

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy

July 17, 2013

## ***Fisheries Lesson 1: Federal Agencies Question State Master Plan Project for Destruction of Essential Fish Habitat***

The Mid-Barataria Sediment Diversion is one of the largest projects contained in Louisiana's State Master Plan. It is intended to address where marsh loss has been the highest – eastern Barataria Bay. When the river is high, the diversion could pump more than 50,000 cubic feet per second of sediment and freshwater and deliver as much as 600,000 cubic yards of sediment and water into the Barataria basin. Reconnecting the river to the delta would provide the materials to offset wetland loss caused by erosion, subsidence, and sea level rise.

The state sought comments from federal agencies including National Marine Fisheries Service (NMFS) and U.S. Fish & Wildlife Service (FWS). The agencies [expressed valid concerns](#) about the diversion's effects on fisheries in Barataria Bay. NMFS also expressed concern about the loss of "[essential fish habitat](#)" as designated under the Magnuson-Stevens Act. The entirety of the Gulf Coast has been [designated](#) "essential fish habitat" for one species or another. For example, all inshore waters from Apalachicola Bay to Brownsville, TX have been designated "major nursery areas" for [brown shrimp](#). Any conversion of water to land in these areas would constitute destruction of essential fish habitat. Of course doing nothing to restore the coast will also destroy essential fish habitat. The Magnuson-Stevens Act is not, however, a strait-jacket that commands an outcome, but rather requires consultation and coordination to attempt to avoid injuries to fisheries as practicable. To see just how that can work in practice consider the following Fisheries Lesson 2.

## ***Fisheries Lesson 2: Meanwhile, Federal Agencies Work with State to "Destroy" Essential Fish Habitat***

The State of Louisiana is [rebuilding](#) three barrier islands south of Buras in Plaquemines Parish. Using dredge material pumped 22 miles from the Mississippi River, Shell Island, Pelican Island, and Scofield Island are being rebuilt where Barataria Bay meets the Gulf of Mexico. The islands are valuable ecologically for nesting and migratory birds and as protection against storm surge. By pumping diverted sediment from the Mississippi, they are creating hundreds of acres of beach and dunes in areas that have been underwater. In doing so, technically, they are eliminating essential fish habitat. Funding for Shell and Scofield Islands came in part from BP, but funding for Pelican Island came from CWPPRA

The **Tulane Institute on Water Resources Law and Policy** is a program of the Tulane University Law School.

The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and stewardship of water.

### Coming up:

[July 18, 2013](#)

[NRDA Early Restoration Public Scoping Meeting](#)  
Courtyard Marriott  
Houma, LA

[July 24-25, 2013](#)

National Academy of Sciences  
[Gulf Program Advisory Group Meeting](#)  
New Orleans, LA

[July 30 & 31, 2013](#)

Toledo Bend Hydroelectric Project  
[FERC Public Meetings](#) for Draft EIS  
Orange, TX & Many, LA

[October 24-26 2013](#)

Lake Pontchartrain Basin Foundation  
[Basics of the Basin 2013](#)  
New Orleans, LA  
[Call for papers](#)

### Job Opportunity:

[Attorney/Adviser](#)

U.S. International Boundary & Water Commission  
El Paso, TX

**Tulane Institute**  
on Water Resources Law & Policy

6329 Freret Street, Suite 155G  
New Orleans, LA 70118  
504-865-5982

<http://www.law.tulane.edu/enlaw/>

money, with NMFS sponsoring the federal cost-share. Yes, the same NMFS that is concerned about the sediment diversion's elimination of essential fish habitat in the same Barataria Bay in the above story. Class dismissed .

### ***Model Shows Coastal Wetlands are Coastal Defenses under Any Scenario***

A new [study](#) published in Nature Climate Change showed that climate change and the extreme weather and sea-level rise associated with it are increasing the number of people facing [coastal hazards](#). The study's authors created a hazard index to specify the areas of coastline most vulnerable to coastal hazards under five different sea-level-rise scenarios. Additionally, the authors were able to map the risk reduction created by natural habitats and the added hazards created by [habitat destruction](#).

### ***National Research Council Report Urges Feds to Incorporate Ecosystem Services into Deepwater Horizon Disaster Natural Resources Damage Assessment***

Last week, a National Research Council committee published a [report](#) encouraging the National Oceanic and Atmospheric Administration (NOAA) to add another layer to the challenge of effectively calculating the damage to natural resources (NRDA) caused by the *Deepwater Horizon* oil spill. Calculating a NRDA is difficult. Calculating a large-scale NRDA is more difficult. Calculating a NRDA is even more difficult when the affected ecosystem was already degrading. It is yet more difficult when there are gaps in data that would establish a pre-damage baseline. This is the situation NOAA faces for the Deepwater Horizon NRDA. However, an approach that included ecosystem services would be the only way to include [damages](#) caused by the loss of goods and services undamaged natural resources would have provided. The ecosystem resource approach would not only be the only way to account for damages from the Deepwater Horizon spill, but could set a benchmark for future NRDA's.

### ***Bad Water = Bad Beer?-- Breweries Mobilizing for Clean Water Act and Against Oil and Gas Fracking***

More than twenty craft breweries are [joining](#) with the Natural Resources Defense Council to promote the full and complete application of the Clean Water Act. The brewers are advocating for completion of federal guidelines for application of the Clean Water Act. On the other hand, it would seem that the majority of House of Representatives are uninterested in quality beer. Last week, the House [passed](#) its Energy and Water Appropriations Act. The Act passed 227 to 198, but only after voting down an amendment from Rep. Jim Moran (D-VA) that would have removed language that blocks the Corps of Engineers from implementing the same Clean Water Act guidance that brewers are advocating for.

Meanwhile, some brewers in [Colorado](#) are following the lead of their German counterparts by speaking up against the pollution of groundwater by oil and gas fracking. The Colorado state government, helmed Gov. John Hickenlooper, both a former petroleum geologist and owner of a brewpub and craft brewery, is not on the same page as the state's brewers. Instead, the state has entered a [suit](#) against the city of Longmont. Concerned about groundwater pollution, the city passed a ban on fracking last year. Oil and gas companies, now joined by the state, are suing to overturn the ban. Perhaps Governor Hickenlooper's brewery in Denver doesn't get its water from groundwater, let alone Longmont groundwater.

### ***Drought in the Southwest United States Leads to Emergency Declaration for Entire Navajo Nation***

The drought in New Mexico has been widely reported on (as covered here in previous TUWWs), but the drought has had effects beyond straining New Mexico-Texas relations. Navajo leaders declared a [water emergency](#) for the entirety of the country's largest American Indian reservation. Water supplies for livestock are in short supply, and conditions are expected to worsen as the summer continues.

### ***African Continent Facing Variety of Water Issues.***

Every variety of water issue that comes up in the United States also exists in Africa, and then some. River issues on the huge continent, with more than 50 countries, are almost always international in nature. Fisheries issues can pit subsistence against international industry. Water shortages can mean an actual lack of water for human consumption, not an increase in prices or a slowdown on growth. AllAfrica.com has published a [series of articles](#) about African water issues that we highly recommend. The articles cover overfishing in West Africa, water supply issues in the brand new nation of South Sudan, exporting drinking water from Lesotho to South Africa, and more.

## ***Even in Middle Earth, Water Quality Suffers from Agricultural Runoff***

New Zealand, once known as the country with the best environmental management in the world and home to the Bagginses of [Bag End](#), now faces water degradation from poor agricultural nutrient management. The country is facing the problem with [voluntary agreements](#), and the Department of Conservation has been [slashed and restructured](#). Let's hope New Zealand gets its water house in order, because if New Zealand, of all places, can't manage to keep water clean and free from nutrient pollution, who can?

## ***The Mecca of Desalination is... Mecca***

Saudi Arabian desalination is the world's leader in desalination and is [ramping up](#) processing seawater into drinking water. Mecca is now slated to receive 670,000 cubic meters of desalinated water per day and recently received \$224 million in new water infrastructure. Jeddah already receives 1.2 million cubic meters of water per day. For a comparison, the Sacramento River yesterday delivered approximately 562,000 cubic meters of water to the Sacramento Delta yesterday.