quadrupeds by licensed trappers, except alligators, providing they have been caught by legal methods. Such animals must be released or pelted by the last day of the open trapping season, unless the trapper has a nongame quadruped breeder or exhibitor's license.

In an effort to facilitate better protection of personal and property rights in marshland areas, Act 597 vests wildlife officers and agents with the same authority and powers that regular law enforcement officers of this state hold.

Act 595 changes the definition of "wildlife" for purposes of the Louisiana threatened and endangered species law from "all species of wild quadrupeds, wild birds, or wild plants" to "all species of wild vertebrates and invertebrates".

Two new laws fall in the miscellaneous category. Act 381 authorizes the local governing body of a parish or municipality to prohibit the operation of motorboats within an area inundated by a water body that is above flood stage. The act exempts commercial fishermen from such a prohibition. Act 166 authorizes eligible Louisiana residents aged sixty or older to apply for big game hunting permits by mail.

House Bill 264, designed to clarify the respective duties and functions of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission, was vetoed by the Governor. A companion bill, HB 362, which would have made technical amendments to the Wildlife and Fisheries laws to reflect the respective powers of the Department of Wildlife and Fisheries, the Commission, and the Secretary of the Department of Wildlife and Fisheries failed in committee.

NOTE: The concurrent resolutions discussed in this issue do not have the effect of law but rather are formal expressions of the Legislature's views on particular matters.

A number of concurrent resolutions concerning fisheries and wildlife were also passed during the session.

HCR 72 expresses the Legislature's desire that any new version of Title 56 dealing with the fishing industry in Louisiana will be written in "plain English".

HCR 75 creates a joint legislative subcommittee to reform and propose a comprehensive recodification of Title 56. This resolution continues a reformation effort that began in last year's legislative session.

HCR 213 declares Des. Allemands, parish of St. Charles, as the "Catfish Capital of the Universe."

HCR 212 requests the Department of Public Safety to remove state troopers from policing fresh water lakes and place them in coastal areas to aid in the enforcement of laws against smuggling

SCR 132 requests the formation of a joint legislative committee to study licensing and theft of crab and fish traps.

SCR 13 requests that the Louisiana Wildlife and Fisheries Commission prohibit doe days during deer hunting season in Grant, Caldwell, and Winn parishes.

SCR 56 asks the Congress to assist commercial fishermen in Louisiana with the ever increasing cost of fuel bills.

SCR 14 requests that local school boards and the Department of Wildlife and Fisheries undertake programs in public and interested private schools to inform students of the state fish and game laws and the importance of conservation and preservation.

ENVIRONMENT

Much of the activity in the environmental area during the 1980 session dealt with refinements of the environmental re-organization legislation enacted during the 1979 session, Louisiana Environmental Affairs Act (Act 449 of 1979). (See LCL#35).

SOLID WASTES

Act 507 creates the Louisiana Resource Recovery and Development Authority within the Department of Natural Resources' Office of Environmental Affairs. This act provides for the development and implementation of a state wide regional solid waste management plan. This act is geared at protecting the land, air, and groundwater resources of this state by developing and financing systems to manage, dispose, and recycle solid wastes. Additionally this act is designed to provide for the maximum reuse of materials and energy resources derived from solid waste. Hazardous wastes are not included.

Act 197 establishes a procedure that must be followed by Louisiana governmental bodies before entering into agreements to reclassify any area of the state for the purpose of altering existing ambient air standards.

HAZARDOUS WASTES

Three acts deal specifically with hazardous wastes, a topic that has gotten major attention from the Legislature since 1978. (See LCLs #33 and 35). Act 748 grants the state exclusive jurisdiction over the generation, transportation, and/or disposal of hazardous wastes and limits parish and municipal authority over these to over siting of facilities.

Act 194 focuses on the many problems associated with Hazardous Waste. This act redefines and broadens the powers of the Environmental Control Commission. The Commission now has the authority to regulate the transportation of radioactive materials and byproducts in state, and the power to promulgate rules and issue permits for waste discharge.

This act changes a provision of Act 449 of 1979 that made the State Attorney General responsible for the prosecution of all cases, both civil and criminal, arising out of violations of the environmental laws and regulations established by Act 449. The granting of criminal prosecution authority to the Attorney General was a somewhat controversial provision because it appeared to run afoul of Article V, Section 26 (B) of the 1974 Louisiana Constitution, which provides that the district attorney is in charge of every criminal prosecution by the state in his district. Act 194 resolves this controversy by deleting reference to prosecution authority for the Attorney General over criminal actions and providing that criminal prosecutions for violations of the environmental laws or regulations may be instituted by the district attorney having criminal jurisdiction. The Attorney General still retains the authority to prosecute for civil violations of Louisiana's environmental laws and regulations.

Act 194 also sets up two funds, the first fund being the Environmental Emergency Response Fund. This fund is to be used to defray the costs of an emergency response to pollution discharges, in the abatement of pollution sources, and to insure technical support in environmental litigation. The second fund set up by Act 194 is the Hazardous Waste Protection Fund. This fund is to be used where hazardous wastes sites have been closed and; a hazardous waste accident occurs, for the maintenance and custody of hazardous waste facilities, and to assure financial responsibility in the event of damages resulting from accidents and negligence.

Act 603 amends the law dealing with transportation of hazardous materials by changing the definition of "hazardous materials". Hazardous materials are now defined to mean any gaseous, liquid, or solid material which because of its quantity, concentration, physical, chemical, or biological composition poses a substantial present or potential hazard to human health, the environment, or property when transported in commerce. This law also increases the minimum liability insurance requirement for carriers of hazardous materials from \$100,000 to \$200,000.

Regulations governing the disposal of nonhazardous wastes (such as drilling mud and saltwater) from oil and gas drilling operations were enacted by Act 804.

Act 364 empowers the Secretary of the Department of Public Safety to require emergency plans from all facilities where toxic gaseous substances are produced or maintained.

Finally, a new law in the environmental area is Act 183. This act prohibits channelization, channel realignment, reservoir construction and excavation with a dragline, backhoe, caterpillar tractor or by any other means on that portion of the bed and banks of the Comite River in East Baton Rouge Parish between Comite Drive and Greenwell Springs Road, which is within three hundred feet of any state highway or bridge without written approval of the Department of Transportation and Development and except as required for construction, maintenance and preservation of state highways by the DOTD and provides penalties for violations of these prohibitions.

Numerous resolutions dealing with environmental protection matters were passed during the session.

HCR 118 directed the Environmental Control Commission to establish a permanent network of air pollution monitory stations in the chemical plant areas throughout the state.

HCR 268 provides for the Department of Natural Resources to survey and identify all state owned land in the Atchafalaya Basin, and to mark and identify all boundries thereof.

HCR 273 provides for a study of the feasibility of bringing Louisiana into into the Natural Pollution Discharge Elimination System under the Federal Water Pollution Control Act amendments of 1972.

HCR 159 urges the Corps of Engineers to study the feasibility of flood control plans to divert waters from the West Pearl River into the Pearl River.

HCR 195 requests the Corps of Engineers to study the water flow and drainage patterns in the Mermentau Basin.

SCR 73 requests the Louisiana Congressional delegation to bring to the attention of the Corps of Engineers the necessity of dredging the Amite River to reduce damage due to flooding in the Amite River Basin.

NATURAL RESOURCES

Several bills enacted this session deal with natural resources, particularly areas involving minerals and energy resources.

The prospecting for oil, gas, or minerals on private land in Louisiana without the landowner's consent is now prohibited by Act 435. This act requires that, prior to entering a landowner's property, a prospector file a notice of his intent to conduct exploration operations on such property with the Department of Wildlife and Fisheries.

Section 115 of the Louisiana Mineral Code is clarified by Act 122. This act provides that, as with leases for the development of other solid minerals in Louisiana, a mineral lease for the exploration and production of lignite or other forms of coal may be extended for a period greater than 40 years, if there have been actual mining operations on the land or on land unitized with that piece of land.

The minimum royalty on sulphur has been changed by Act 216 in state mineral leases. This act changes the minimum royalty from \$.75 per long ton of sulphur produced and saved, to one-eighth of the value per long ton and not less than \$2.00 per long ton.

Act 108 amends the definition of "gas" in Section 503 of Title 30 of the Revised Statutes to include, "synthetic gas which is produced from coal, lignite, or petroleum, or petroleum coke, the heat content of which synthetic gas does not exceed 800 BTU's per standard cubic foot". This additon makes it clear that synthetic gas comes under the regulatory jurisdiction of the Office of Conservation in the Department of Natural Resources. Prior

laws gave an expansive definition to the term "petroleum" for purposes of petroleum pipeline regulation by the Public Service Commission. Act 109 excludes methanol produced synthetically from coal, lignite, or petroleum coke from this definition of "petroleum".

The Louisiana Mineral Code is amended in Section 149 by Act 371. The amendment provides that when the federal government, the state government, or a legal entity having expropriation powers, acquires land on which the mineral rights have been reserved to the landowner, before it can transfer the land to a third party, it must first offer to sell the interests acquired in the land back to the original owner at a fair market value.

The act also adds a new section to the state lands provisions of Louisiana law to provide, that when the state or a state agency acquires any land, other than highway right of way, before it can transfer the land to a third party, it must first offer to sell the right or interest it acquired in the property to the original owner at the fair market value before it can transfer the land to a third party.

Gasohol and motor fuels composed of at least 10% alcohol are exempted from state sales and use taxes and motor fuel taxes by Act 540. Act 159 provides an exemption from state sales taxes for any materials or energy sources used to fuel the generation of electric power and all energy sources except refinery gas when used as boiler fuel.

Act 715 establishes a licensing system for the drilling of wells for underground water under the control of the Office of Public Works in the Department of Transportation and Development.

Numerous resolutions dealing with Natural Resource problems were also passed by the legislature.

HCR 229 requests the establishment of a joint legislative subcommittee to study the enactment of a uniform trespass laws

to prevent abuse by the public of private lands historically used for recreational purposes. An advisory committee to the subcommittee is also established.

HCR 171 provides for a study of the necessity, safety, economy, and alternatives to nuclear energy production in Louisiana.

HCR 254 requests the establishment of a joint legislative subcommittee to study, evaluate, and advise on proposed storage of nuclear waste in the state, especially in geologic formations such as salt domes.

HCR 33 urges Congress and the Department of Energy to discontinue funding and the authorization for studies concerning suitability of geologic structures in Louisiana for permanent or temporary storage of radioactive waste or materials.

HCR 130 memorializes the Congress to oppose imposition of the "gasoline conservation fee" on imported oil proposed by the President on March 14, 1980.

SCR 43 requests the establishment of a joint legislative subcommittee to study use of incentives for nongovernmental usage of renewable energy resources through controlling such factors as density solar access, shading patterns, and other needs specifically suited to Louisiana's climate.

HCR 44 requests the establishment of a joint legislative subcommittee to study use of incentives to encourage production conservation measures in the petroleum industry.

SCR 35 requests the establishment of a joint legislative subcommittee to study the production of renewable agricultural fuels in Louisiana.

SCR 106 requests a joint committee to study the use of defoliants or herbicides on state owned lands and rights of ways.

**LOUISIANA'S COASTAL RESOURCE
PROGRAM GAINS
FEDERAL APPROVAL**

The U.S. Department of Commerce declared the year 1980 to be the "Year of the Coast". It is fitting that on September 19, 1980, that Louisiana's Coastal Resources Program gained federal approval. The National Oceanic and Atmospheric Administration of the U.S. Department of Commerce reviewed Louisiana's program and gave the necessary approval for the program's implementation. Approval will provide funding for the development of local coastal programs, coastal use permit programs and enforcement and monitoring systems. The regulatory facets of the program went into effect on October 1, 1980.

The program was the result of five years of planning and encompassed public hearings, a draft environmental impact statement, a final environmental impact statement, and state reviews.

The Louisiana Coastal Resources Program is based, in large part, on the Louisiana State and Local Coastal Resources Management Act of 1978 (Act 361). This

act set out a comprehensive set of coastal zone management policies and guidelines. It further provides for the implementation of a new permit system to regulate coastal use and development.

This new permit system provides for a shared state-local (parish) partnership for the management and development of the Louisiana Coastal Zone. Accordingly, permits can be issued by both local governments and state entities. Finally, this new permit process is coordinated at all levels to assure that the interests of the federal, state, and local governing bodies are protected.

For more information, contact the Coastal Management Section of the Louisiana Department of Natural Resources at:

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Baton Rouge, LA 70804
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COMING UP IN THE LCL

The next issue of the LCL will discuss the Gulf of Mexico Shrimp Management Plan, the effects of the "Texas Closure", and possible remedies open to the state of Louisiana and its fishermen.

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