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## 1998 FIRST EXTRAORDINARY SESSION AND REGULAR SESSION OF THE LOUISIANA LEGISLATURE

by Michelle Marney

This annual Legislative issue of *Louisiana Coastal Law* is devoted to summarizing acts and resolutions enacted during the Regular Session and the First Extraordinary Session of the Louisiana Legislature. Legislation having a general impact on Louisiana coastal resources and environment is covered. Further information about these laws or resolutions can be obtained by contacting the Sea Grant Legal Program.

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### Wildlife and Fisheries

#### Special Session

#### 1998 1st Ex. Sess. Act 164 (H.B. 177)

Authorizes the Department of Wildlife and Fisheries to implement an electronic issuance system for hunting and recreational fishing licenses and permits, allowing for purchase of licenses or permits using the telephone and any other electronic methods of communication and for payment of the required fees by credit card. Repeals the requirements for license booklets and all licensing matters currently undertaken by tax collectors.(amending R.S. 33:1423(B)(1) and R.S. 56:6(21), 8(12)(a)(ii) and (60.1), 103(B) and (D), 104(A)(introductory paragraph) and (1)(a), 251(A)(1), 302.4(A), 302.5, 302.6, and 642(A), enacting R.S. 56:30.1, 302.4(D), and 641.1, and repealing R.S. 56:302.4(B))

#### 1998 1st Ex. Sess. Act 54 (H.B. 32)

Provides for eligibility to hold a commercial fisherman's rod and reel gear license, denying the license to a person convicted of a fishery-related class three or greater violation for a period of two

years, five years for a second conviction, and ten years for third and subsequent convictions. (enacting R.S. 56:305.7 and repealing R.S. 56:303.10)

#### 1998 1st Ex. Sess. Act 31 (H.B. 60)

Authorizes the dissemination of wildlife and fisheries information and education in the state of Louisiana by the Department of Wildlife and Fisheries (amending R.S. 36:605(B)(6) and enacting R.S. 36:605(B)(7) and R.S. 56:6(29))

#### 1998 1st Ex. Sess. Act 155 (H.B. 25)

Requires a recreational gear license for the taking of crawfish for recreational purposes. Sets a licensing fee of fifteen dollars for use of not more than thirty-five crawfish traps and requires that all traps be tagged with the name and license number of the fisherman. Sets a daily catch limit of one hundred fifty pounds. (amending R.S. 56:8(30) and enacting R.S. 56:302.3(B)(7) and 325(A)(7)).

#### 1998 1st Ex. Sess. (H.C.R. No. 34)

Requests that the Department of Wildlife and Fisheries develop a program to control and prevent the problem of black

drum predation on the oyster population on both public and private leases.

#### 1998 1st Ex. Sess. (H.C.R. No. 19)

Continues the Louisiana Oyster Task Force to study the water quality and management requirements of the state's molluscan propagating areas, to study the decline in molluscan shellfish production and the reasons therefor, to study the ways in which management can maximize molluscan shellfish production, and to make recommendations with respect to issues pertaining to the oyster industry and oyster production, marketing, and salability to the Department of Wildlife and Fisheries, Department of Health and Hospitals, Department of Natural Resources, governor's Office of Coastal Activities, and the legislature. Provides for the composition of the thirteen member task force.

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**Regular Session**

**1998 Act 28 (S.B. 64)**

Provides an exemption from the sales and use tax imposed by the state of Louisiana or any of its local governmental subdivisions or school boards or any rental or purchase of property or services for Bass Life or any of its chapters, recognizing Bass Life as a nonprofit organization dedicated exclusively to the conservation of fish and the preservation and conservation of their habitat. (amending R.S. 47:305.41 and 305.43(A) and enacting R.S. 47:305.51)

**1998 S.C.R. No. 31**

Directs the Department of Wildlife and Fisheries to report to the House and Senate natural resources committees on the number of parishes who requested assistance pursuant to H.C.R. No. 79 of the 1995 Regular Session, the total number of beaver or nutria destroyed or removed by the department pursuant to the resolution, as well as the department's future plans for containment of these two species.

**1998 H.C.R. No. 37**

Requests that the Department of Wildlife and Fisheries and the U.S. Fish and Wildlife Service and the U.S. Forestry Service coordinate the opening and closing of hunting seasons in the Kisatchie National Forest with the opening and closing dates on land in the state which is not owned by the federal government.

**1998 S.C.R. No. 52**

Requests that the secretary of the Department of Wildlife and Fisheries evaluate and study scenic Bayou Liberty from the center of the waterway to the low water mark, and provide recommendations to the legislature as to what actions are necessary to maintain the bayou while insuring its natural scenic beauty.

**1998 S.C.R. No. 4**

Requests that the Department of Wildlife and Fisheries evaluate and study the portion of the Tchefuncte River from the Highway 22 Bridge to its entrance into Lake Pontchartrain and provide recommendations to the legislature as to what actions are necessary to main-

tain the river while insuring its natural scenic beauty.

**Ports, Harbors, and Waterways**

**Special Session**

**1998 1st Ex. Sess. Act 64 (H.B. 53)**

Provides for the authorization of and use by the secretary of DOTD of monies out of an emergency fund for projects of the Airport Construction and Development Priority Program, Statewide Flood Control Program, and Port Commission and Development Priority Program when such projects are undertaken due to emergencies. (amending R.S. 2:805, R.S. 34:3455, and R.S. 38:90.7)

**1998 1st Ex. Sess. Act 48 (H.B. 190)**

Authorizes the Twin Parish Port Commission (Iberia and Vermilion) to adopt ordinances making rules and regulations for the conduct, management, and control of the port and the waters and landings within its territorial jurisdiction. Assigns jurisdiction over trial and punishment of violations of ordinances passed by the commission to the Sixteenth Judicial District Court for the Parish of Iberia for those violations committed in Iberia Parish and to the Fifteenth District Court for the Parish of Vermilion for those violations committed in Vermilion Parish.

**1998 1st Ex. Sess. Act 67 (H.B. 74)**

Establishes the limits of the district and the rights and powers of the Vidalia Port Commission. Defining the port area as the entire town of Vidalia as the boundaries and limits of said town fixed by law and extending southward to the northern boundary of the Forrest-Moreau Plantation and all the land fronting the Mississippi River to a depth of five hundred feet from low water's edge. (amending R.S. 34:1863(A), enacting R.S. 34:1865, 1866, and 1867, and repealing R.S. 34:3141, 3142, 3143, 3144, and 3145)

**1998 1st Ex. Sess. Act 34 (H.B. 77)**

Authorizes all assets held by others or remaining in the account of the former St. Tammany Levee District be transferred to the St. Tammany Parish Police Jury for the specific purpose of provid-

ing levee and levee drainage and flood control protection within certain designated areas located within St. Tammany Parish and requires public hearings prior to the expenditure of any funds.

**Oil, Gas, and Minerals**

**Special Session**

**1998 1st Ex. Sess. Act 38 (H.B. 87)**

Transfers the duties and responsibilities relative to the regulation and inspection of petroleum and petroleum products from the secretary of the Department of Transportation and Development to the commissioner of the Department of Agriculture and Forestry. (amending R.S. 51:781(4) and 784.1 and enacting R.S. 51:792.1)

**1998 1st Ex. Sess. Act 47 (H.B. 176)**

Provides for a tiered fee system for annual payments to the office of conservation of the Department of Natural Resources by oil and gas operators on capable oil wells and capable gas wells, as defined by the Department of Revenue. The tiered system is based on annual volume of capable oil and capable gas production for all nonexempt wells. Incapable oil, stripper oil, incapable gas well gas, and incapable oil well gas are exempt from the fee. (amending R.S. 30:21(B)(1)(a))

**1998 1st Ex. Sess. Act 53 (H.B. 57)**

Provides for imprescriptibility of mineral rights when reserved in land transferred to state or national nonprofit land conservation organizations. (amending R.S. 31:149.1)

**Regular Session**

**1998 Act 67 (H.B. 298)**

Provides that the severance tax rate established for wells utilizing produced water for the purpose of enhanced oil and gas recovery is not limited to wells utilizing water from the same reservoir and field as a further incentive to the oil and gas industry to inject produced water. (amending R.S. 47:633.5(B))

**1998 Act 7 (H.B. 7)**

Extends the period for severance tax suspensions for inactive wells and new discovery wells. Requires certification of inactive or new discovery status by the Department of Natural Resources.



(amending R.S. 47:633(7)(c)(iv)(aa) and 648.2(1)(c))

**1998 Act 3 (H.B. 44)**

Requires every corporation, domestic or foreign, engaged in the business of transporting natural gas by pipeline in this state to pay an additional annual franchise tax for exercising their franchises or charters or the continuance of their franchises or charters in this state, equal to one percent of the gross receipts from the operation of its franchises or charters in this state. (amending R.S. 47:1031)

**1998 S.C.R. No. 60**

Memorializes Congress to develop a national energy policy to address the needs of federal, state, and local executive and legislative branch agencies and officials for data and information necessary for them to cope with and plan for the declining production of oil and gas in older fields and in the shallow waters surrounding the United States and the increasing pressures of foreign competition on production and oil and gas refining.

**1998 H.R. No. 63**

Requests that the Louisiana Department of Wildlife and Fisheries review and amend its policies and practices relative to seismic activities in order to achieve conformity with state law, jurisprudence, and legislative intent to correct the negative impact the Department's regulatory practices have on continued seismic activities in certain areas of the state.

**Public Lands and Resources**

**Special Session**

**1998 1st Ex. Sess. Act 68 (H.B. 76)**

Provides for the transfer, sale, lease, or other cooperative endeavor involving certain state property in Ouachita Parish by and on behalf of the state through the Department of Wildlife and Fisheries and the United States Fish and Wildlife Service for the sole purpose of inclusion of the above property into, or management and use as part of, the Black Bayou Lake National Wildlife Refuge.

**1998 1st Ex. Sess. Act 3 (H.B. 114)**

Creates the Atchafalaya Basin Program

in the Department of Natural Resources to serve as the authority on behalf of the state to work in partnership with the U.S. Army Corps of Engineers and other public entities, and coordinate state and local activities, in developing and implementing the federally sponsored and funded Atchafalaya Basin Floodway System, Louisiana Project. (enacting R.S. 30:2000.1 through 2000.8 and R.S. 36:359(J))

**1998 1st Ex. Sess. (S.C.R. No. 16)**

Requests that Congress support and adopt legislation to provide for the sharing of revenues generated from mineral exploration on the Outer Continental Shelf with the coastal states and territories pursuant to a formula recommended by the Outer Continental Shelf Policy Committee.

**Regular Session**

**1998 Act 27 (S.B. 59)**

Repeals certain taxes related to natural resources. (repealing R.S. 47:651, R.S. 47:671 through 681.1, and R.S. 47:691 through 697)

**1998 S.C.R. No. 31**

**1998 S.C.R. No. 13**

Continues the Atchafalaya and Tech-Vermilion Flood Control Advisory Commission to study and make recommendations relative to solutions to the flood problems in the parishes of Rapides, Avoyelles, St. Landry, Evangeline, Lafayette, St. Martin, Vermilion, Iberia, and St. Mary and to coordinate local as well as overall efforts for flood control with local, state, and federal entities.

**1998 H.C.R. No. 4**

Approves the Coastal Wetlands Conservation and Restoration Plan prepared by the Wetlands Conservation and Restoration Authority for Fiscal Year 1998-1999.

**1998 H.C.R. No. 72**

Requests that the Department of Natural Resources and permit applicants publishing notices in official parish journals also publish such notices in newspapers within affected localities when public notice in an official parish journal may be insufficient.

**1998 H.C.R. No. 78**

Nominates the Little River in Grant

and LaSalle Parishes for declassification from the Louisiana natural and scenic rivers system so that planned development may proceed.

**1998 S.R. No. 9**

Provides relative to the membership of the Bayou Manchac-Alligator Bayou-Spanish Lake Study Commission and the deadline for the commission to submit its report to the Louisiana Senate, the Department of Culture, Recreation, and Tourism, and the Department of Wildlife and Fisheries.

**Environmental Quality**

**Special Session**

**1998 1st Ex. Sess. Act 140 (S.B. 155)**

Establishes the Louisiana Asbestos Detection and Abatement Act to create a fund to provide a mechanism by which the presence of friable asbestos-containing materials in state buildings can be detected, analyzed, controlled, managed, maintained, and abated, if necessary. (Enacting R.S. 39:97.1 through 97.4)

**Regular Session**

**1998 H.C.R. No. 69**

Requests that the administrator of the United States Environmental Protection

Agency consider and approve the Louisiana State Implementation Plan for ozone reduction in the city of Baton Rouge, and the surrounding five parishes which have been designated as "non-attainment" areas and not to impose sanctions for the failure of the state to adopt a vehicle emissions inspection and maintenance program.

**1998 S.C.R. No. 49**

Requests that the Louisiana Department of Environmental Quality rigorously enforce the December 22, 1998 deadline for upgrades to underground storage tank systems as required by the United States Environmental Protection Agency and the environmental regulatory code of the state of Louisiana.

**Miscellaneous**

**Special Session**

**1998 1st Ex. Sess. Act 43 (H.B. 128)**



## Discharge Regulations

Requires prior approval of the secretary of the Department of Transportation and Development for nomination for inclusion or placement of bridges, highways, or certain roadway structures in the National Register of Historic Places. (amends R.S. 48:275)

### Regular Session

#### 1998 Act 8 (H.B. 8)

Provides for a tax credit for purchases of qualified recycling equipment to be used exclusively in the state amounting to a credit against any income and corporation franchise taxes imposed by the state in an amount equal to twenty percent of the cost of the recycling equipment less the amount of any other tax credits received for the purchase of such

equipment. Extends the qualification period for the credit to purchases made on or after September 1, 1991, and on or before December 31, 2000. (amending R.S. 47:6005(C)(1))

#### 1998 Act 35 (S.B. 109)

Exempts diesel fuel, butane, propane, or other liquefied petroleum gases used for farm purposes from state taxes imposed by R.S. 47:302(A), R.S. 47:321(A), and R.S. 47:331(A). (amending R.S. 47:305.37)

#### 1998 S.R. No. 39

Creates a special Senate committee composed of the members of the Senate Committee on Finance and the members of the Senate Committee on Revenue and Fiscal Affairs to study the Louisiana Public Facilities Authority

and the Louisiana Local Government Environmental Facilities and Community Development Authority, funds which are available to them, and issues related to funding

local projects with state general funds and bonds.

#### 1998 H.R. 81

Requests that the Department of Natural Resources, Department of Wildlife and Fisheries, and other appropriate public entities develop or refine inter-agency procedures to facilitate the obtaining of permits, including dissemination of information relative to obtaining of permits, standardization of forms and information, and the potential consolidation and development of "one-stop shopping" procedures.

## Navy and EPA to Regulate Discharge from Vessels by Sharonne O'Shea and Ave Mince-Didier

On August 25, 1998 the Environmental Protection Agency (EPA) released its proposed rules on Phase I of the Uniform National Discharge Standards for Vessels of the Armed Forces (UNDS). The National Defense Authorization Act of 1996, Section 325, amended the Clean Water Act, Section 3112 to require the Secretary of Defense and the Administration of the EPA to develop national standards for discharges from Armed Forces vessels so that pollution control technology for environmentally sound ships may be developed.

The Phase I analysis determines which discharges warrant regulation. Once these regulations go into effect, state and local legislative bodies will be prohibited from adopting any regulations affecting discharges except to establish no-discharge zones within their waters. Those states with larger ports, canals, or heavy-traffic waterways may want to examine the proposal closely as only those standards of the ten states with the most Navy vessels were considered in the analysis. Consequently, standards in the 40 other states may be legally exceeded under the UNDS with no recourse by the state.

The regulation sets forth an interpretation of the Congressional directive to apply comprehensively, whether the vessel is under power or docked in State waters. Such an interpretation allows

for uniformity irrespective of location, recognizing the unique, transient nature of vessels as pollution sources. This scheme also makes Armed Services vessels a notable departure from NPDES point-source permitting and traditional, state regulation of pollution sources. Finally, Phase I establishes a procedure for states to petition the EPA and the Department of Defense (DOD) for review of an unregulated discharge, and designs a system that allows for the establishment of no-discharge areas in state waters.

Phase II will establish marine pollution control device (MCPD) performance standards and Phase III will detail specific requirements for the design, construction, and use of MPCDs. MPCDs are practices or technologies that can be used on an Armed Forces vessel to treat, control, receive, retain or discharge a discharge that is incidental to the operation of the vessel.

The proposed regulations would only apply to "discharges incidental to the normal operation of vessels of the Armed Forces." Thus, commercial ships, private vessels, chartered vessels, vessels owned or operated by state or local governments, Department of Transportation vessels (other than the Coast Guard), Army Corps of Engineers vessels, vessels in drydock, vessels still under construction, and amphibious

vessels are excluded. Nevertheless, one must wonder whether the discharges common to both Armed Forces and private vessels uncovered during this regulatory process may be of such a degree as to encourage deviation from the long standing exemption of vessels from the Clean Water Act (40 C.F.R. 122.2 and 33 U.S.C. 1362 (12)(B)).

Other exemptions also exist. Discharges from vessels containing nuclear materials are governed under the Atomic Energy Act of 1954 and thus are not affected by these regulations. Shipboard solid waste is regulated under the 1901 Act to Prevent Pollution from Ships. Discharges resulting from an emergency are not covered by these regulations nor are air emissions from certain equipment, including incinerators.

An Armed Forces vessel is defined, in Section 312(a)(14) of the CWA, as "(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and (B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operation as a vessel equivalent to a vessel [owned or operated by the DOD]." The CWA defines a vessel as any watercraft or other object that is capable of being used as a means of transportation through navigable wa-



ters. Approximately 7,000 Armed Forces vessels fall under the ambit of UNDS.

Covered vessels are varied in type and location. In the Gulf of Mexico region, the Navy primarily operates from Mayport, Florida; the Coast Guard has large stations in Miami and Galveston, Texas; and the Air Force maintains all of its larger ships at Tyndall Air Force Base and at Carrabelle, both of which are in Florida. Of course, for each branch of the Armed Forces, utilizes smaller ports throughout the nation.

In determining whether a discharge warrants a MPCD, the EPA and the DOD must consider a variety of factors. These include the following: the nature of the substance; its environmental impacts; whether an MPCD is practical; what affects the use of an MPCD might have on the operation of the vessel; U.S. law; international standards; and economic cost. To ascertain environmental impacts, the EPA and the DOD asked the following questions: Does the discharge contain substances in concentrations that exceed state or federal water quality standards and that, if released into the environment, may have an adverse impact? Could the discharge exceed thermal water quality guidelines in areas beyond the mixing zone and might that have an adverse impact? Could the discharge potentially contain biocummulative chemicals in large amounts that may adversely impact the environment? Could the discharge introduce non-indigenous species to a new area? If any of these questions can be answered in the affirmative for a particular discharge, then that discharge has the potential for environmental damage.

Several standards were used to assist in answering the above questions. Saltwater aquatic life criteria was used because most of the vessels considered operate in estuaries, near the coast or at open sea. Acute water criteria was used in determining the status of occasional or short discharges (a few hours or less). Chronic water criteria was used when studying long or continuous discharge. For those discharges that contained substances that exceeded these water quality guidelines the EPA and the DOD further considered flow rates, the geographic area of the discharge, whether the discharge was continuous or occasional, and mass loadings. In some cases, the effects of dilution were also examined. This was done so that if a dis-

charge occurred rarely or contained these substances in small amounts or if dilution lowered levels to those which are acceptable, then the discharge would not be considered a danger to the environment. However, some substances, such as heavy metals, are harmful in exceedingly minute amounts.

The Phase I analysis emphasizes that many of these discharges occur outside 12 n.m., or that discharges are held until the vessel reaches the 12 n.m. limit, and deems this a MPCD of sorts. Stepping outside the jurisdictional boundaries is not a pollution control method. Contamination exceeding standards will still result. In effect, the EPA and DOD are circumventing point source regulation. Consider the following discharges that occur outside the 12 n.m. limit: Submarine bilgewater discharged beyond 50 n.m. with variable frequency; Seawater cooling discharges continuously within and beyond 12 n.m.; Non-oily machine wastewater discharged intermittently, at port, during transit and at sea; Photographic lab discharge drains may be generated within 12 n.m. but standard practice is to hold the waste onboard within 12 n.m.; Sonar dome discharges are continuous within and beyond 12 n.m.; Compensated fuel ballast is created both in port and at sea; Catapult water brake tank and post-launch retraction exhaust is an occasional discharge and the Navy has regulations concerning catapult testing required within 12 n.m. of the shore; Naval regulations have banned chain locker discharge within 12 n.m. of the shore; Elevator pit effluent, gas turbine water wash, and motor gasoline compensating discharges may occur anywhere.

#### Discharges requiring the use of a MPCD:

*Aqueous Film Forming Foam* (AFFF) is a mixture of fire-fighting foam, which is used for training, testing and maintenance, and sea water used to extinguish liquid fires. AFFF does not cause toxic effects and all AFFF discharges occur while the vessel is in motion so that the substance is dispersed by the ship's wake. Most Armed Forces vessels observe a self-imposed ban on AFFF discharges in coastal areas.

*Catapult Water Brake Tank and Post-Launch Retraction Exhaust*, discharged by aircraft carriers, is a combination of the oily water skimmed from the catapult water brake tank and the condensed steam that is emitted when the catapult

is retracted.

*Chain Locker Effluent* discharge is composed of the substances that collect in the chain locker, which houses the anchor chain. During anchor chain wash-down and retrieval and during heavy weather, water and debris collect in the chain locker. Should chain locker effluent be discharged in port, potential exists for introducing nonindigenous species.

*Ballast, both Clean and Compensated Fuel Ballast*. Clean Ballast can include chemical additives, substances found in tank coating, metals from the piping system and sacrificial anodes used to control corrosion, zinc, copper and nickel, some that may exceed state regulations on water quality. Clean ballast discharge also has the potential to introduce nonindigenous species. The Navy, the Coast Guard and the Military Sealift Command either observe the International Maritime Organization (IMO) guidelines on ballast or are in the process of approving the guidelines. Compensated Fuel Ballast consists of the seawater that is taken into the fuel tank, at sea, as the tank empties and is then discharged at refueling in order to maintain the ship's stability.

*Controllable Pitch Propeller (CPP) Hydraulic Fluid* discharges from the propeller seals during normal operation and maintenance. Hydraulic oil may discharge during underwater CPP repair, replacement and maintenance and during leakage through the CPP seals. The EPA and the DOD fear that, even with Naval regulations in place, the amount of oil released may create an oil sheen and exceed state water quality criteria.

*Deck Runoff* is generated when water falls on the deck, from weather or washing, and then moves overboard, taking with it any residue that was on the deck. Contents of deck runoff will vary from ship to ship but a limited sampling of deck runoff indicated that lead, nickel, cadmium, chromium, phenols and oil and grease could be present and in levels exceeding Federal and state water quality criteria.

*Dirty Ballast* is composed of seawater taken into and discharged from empty fuel tanks in order to maintain stability of the vessel. Coast Guard vessels monitor the concentration of oil in the dirty ballast. Should it exceed 15 ppm oil, the dirty ballast will be treated in



## Discharge Regulations

oil-water separator. Un-monitored dirty ballast may contain oil, phenol, copper, zinc, silver, nickel and benzene in levels that exceed water quality criteria.

*Distillation and Reverse Osmosis Brine* is the concentrated seawater created in the process of distilling seawater into freshwater. It may contain ammonia, copper, iron, lead, nickel, and phosphorus in levels that surpass state and Federal water quality criteria.

*Elevator Pit Effluent* consists of the liquids that collect in the sumps of elevator wells. Elevator pit effluent must be disposed of onshore or treated with an oil-water separator prior to discharge since it may contain concentrations of nickel, copper and bis(2-ethylhexyl)phthalate which exceed water quality standards.

*Firemain Systems* discharge seawater which is pumped through the system for the purposes of maintenance, testing, and training. Firemain system discharge may contain levels of nickel, copper and bis(2-ethylhexyl)phthalate which exceed state and Federal water quality standards. Alternate piping or the use of dry fireman systems, which the Coast Guard uses, appear to mitigate environmental damage.

*Gas Turbine Water Wash* is discharged during the cleaning of propulsion and auxiliary gas turbines. Cadmium, copper, and nickel may be present. Naphthalene may also be present and in levels that surpass that which is acceptable according to state and Federal water quality criteria. Most vessels contain a holding tank for gas turbine water wash and dispose of it onshore.

*Graywater* is bath, shower and galley water. Some substances which may be present, and in levels exceeding state and Federal water quality criteria include: mercury, lead, copper, and silver. The use of a containment facility and the transport of graywater for onshore treatment serves to mitigate adverse impacts.

*Hull Coating Leachate* is composed of substances that leach, dissolve or erode from hull paints into the water. These substances prevent hull corrosion and discourage the growth of biological organisms on the hull. The release of hull coating leachates will vary from vessel to vessel.

*Motor Gasoline Compensating Dis-*

*charge* consists of the seawater which runs through the motor gasoline tank of some Naval equipment and amphibious vessels. This discharge may contain toluene, phenols, naphthalenes, ethylbenzene and benzene in levels that exceed water quality standards.

*Non-Oily Machinery Wastewater* is composed of water leakage from various pieces of equipment. A system of pans, drains and funnels insures that this wastewater will not mix with oily bilgewater. Non-oily machinery wastewater may contain silver, nickel, copper, bis(2-ethylhexyl)phthalate, ammonia, nitrates, phosphorus and Kjeldahl nitrogen in levels that may exceed water quality standards. This discharge may also contain mercury in low concentrations.

*Photographic Laboratory Drains* include film rinse water, photographic fixer-bath solutions, and spent processing chemical developers. It has yet to be determined whether or not this discharge has the potential for adverse effects; it may contain silver exceeding water quality standards.

*Seawater Cooling Overboard Discharge* is the seawater used in the non-contact cooling water system, and then, when hot, discharged overboard. The cooling water is used for main propulsion machinery, auxiliary equipment, and electrical generating plants. This discharge may exceed state thermal mixing zone regulations. Also, this discharge may contain concentrations of nitrogen, nickel, silver and copper in levels higher than those allowed by state and Federal water quality criteria. There is also the small possibility that this discharge may transport non-indigenous species although a strainer is used to minimize the risk.

*Seawater Piping Biofouling Prevention* is composed of the additives used to prevent the growth of biofouling organisms in the seawater cooling systems. Prevention systems include chemical dosing, anodic control systems and chlorination. Residual chlorine may exceed water quality standards.

*Small Boat Engine Wet Exhaust* consists of the seawater used in small craft propulsion engines to quiet the engine and cool the exhaust. This discharge may include several substances that can exceed criteria for water quality, including: benzene, ethylbenzene, naphthalene, polycyclic aromatic hydrocar-

bons and toluene.

*Sonar Dome Discharge* consists of the water discharged from the sonar dome during maintenance, and the antifoulant materials, from the exterior of the sonar dome, which are leached into the sea. Sonar domes are filled with water in order to maintain internal pressure and shape. This discharge may contain copper, nickel, zinc, and TBT in levels which may exceed state and Federal water quality standards.

*Submarine Bilgewater* includes: spillage from drinking fountains, evaporator water which fails to meet certain specifications, water from piping and valve leaks and condensed steam. The majority of submarines are capable of separating oily bilgewater from non-oily bilgewater. This discharge may contain many substances in levels which can exceed Federal and state standards of water quality, including: zinc, silver, nickel, mercury, copper, cadmium, chlorine, cyanide, heptachlor, heptachlor epoxide, and phenol.

*Surface Vessel Bilgewater/Oil-Water Separator (OWS) Discharge* is wastewater and leakage which drains into the lowest part of the hull, the bilge. The water is then treated in an OWS. This bilgewater can only be discharged if it contains less than 15 ppm of oil. The discharge may also contain zinc, nickel, copper, mercury, iron, phosphorus, nitrates, nitrites, ammonia, Kjeldahl nitrogen and oil in concentrations that exceed Federal and state regulations regarding water quality.

*Underwater Ship Husbandry Discharge* consists of materials disposed of during the cleaning, maintenance, inspections and repair of the hull and its appendages. This discharge has the potential to transport non-indigenous species. It may also contain copper and zinc in levels which surpass state and Federal water quality standards.

*Welldeck Discharges* are created when the welldeck is flooded, during the loading or unloading of landing craft, and then the water and any residue from the welldeck is washed out. It may also be created during routine cleaning. There is a small possibility that non-indigenous species may be transported by this discharge. This discharge may also contain certain minerals, chlorine or hydrocarbons in levels that exceed standards of water quality.



**Excluded Discharges:**

The EPA and the DOD have determined that the following substances do not require the use of an MPCD: boiler blowdown, catapult wet accumulator discharge, cathodic protection discharge, freshwater lay-up, mine countermeasures equipment lubrication, portable damage control drain pump discharge, portable damage control drain

pump wet exhaust, refrigeration and air conditioning condensate, rudder bearing lubrication, steam condensate, stern tube seals and underwater bearing lubrication, submarine acoustic countermeasures launcher discharge, submarine emergency diesel engine wet exhaust, and submarine outboard equipment grease and external hydraulics.

For more information on UNDS and other related subjects you may contact the following website, which is published by the Navy and the EPA: <http://206.5.146.100/n45/doc/unds/unds.html>.

Information found at 63 FR 45298.

## Nationwide Permit Modifications by Sharonne O'Shea

Each year the nation loses 140 citizens and \$4 billion dollars of property to floods.<sup>1</sup> Louisiana leads the nation in the number of repetitive loss payments from flooding.<sup>2</sup> Louisiana also leads the nation in wetlands loss, estimated at between 25 and 35 acres annually.<sup>3</sup> Recently, the president and the Army Corps of Engineers proposed some changes that would address both flood damage and wetlands loss.

The changes suggested in the October 14 publication<sup>4</sup> would alter the use of Nationwide Permit (NWP) 26 by the Corps of Engineers in three cases: projects in flood plains, projects impacting critical resource waters, and projects impacting impaired waters. NWP 26 applies to discharges of dredged or fill material into headwaters and isolated waters. The Corps issues a variety of NWPs for activities that would destroy or damage wetlands when certain national and regional criteria are met. When the national and regional criteria cannot be met by a project, the Corps will undertake an individual permit review. Individual permit reviews typically take longer and require more detailed information. Consequently, obtaining an individual permit often costs more than a NWP. NWPs address two objectives: providing uniformity in permits and streamlining the permitting process. Because of their generalized nature, however, the NWPs have been criticized as a rubber stamp that fails to adequately protect wetlands.

The proposed changes would make NWPs inapplicable to permanent, above-grade, wetland fills when the wetlands are located within a 100-year floodplain. This change would not eliminate the ability to develop in a

floodplain but would require an individual permit. The Corps intends to reduce potential for loss of life and property due to flooding and increase opportunities for restoring existing floodplains by making development in a floodplain subject to more particularized review than under the NWP system. Other activities, such as boat ramps or stream restoration projects, that must be located within the 100-year floodplain but have negligible impact on flooding will continue to be subject to NWPs. Approximately 27 percent of Louisiana's land lies within a 100 year flood plain.<sup>5</sup> Of course, not all of this land will fall within the legal definition of a wetland and require a permit. However, the proposed change would have a significant impact on Louisiana due to the vast acreage of floodplain in the state.

The proposed rules also single out Outstanding Natural Resource Waters, National Wild and Scenic Rivers, and State Ecological Reserves as "critical resource waters." Designating a waterbody as a critical resource water will preclude development under a NWP. It is important to note that the individual permit process still remains an alternative for those seeking permits to fill wetlands connected with these critical resource waters. As the process is generally perceived to be more time consuming and difficult, however, it is expected to result in discouraging inappropriate development near these waters, thereby helping them retain their pristine nature.

A second designation, "impaired waters," is also proposed by the Corps. These waters would include the 40 percent of the Nation's surveyed waters

that do not meet standards set under the Clean Water Act (CWA). The Corps maintains that the continued loss of wetlands near waters that fail to meet CWA standards undermines efforts to rehabilitate these waters. Wetlands are widely recognized as nature's water filtration system. Removal of wetlands allows for many contaminants to flow directly into waterbodies, thwarting their ability to recover. NWPs will still be used in wetlands connected to impaired waters, but limited under the proposed rules.

Until the completion of the rulemaking process, use of NWP 26 has been extended to Sept. 15, 1999. Comments on the proposal will be accepted until November 30, 1998. See the following website for further information: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. Also, contact the Louisiana Department of Environmental Quality at 504/765-0664 or the Army Corps of Engineers at 504/862-1879.

<sup>1</sup>Clinton Announces Steps to Curtail Wetland Loss, *The Washington Post*, (Oct. 8, 1998) A10.

<sup>2</sup><http://www.nwf.org/nwf/pubs/higherground/table3-4.html>; A repetitive loss is two or more payments exceeding \$1,000 each from the National Floodplain Insurance Program within a 10 year period.

<sup>3</sup>Barras et. al., *Land Loss in Coastal Louisiana 1956-90*, National Biological Survey, National Wetlands Research Center Open File Report 94-01, 1 (1994) and Dunbar, et. al., *Land Loss Rates Report 3 Louisiana Coastal Plain*, U.S. Army Corps of Engineers, Technical Report GL-90-2 (1992).

463 Fed. Reg. 55095.

<sup>5</sup>Floodplain Management in the United States: An Assessment Report, Vol. 2, *Table 1-2. FEMA Estimate of Floodplain Area in Identified Floodprone Communities, by State* (1992).



Announcements

The Sea Grant Legal Program is the proud recipient of two new grants as part of the Gulf Oyster Industry Program. One grant offers the opportunity to explore the implementation of the state's Lease Relocation Program for oyster leaseholders who are impacted by freshwater diversion projects. The other project will assess the feasibility of requiring restoration under the Clean Water Act when shellfish beds are closed due to point source discharge contaminations.

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The Sea Grant Legal Program is pleased to announce that two of its legal research assistants have acquired positions as law clerks for Louisiana Supreme Court Justice Catherine D. "Kittie" Kimball. Katherine Yates, a spring 1998 graduate of Paul Hebert Law Center, began her clerkship in August. Tara Kebodeaux, who will graduate in the spring of 1999, will begin her clerkship in August of 1999.

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