

NEWS FROM THE DOCKS



Louisiana Ports Deliver

ASSOCIATION OF LOUISIANA September 2011
Volume 12, No.9

Message from the PAL Office

Could it possibly be that one of the hottest summers on record is finally over? A tropical storm called Lee brought a little rain, wind and cooler weather our way. I am sure the heat will be back before the Fall finally sets in for good. But, right now the cool morning air feels pretty wonderful.

My favorite topic for this time of year is football. There is plenty to be excited about with the Tigers winning big over Oregon and moving into the #2 spot on the AP poll. Keep your fingers crossed. This could be a BIG season.

This month PAL welcomes a new corporate member. The Vinton Harbor and Terminal District has joined our ranks as an emerging port. They are located six miles southwest of Vinton, LA and will be represented by Mr. Gene Sonnier. Welcome Vinton! We look forward to working with you.

PAL activities continue to include preparation of our new directory called "Profiles of Louisiana Ports". Production has been delayed to allow adequate time to incorporate Vinton into the publication. Hopefully we will have it available during October.

We are also proceeding with plans for a new Economic Impact Study of Louisiana Ports. The study will be developed by Dr. Jim Richardson of LSU. DOTD is cost sharing with PAL to produce this document. At the present time we are awaiting approval from the Division of Administration of our Cooperative Endeavor Agreement with DOTD before we can actually sign the contract with Dr. Richardson. We anticipate Dr. Richardson discussing his

methodology and approach at our PAL meeting at Port Fourchon near the end of September.

PAL always welcomes new associate members. If you have been considering joining, please contact the PAL office for more information. Information can also be found on our webpage.

And, if you are an associate member, PAL will be happy to include information about your organization in this newsletter. Just write up a short article and send it to the PAL office.

Legislative Update

Qualifying for political office is upon us. September 6, 7, and 8 are the dates to qualify for all local, legislative, and statewide offices. The Legislative offices of House Speaker and Senate President are receiving considerable attention from current members of the legislature. As noted last month, with retirements, term limits, and election competition, it is likely that 40% of the legislature will be newly elected members.

The Joint Committee on Transportation Highways and Public Works recently met to consider and approved the 2nd quarter Port Priority Program project for the Port of Point Coupee in the amount of \$1.014 million. The over all total projects cost of the 10 approved 2012-13 program projects is \$251.75 million, of which \$115.11 million is the estimated construction cost, with the state being responsible for \$88.55 million. The current unfunded state balance of the 10 approved projects is approximately \$56.5million.

On August 20th, the Alternative Energy Rules were published by the Office of Mineral Resources in the Louisiana State Register, and

are applicable to the Hydro-Kinetic generation of electricity. The law required that when writing the rules, OMR consult with DOTD. PAL participated in this consultation. The law and draft Rules grant ports the authority to approve the locations of the generators to insure that port operations and navigation are not hindered. Both DOTD and PAL have met with the Office of Mineral Resources, and exchanged email comments on drafting the early versions of the Rules. Port Directors and their attorneys should carefully review the Rules. Any comments or request for changes must be submitted within 60 days. The OMR will then file a Summary Report of any comments, which will be submitted to the appropriate House and Senate Committees having oversight of the Rules. The committees can hold hearings if it deems them necessary, and can reject the rules. The rejection by a committee can be overruled by the Division of Administration.

Design - Build Committee to draft legislation to allow ports to utilize Design/build is being formed between interested Engineer organizations and ports. This effort is led by associate member, Alan Krouse of Buchart Horn, Inc. The committee will be chaired by Kent Dussom of URS, also associate members. As of this time Don Brinkman of the Port of Lake Charles, Matt Grisham of the Port of New Orleans, and Joe Accardo of PAL will represent PAL. It is likely that DOTD may also participate. The committee may add additional interested parties.

E-Verification of employees of contractors performing Public Works contracts is now required by Act 376 and 402. The results of attempts to enforce this requirement will at best cause considerable confusion, and at worst cause low bids to be rejected. In summary a contractor must verify that all new employees are legally in the country by utilizing the e-verify system and/or providing proof of citizenship, alien registration, U. S. immigration form, etc. The documents to be utilized as provided by La. law may be at odds with certain federal laws. When a contractor submits a Public Works bid the La. law will require an affidavit that all employees will be in compliance with the verification requirements of the law.

Open Meetings Law--Act 188 now requires that all public entities post a notice relative to the requirements of the Open Meetings law just as it

must now do relative to workers compensation laws and discrimination laws. An example of a poster was recently emailed to all port directors.

The Coastal Protection and Restoration Authority of La. has initiated the process for drafting a Louisiana 2012 Coastal Master Plan. Coastal port representatives and PAL have been requested by William Rhinehart, Chief of Planning, to participate in a "Maritime Focus Group for Louisiana 2012 Coastal Master Plan". Outlined in communications from CPRA, the purpose of the Maritime Focus Group is "to discuss options, understand potential impacts to your industry and provide suggestions for addressing restoration and protection planning into the future..(and) is being formed in order to expand communications with representatives of Louisiana's maritime industry and to educate and inform them as to the nature of our work...." The group will meet twice during the planning process, with the first meeting in October.

PAL continues to participate in the Big River group to publicize the need for additional dredge funding for the U.S. Army Corps of Engineers. The scheduled August 25th presentation by Congressman Boustany at the Port of Baton Rouge relative to his bill (RAMP) to require that the Harbor Maintenance Tax trust fund money be appropriated for dredging and harbor maintenance, was postponed by the congressman.



Joe Accardo
Executive

Corporate Member News

Port of St. Bernard

Robert J. Scafidel, Ed.D., St. Bernard Port Harbor and Terminal District's Executive Director, to represent United States Delegation at the 100th Annual Convention of the American Association of Port Authorities (AAPA).

The AAPA will hold their 100th Annual Convention in Seattle, Washington September 11-15, 2011. Dr. Scafidel was honored by being chosen to present the United States Delegation Response during the Opening Ceremonies. Responders from Canada, Latin America and the Caribbean will also speak on behalf of their respective delegations.



Pictured above is Dr. Robert J. Scafidel, Executive Director of St. Bernard Port.

Twin Parish Port Commission

Internet used to sell catch

The Advocate
Bryan Tuck
Sept. 7, 2011

A Port of Delcambre program that uses the Internet to connect fishermen with seafood lovers who want to buy directly off the boat is spawning similar programs across the Louisiana coast.

“That thing has really taken off. They want to expand it across the state,” Port of Delcambre Director Wendell Verret said.

The Gulf States Marine Fisheries Commission has awarded a \$560,000 grant to launch new direct marketing programs for fishing communities in three other regions — Cameron Parish, Lafourche and Terrebonne parishes, and the New Orleans area.

The commission, a five-state coalition that works to manage Gulf Coast fisheries, learned of the Delcambre program and believed it could serve as a model in other areas, said Thomas Hymel, an agent with the LSU Agricultural Center and the Louisiana Sea Grant program.

He manages the Delcambre Direct Seafood program at the port and will oversee the expansion.

The new marketing programs should be up and running by the spring 2012 shrimp season, Hymel said.

The key feature of the Delcambre program is an Internet site where fishermen can post information on when they will be returning to the dock and how much shrimp they have.

The site includes profiles of each fisherman — where he is from, how long he’s been in business — and telephone numbers, allowing customers to contact the fishermen directly to make arrangements for purchase.

The program also sends out email updates and newsletters to keep customers apprised of how the season is going.

“The goal of the program was to make it easier for the public to contact the shrimpers and make a business deal,” Hymel said.



The Delcambre marketing effort launched in the spring of 2010, and the response from both the fishermen and the public has been “phenomenal,” Hymel said.

He said 25 fishermen are now participating in the program, and many have been posting Internet updates about their catch since the fall shrimp season began Aug. 22.

Most independent fishermen have always sold directly to customers, but the new marketing system uses technology to refine and expand that direct connection, Hymel said.

“The phone rings more,” said Cheryl Granger, who with her husband, “Big Al” Granger, has made a living off shrimp, crabs and fish for 20 years.

“He catches them, and I sell them,” she said.

Cheryl Granger said Delcambre’s marketing program helps reach out to south Louisiana residents who might not realize the bounty of seafood in their backyard.

“People just don’t know where you can get something fresh,” she said.

She said selling directly to customers is critical to keeping the family business afloat, because processors are not paying enough to make ends meet.

Fishermen can often make more than two times what they would make selling their seafood to a processor, Hymel said, and customers who buy directly from fishermen generally pay half of what they would pay at a store.

Hymel said direct marketing could offer a new economic model for sustaining what remains of the state’s fishing industry, which has struggled in recent years to contend with low-priced imports, high fuel prices, hurricanes and oil spills.

“We used to have, in Delcambre, well over 100 shrimp boats. Now, there are maybe 20 local boats,” he said.

The seafood marketing program is one of several revitalization projects at the Port of Delcambre, supported in part by grants and in part by a property tax that voters in the area approved in 2009.

Construction is expected to be complete by November on a new \$1 million marina on the Delcambre Canal to attract recreational boaters, said Verret, the port director.

He said some of the slots in the 38-slip marina will be able to accommodate boats up to 50 feet in length.

“The nearest marina for boats of that size is Cypremort Point. Other than that, it’s hard to find a place for a boat like that to park,” Verret said.

The port is also planning a \$2.4 million project along the Delcambre Canal that will include a new boat launch, a fishing pier, shrimp boat docks and a pavilion where fishermen can sell their catch, Verret said.

Associate Member News

T. Baker Smith

Lucien ‘Lu’ Cutrera, AICP, L.A. joins T. Baker Smith (TBS) in the Baton Rouge, LA office as a Senior Professional Planner.

Cutrera has over 30 years of environmental, transportation, and land use planning, as well as, landscape architecture expertise. He holds a master’s degree in environmental design and is a landscape architect and certified planner with the American Planning Association. Cutrera has worked on multiple urban and regional planning, design, and economic development projects in municipalities across the state using his skills to find solutions to community problems and carry the community toward its desired long-term goals.



“We are glad to have Lu on our team, and we look forward to his leadership in solidifying our existing integrated practice areas and exploring new opportunities that work with our business model,” said Kenneth Smith, President and CEO of T. Baker Smith

Lu Cutrera can be reached at (225) 744-2116 or at lu.cutrera@tbsmith.com.

Louisiana Maritime Association (LaMA)

We are pleased to advise you that the merger of the Mississippi River Maritime Association and the New Orleans Steamship Association d.b.a. Gulf



States Maritime Association into a SINGLE, UNIFIED ASSOCIATION--the Louisiana Maritime Association (LaMA), is progressing nicely.

For your information, Mike Titone has accepted another position in our industry. Mike felt this was the right choice for him and his family, and he plans to remain active in the maritime industry in his new position. We wish Mike and his family well and offer our thanks for his many years of service.

We are also pleased to announce that the current staffing, officers and committees are in place and are as follows:

STAFF

Captain Ron Branch, USCG (Ret.) has assumed the position of Interim President

Sean M. Duffy, Sr. will serve as our Vice President, Maritime Advocate

Chris M. Cunningham, Ph. D. will serve as our Vice President, Technology

Cindy McKnight will serve as General Office Manager

Christine Titus will serve as our Operations Assistant

Roy Gonzalez will serve as our Consultant

Legal News



US Army Corps of Engineers Not Responsible for Allision

On June 2, 2008 container ship MSC TURCHIA allided with the Napoleon Avenue Wharf. Both ship and wharf sustained damage. The ship sued the Board of Commissioners of The Port of New Orleans, owner of the Napoleon Avenue Wharf, for its damages. The Board then counter claimed against the ship for damage to the wharf. At the same time, the Board filed a Third Party Claim against the U.S. Army Corps of Engineers. Prior to trial, the Board and the ship's interests settled their claims. The Board then proceeded to trial against the Corps.

The essence of the Board's case against the Corps was that the Corps was aware of the existence of a shoal which caused the TURCHIA to ground and allide with the wharf.

The Board contended that the Corps was liable to it because the Corps did not notify it of the shoal by immediately calling the Board when it became aware of the shoal.

The Court noted that the evidence showed the following:

The Board conducts its own cross-section surveys of areas of the river producing a contour map showing water depth 1,000 feet from a wharf. It conducted such surveys off the Napoleon Avenue wharf on March 4, 2008 and several days after the accident on June 6, 2008. The Board also performs a "line survey" on a weekly basis that shows water depth along a line twenty feet off the wharf's face.

The Corps, one to six times a month, performs "line surveys" along a line 150 feet of the wharf's face. It performed such surveys on April 23, 2008, April 29, 2008, May 12, 2008 and May 29, 2008. The Corps' line surveys provide both a profile view indicating water depth along the survey line, and an aerial view of the river and of the survey line. The Corps considers this survey adequate to determine the navigability of the water in the area immediately beyond the survey line, and thus whether dredging is required. Relevant to this case, the May 29 survey was plotted on May 30.

The Corps provides its line survey and other relevant information to the Board through several mediums. It publishes the line surveys on its website shortly after plotting them. The viewing software is free to the public on the website. Additionally, the Corps sends hard copies of the survey to the Board by mail every time it completes a new survey. Finally, the Corps conducts a monthly Mississippi River maintenance forum to review river conditions. Board members were invited, but none attended from January through May, 2008.

The Court found that the incident at the center of the dispute began when on May 29, 2008, the TURCHIA's owner filed a berth application on behalf of the TURCHIA with the Board. That application specified that the ship required forty-five feet of water at berth. The TURCHIA was assigned to the Nashville Avenue Wharf. The District Court found that "[t]he credible evidence is that before he did so, Mr. Hankins referred only to the [Board's] twenty foot profile survey to determine whether the Port could offer

the water depth requested by a vessel.” On June 2, 2008, the TURCHIA grounded near the Napoleon Avenue and Nashville Avenue Wharves. A computer reconstruction prepared indicated that the TURCHIA’s bow swung to the right and its starboard side allided with the wharf, and that “pivot point” where it grounded was about 320 feet from the wharf. This meant that the grounding point was about 140 feet past the Corps’ survey line, which was about 180 feet from the wharf.

At trial the Judge found; 1) that the Corps may not have had actual knowledge of the shoal, 2) the Corps took due care by using several adequate measures to disseminate the line survey it conducted, and 3) that the Board did not prove that it placed any reliance on the Corp’s survey data. The court exonerated the Corps.

On appeal, the Board argued that when compared to the Corps’ May 29 survey, the cross section survey completed on June 6 established that the shoal that appeared in the Board’s survey was the same one on which the TURCHIA grounded. Second, the Board argued that the Corps’ failure to call and warn the Board of the shoal on the same day it obtained the survey data was a breach of its duty of due care. Third, it also disputed the District Court’s conclusion that the Board did not rely on the Corps’ survey data.

The Fifth Circuit Court of Appeal found by its mission that the Corps has undertaken a duty to help ensure the safety and navigability of the harbor. The Court also found that the duty owed by the Corps to the Board the same as “that of a private person in like circumstances,” which is due care. The Court recognized that where “the Government had no prior knowledge of the existence of the shoal [that] caused the accident,” it may not be held that its failure to warn was in dereliction of its duty of due care, and that “[e]vidence of reliance is necessary to establish that governmental negligence was a cause of the injury.”

The Court of Appeals affirmed the lower court finding that the Corps may not have known of the shoal. The Board argued that the Corps’ cross section survey indicates that the shoal that grounded the TURCHIA was the only shoal in the area of sufficient height and size to ground the ship, and therefore the shoal that appeared on

the Corps’ line survey must have been the same shoal. While this may be correct, the trial judge found that the connection between the shoaling of the Corps’ survey line and the shoaling 140 feet away where the TURCHIA grounded was tenuous based on the evidence it examined. The court found the evidence sufficient to support the trial judge’s finding.

The appellate court also found that the trial judge did not clearly err in concluding that the Corps exercised due care in the way it distributed the survey, especially given the Board’s lack of diligence. The Board insisted that the surveys published on the Corps’ website were unreadable, that it did not receive the paper survey showing the shoal before the accident, and that anything except a phone call to the Board constituted a breach of the Corps’ duty of due care. The court noted, however, that there were several ways in which users could obtain help in reading the survey. While there was evidence that some individuals found the online version difficult to read, the Board still had other options to access the information.

The court also found that the Board did not rely on the Corps’ survey data, but its own twenty foot line survey, and did not attempt to avail itself of the resources provided by the Corps. Therefore, without reliance on the Corps’ surveys, the Board’s claim failed regardless of any shortcomings in the Corps’ knowledge sharing system.

Finally, the Court found the Board’s argument that only an immediate phone call to warn of the shoal could constitute due care was unavailing. The record contained testimony that shoaling is a common phenomenon in the harbor, and that the Corps had no knowledge of when particular vessels with particular depth requirements plan on docking at the wharves. This information was within the control of the Board. Therefore, the Corps had no reason to pay special concern to the evidence of shoaling in its line survey beyond its normal efforts in disseminating survey information. Its duty to act with reasonable care did not require it to call the Board.

Judgment for the Corps.



BY WILTON E. BLAND, PARTNER
MOULEDOUX, BLAND, LEGRAND &
BRACKETT.
504-595-3000 OR WWW.MBLB.COM

development of the Caribbean and Central America.

Click here for:

[Conference Registration Form](#)
[Preliminary Conference Agenda](#)

World Trade Center

35th Annual Conference on the Caribbean and Central America

November 30 to December 2, 2011
New Orleans Marriott

For the first time in its history, CCAA, with the World Trade Center as co-host, is bringing the Conference on the Caribbean and Central America to New Orleans. With deep historical and cultural ties between the city and the countries of the Caribbean and Central America, this year's Conference will build aspects of the shared heritage into the conference in ways that will be unique and memorable.

This year the Conference has expanded its programming to feature country presentations, mobile workshops, and more opportunities to do business through networking and matchmaking. As always, the Conference will have plenary presentations and panels covering a wide range of current issues, and a first-class series of speakers.

Notable topics this year include:

- The impact of the expansion of the Panama Canal.
- The security challenges in the region.
- Discussions on regional trade policy.
- Disaster preparation and mitigation.
- A variety of industry-focused roundtables.

For over three decades, CCAA's Conference on the Caribbean and Central America has brought together regional and international stakeholders who are making a difference in the economic

MARK YOUR CALENDARS

September 29, 2011 PAL Monthly Meeting, 10Am, Port Fourchon Operations Center

November 3, 2011, PAL Monthly Meeting, 10AM, Port of New Orleans

December 15, 2011, PAL Monthly Meeting, 10AM, Natchitoches, LA

