

JUNE 77

LCL REPORT NO.26

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LOUISIANA COASTAL LAW



The Louisiana Legislature is presently considering a number of issues important to the coastal zone. Legislation has been proposed to deal with two particularly troublesome subjects: management of fisheries resources and the coastal resource management program.

MANAGEMENT OF FISHERIES RESOURCES

At the heart of the fishing issue lies the gill net controversy. A gill net is defined by Louisiana law to be "any net of vegetable or synthetic materials set vertically, either in a stationary position or floating, with a mesh of such size and design as to be used primarily to catch fish around the gills without manual manipulation." The arguments for and against gill netting have divided the state's commercial and sports fishermen, since the latter claim that gill nets have significantly reduced the speckled trout and redfish population. They point to the rising number of permits for gill nets in sixteen coastal parishes (from about 625 in 1964 to 1,740 in 1975) and to the increased speckled trout landings in Louisiana (from an annual average of 575,000 pounds in the 1960's to about 1,500,000 pounds a year in the early 1970's). The sports fishermen contend that this great upsurge in landings was caused by overfishing which eventually led to decreased landings in speckled trout in 1974 and 1975. According to opponents of gill nets the device's small bar, presently set at 1 1/2 inches, traps young fish and interferes with spawning. On the other hand, the commercial fishermen counter these allegations by blaming the declining fish population on the heavy influx of freshwater in recent years which has pushed the food supply farther out in the Gulf.

At present there are a number of statutes which regulate gill netting,

although in a rather piecemeal fashion. Gill nets are prohibited within 500 feet of the mouth of any inlet or pass, in the Bogue Chitto and Tchefuncte Rivers, and in waters surrounding the Chandeleur and Breton Islands. They are also banned within one-half mile of the Grand Island and Grassy Island shorelines in Lake Borgne, within one-half mile of the mouths of rivers flowing into Lake Maurepas, the Amite River diversion, and Pass Manchac, and south of the IntraCoastal Waterway in Lafourche and Terrebonne Parishes. A special prohibition against their use to capture freshwater fish applies to all of the state east of U.S. Highway 51 and to Lake Maurepas and its tributaries.

Last year the Legislature failed to pass any comprehensive statute, but one Act did require the Department of Wildlife and Fisheries to conduct public hearings to determine how to improve the allocation of certain saltwater fish between commercial and sports fishermen. The agency's proposal was presented to the Legislature and recommends higher fees for commercial fishers, creel limits on sports fishermen, a 1,200 foot limit on saltwater gill nets (reduced from 2,000 feet), mandatory fines and loss of gear for commercial violations, and a minimum bar of 2 inches for gill nets, a change from the present 1 1/2 inches bar. The report has been criticized by some sportsmen who disagree with its premise that only partial restriction of gill netting is sought and that therefore "properly operated netting of all types should be allowed within certain time periods."

The Legislature appears to have listened more attentively to the arguments of the sports fishermen. A number of proposed bills would prohibit the use of gill nets in all waters under the state's jurisdiction. Other proposed laws take a more restricted view of the matter and

would prohibit gill nets only in specified areas of the state. Thus, one bill would ban gill nets in Jefferson Parish while another seeks to exclude the devices only from the area of Jefferson Parish south of the IntraCoastal Waterway. SB80 recommends a ban on gill nets for all of the state south of the Intra-Coastal Waterway, whereas HB1132 uses the freshwater shrimp line on the north and the inside-outside shrimp line on the south to delineate the area to be free of gill nets. Another House bill purports to restrict the use of gill nets within a specific area, but would limit the prohibition to non-resident fishing vessels. HB1117, the only bill reported out of committee at this time, proposes a ban on monofilament gill nets south of the line described in R.S. 56:322(A) and in Lakes Pontchartrain, Maurepas, and St. Catherine.

Other methods besides outright bans on gill nets have been proposed. HB1619 and SB422 recommend the creation of saltwater fishing zones in order to preserve the redfish and speckled trout populations. HB1619 contemplates one saltwater zone, bounded on the north by the mesh size line defined in R.S. 56:322(A) and on the south by the inside-outside shrimp line as defined in R.S. 56:495. To fish within this zone, a sports fisherman would be required to buy a \$1.00 fishing stamp which would be affixed to his license and would expire with it. Resident commercial fishers would purchase annual licenses for \$100, and non-resident commercial fishermen would be charged twice as much. The bill provides that a maximum of 1,500 feet of netting be allowed, and that no netting have a net mesh smaller than $1 \frac{7}{8}$ inches bar. Speckled trout less than 14 inches in length and redfish weighing more than 12 pounds would not be taken. SB422 recommends the same boundaries for the saltwater zone, but also envisions a lateral division into numerous color-coded zones, any one of which the Department of Wildlife and Fisheries could close if it received scientific and biologic information showing such a need. The sports fisherman would have access to all zones for a \$1.00 fee, but commercial fishermen would pay \$250 and \$500 (resident and non-resident, respectively) for each zone in which they fish. Commercial

fishermen would be required to display color-coded markings plainly on their vessel's length. They would be limited to 1,000 feet of netting which must be tagged for each color-coded zone.

There has also been response to the gill net controversy at the local government level. In April the Vermilion Parish Police Jury passed an ordinance forbidding their use in the "open waters" under the Parish's jurisdiction, although they will remain legal in inland water such as canals, streams, bayous, lakes and ponds, provided a license fee of \$500 is paid by out-of-state fishers. The Parish officials have been advised that the ordinance is probably outside the scope of their powers since the state has preempted the control of fisheries and waters.

Private citizens have increasingly become involved in the issue. In May a group of French-speaking fishermen claiming descent from Houmas and Choctaw Indians filed a suit in federal district court in New Orleans to enjoin the enforcement of the state gill net laws. The suit alleges that the Indian ancestors of the plaintiffs secured fishing rights from the French which were extended by the 1803 Louisiana Purchase and are still binding on the state.

Regulations for other marine resources besides fish are also being considered by the Legislature. HB70 proposes an amendment to R.S. 56:495 (see above), the statute which delineates the inside and outside shrimping waters of the state. Nets for shrimp catching are also the object of a proposed modification. Under HB110, the minimum mesh size for beam trawl and butterfly nets would be increased from $\frac{5}{8}$ inch bar and $1 \frac{1}{4}$ inches stretched to $\frac{3}{4}$ inch bar and $1 \frac{1}{2}$ inches stretched, which would bring these nets' minimum mesh size into conformity with that of seine and trawl nets. Commercial crabbing would also be subject to regulation under HB1601 which would require any commercial crabber to pay an annual fee of \$5 per trap. To be licensed, the crabber would have to prove that he had either a bond or liability insurance worth at least \$10,000 to be used in indemnifying anyone injured by his traps. A trio of bills were introduced in the House of Representatives to

improve conditions in the state's oyster industry. HB1003 is a measure to protect the oyster reefs in state waters by forbidding the use of dredgers or scrapers to take oysters from the reefs unless permission has first been obtained from the Department of Wildlife and Fisheries. The other two bills deal with preserving the quality of oysters caught in Louisiana waters. HB1004 would provide that oysters and other mollusks destined for human consumption be placed under refrigeration at temperatures between 35°F and 45°F from the time they leave the harvester's vessel until they are bought by the consumer. The final bill, HB1005, would compel all commercial oyster harvesters to purchase tags from the Department of Wildlife and Fisheries and to attach the tags to all oysters before they leave the vessel. Untagged oysters would then be presumed to have been taken in polluted waters and would be subject to seizure by health authorities

COASTAL RESOURCE MANAGEMENT

The issue of coastal zone management is still hotly debated in Louisiana. In the last session, the Legislature authorized the Louisiana Coastal Commission to study the problem and to present recommendations in March, 1977 (see LCL Nos. 24 and 25). The Commission's recommendations have been embodied in HB709 (and SB425, its counterpart in the Senate). The single most controversial element of the bills is the restrictive definition given to the coastal zone, which generally would include the land lying within three geographical miles from the Louisiana coastline as defined in the Submerged Lands Act and as established by the United States Supreme Court in United States v. Louisiana in 1975. The bills would create a 21-member Coastal Commission composed of representatives from ten coastal parishes, ten representatives of various user groups, and the secretary of the Department of Wildlife and Fisheries. The Commission's duties would consist of establishing broad standards and criteria to be followed as a minimum standard by each agency which controls uses in the coastal zone. Guidelines for the establishment of these standards and criteria would include a requirement that different

and multiple uses of the coastal zone be recognized and enhanced and a statement that no acquisition of private property is necessary to achieve the goals of the program. Different agencies of the state would be given responsibility for the regulation of certain uses, but the bulk of responsibility would rest with local governments which, for example, would have jurisdiction over water and erosion control, dredging, effluents, fill and drainage, local roads, bridges, and habitation. The bills also are designed to establish a permitting system at both the state and local level. Agencies (which include local governments) would also be allowed to issue general permits if, in their opinion, the independent review of each proposed use is unnecessary. Fast lands and lands already used in agriculture, aquaculture, and silviculture would be exempted from the coastal zone management program. The Senate version of the bill has been amended in committee to require approval by the House and Senate Natural Resources Committees for any rules, regulations, or guidelines adopted by the Coastal Commission. Another amendment expanded the uses exempted from coastal zone management to include hunting, fishing, trapping, construction of a single-family camp or residence, construction of navigational aids, and emergency construction. SB425 has received a favorable committee report and will go to the Senate floor.

Two proposed bills, SB740 and HB1671 (which is the House version of the same bill), take a more expansive view of the nature of coastal zone management, as is most significantly reflected in the boundaries given to the coastal zone. Starting at the Mississippi state line, the coastal zone's northern boundary line would be Interstate 59 to its junction with Interstate 12, then Interstate 12 until its merger with Interstate 10 in Baton Rouge, and finally Interstate 10 to the Texas state line, excluding only the lands in East Baton Rouge, West Baton Rouge, and Acadia Parishes. Parts of 23 parishes would form the coastal zone, and each parish would be represented on the 33-member Coastal Administrative Board. The ten remaining Board members would be appointed by the governor, one member in

his discretion and the other nine to represent certain state agencies: the Office of State Lands; the Office of Conservation; the Department of Agriculture; the Department of Transportation and Development; the Louisiana State Planning Office; the Department of Wildlife and Fisheries; the Department of Culture, Recreation, and Tourism; the Offshore Terminal Authority; and the Office of Health Services and Environmental Quality. The Board would have several significant powers which the Commission in the previous bill lacks, for the Board not only would draw up minimum guidelines, but also would have the authority to approve the policies, rules, and regulations of the state agencies and to approve coastal zone management programs developed by local governments. The Board would not have the power of eminent domain, but could purchase full title, servitudes, or other real property rights or acquire them by donation. The management program under these proposals would be much more centralized than under HB709 or SB425; state agencies would have the more important role in regulating uses of the coastal zone and local governments on the whole would have a subsidiary part to play since

any regulations or standards promulgated by them could not conflict with the jurisdiction of the state agencies. The entire management program would be administered by the Office of Coastal and Marine Resources in the Department of Wildlife and Fisheries which would be responsible for the disbursement and accounting of federal funds and would monitor the performance of the other agencies. The bills contemplate a permitting procedure in which each agency is primarily responsible for determining which uses within its area of regulation constitute direct and significant impacts on coastal waters. However, certain uses, such as those taking place on land above the 5-foot contour line or those transacted within fast lands, would be exempted from the permit requirement. The bills also would exempt hunting, fishing, trapping, construction of a single-family residence or camp, construction of a private dock costing less than \$2,500 (although preparatory dredging of all types is not exempted), and emergency construction. SB740 received an unfavorable report from its committee and further consideration was postponed indefinitely by a 6-1 vote.

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