

NEWS FROM THE DOCKS



Louisiana Ports Deliver

ASSOCIATION OF LOUISIANA November 2011
Volume 12, No.11

Message from the PAL Office

Where were you on the evening of November 5th? That is a time that will live in the minds of LSU fans for many years to come. #1 LSU beat #2 Alabama in Alabama in what was called the Game of the Century. It was a great win but let's not forget that the big prize is still down the road and there is a lot of football to be played between now and then. Congratulations and GEAUX TIGERS!!!!

PAL has finally sent the 2012-2013 edition of Profiles of Louisiana Ports to the printer. It should be available shortly. A limited number of copies are being printed but it will be available for all of our associate members.

The contract with Dr. Jim Richardson of LSU to develop an economic impact study for PAL has been signed and Dr. Richardson has begun work. The ports can expect to be contacted by his team for information relative to their operations. Please take time to address his questions so this process can move forward smoothly.

At this time of year, we give thanks for loyal friends like you. Your support and patronage have helped make this year a success. May you have an abundance of things to be Thankful for this Thanksgiving!



**HAPPY
THANKSGIVING**

Legislative Update

Legislative Elections-- The October 22nd elections for the 39 members of the Senate resulted in 20 members being elected without opposition, 15 members elected and 4 districts, including 3 incumbents will be determined on November 19th.

In the House of Representatives, of the 105 members, 41 members were elected without opposition, 21 district elections, including 5 incumbents, will be decided on November 19th.

As reported in the press, Senator John Alario will have the support of Governor Jindal for election as Senate President, and Representative Chuck Kleckley will have the support of the Governor for election as Speaker.

Port Priority Program-- DOTD has undertaken the process of selecting a replacement for Dr. Jayawardana as the economist for the Port Construction and Development Priority Program. The contract to provide an economist is through LSU acting for UNO and will extend through the middle of 2012. DOTD has the option of approving the economist, or canceling the contract. Canceling the contract would result in a several month delay to secure approval. Therefore, DOTD is concentrating on securing a qualified economist through the existing contract.

Hydrokinetic Generator Rules-- As noted last month, both PAL and the Port of New Orleans submitted comments to the Office of Mineral Resources (OMR) on the published rules. The process requires OMR consider the comments and make recommendations to the Mineral Board. The OMR has received comments from

DOTD, and extensive comments from Free Flow Power which has applied to the Federal Energy Commission for extensive placement of the generators in navigable waters of the state. OMR has rejected the majority of PAL's comments/suggestions.

The State Mineral Board met on November 9th. At that time PAL made a presentation to the Board requesting passage of the program be deferred until PAL could meet with ORM staff to discuss and defend our comments. OMR staff stated that ample consideration had been given to PAL's comments and they felt no additional discussion was necessary. The Board passed the program.

Design-Build Committee--The committee is chaired by Kent Dussum of URS. It is comprised of engineers from the American Council of Engineering Companies (ACEC), representatives of DOTD, and PAL. They met in Baton Rouge on October 27th. After extensive give and take, there was some limited progress by the committee to consider the Model Regulations for Design Build legislation as a standard to use for port projects. The ACEC members will provide specific proposed changes to the port Design Build legislation of 2011.

Maritime Focus Group of the Coastal Protection and Restoration Authority will meet for a second time on November 18th, relative to the La. 2012 Coastal Master Plan. The agenda will continue discussions of how the Plan can be implemented while sustaining and promoting the growth of ports, and navigation within the Coastal Zone.



Joe Accardo
Executive

Corporate Member News

Port of Iberia

\$9.2 MILLION "MILLENNIUM EXPANSION PHASE II" ADDS ADDITIONAL 108 ACRES TO PORT OF IBERIA

For leasing information, contact Roy Pontiff at the Port of Iberia at 337-364-1065 or email royp@portofiberia.com.

Nine Tracts from 3 to 18 Acres with Utilities Available (Water, Electricity, Natural Gas, Sewer and Telephone)



Waterfront Location Provides Direct Access to Gulf Intracoastal Waterway and Gulf of Mexico (200' wide channel, 13' depth with no height restrictions)

On US 90/I-49 Corridor - L&D Railroad On-Site Currently more than 100 companies operate at the Port of Iberia.

So don't miss out on this opportunity to expand or locate your business where business is being done!

Port of Morgan City

Re-alignment of Lower Atchafalaya River federal navigation channel approved

Approval has been granted for the U.S. Army Corps of Engineers, New Orleans District to re-align the federally-authorized navigation channel in the Lower Atchafalaya River to Crewboat Cut instead of the Horseshoe Bend reach. Crewboat Cut is already the preferred navigation route for local navigation. An analysis of the new channel shows that cost savings can be achieved since the Crewboat Cut channel would require less dredging.

The Atchafalaya River and Bayous Chene, Boeuf and Black, Louisiana federal navigation project meanders through St Mary and Terrebonne parishes. Annual maintenance dredging of the current authorized channel in the Horseshoe Bend reach totals approximately 800,000 cubic yards per year. The proposed realignment through what is locally known as Crewboat Cut will only require approximately 200,000 cubic yards to be removed on an annual basis.

“Analysis conducted by the Corps of Engineers shows that annual maintenance costs for this reach could decline by an estimated \$7.4 million,” said Darrel Broussard, Senior Project Manager. “The lower cost for maintenance from a reduction in dredging costs provides a basis for our recommendation to change the channel alignment to Crewboat Cut.”

“This is certainly good news and one that we have been waiting to hear for a long time. The success of this endeavor came about with the cooperation and hard work of local businesses and citizenry, the Port Commission and the Corps of Engineers. It is an example of what can be done when you work together and persist in a common goal. Now comes the hard part and that is finding the money in these financially difficult times to bring this project to its final conclusion,” said Jerry Hoffpauir, Executive Director, Port of Morgan City.

Hydrodynamic modeling was conducted to determine potential effects on water stages in and around Morgan City, estimate sedimentation rates, and provide data for a ship simulation model. The model showed that no measurable change would occur in water stages in Morgan City and sedimentation rates in the Crewboat Cut as a result of channel realignment. In addition, the ship simulator indicated that the new channel would be a safe navigation route for vessels that already use the current channel.

To ensure that the banks of the Crewboat Cut navigation channel remain stable, 1.8 miles of stone bank protection must be placed along the east bank of the channel. The new channel alignment will not be adopted into the federal system until the bank protection measures are in place.

Once the federal navigation channel has been realigned, the Corps anticipates that the Horseshoe Bend reach will naturally shoal over time.

Port of New Orleans

Three New Ships Set To Offer New Cruising Options - Cruise Capacity to Increase by 112%

Nov. 5, 2011 marked the beginning of a whirlwind nine days for the Port of New Orleans, as the first of three new and larger

cruise ships called the Crescent City home. The new additions will double the Port’s cruise capacity, bringing the total number of homeported ships from two to four.



The 2,052-passenger *Carnival Elation* will arrive at the Port on Saturday Nov. 5 to sail year-round four- and five-night cruises to Cozumel and Progreso, Mexico. The ship replaces the *Carnival Ecstasy* which replaced the *Carnival Triumph* September 22.

On Nov. 12, Royal Caribbean Cruise Line’s 3,114-passenger *Voyager of the Seas* will arrive to sail seasonal seven-day western Caribbean itineraries. The ship will be homeported in New Orleans during the winter cruise season from November to April.

The 2,974-passenger *Carnival Conquest* will arrive Nov. 13 to sail year-round seven-day itineraries to both eastern and western Caribbean ports of call. With the arrival of the *Conquest*, Carnival will have two ships homeported in New Orleans for the first time since Hurricane Katrina.

The three new ships join Norwegian Cruise Line’s 2,018-passenger *Norwegian Spirit* currently sailing seven-day western Caribbean cruises from New Orleans. In the fall of 2012, the *Norwegian Spirit* will be replaced by the newer and larger 2,348-passenger *Norwegian Star*.

“This is truly the most exciting time ever for cruising in New Orleans,” said Port President and CEO Gary LaGrange. “We have worked hard to regain the trust of the cruise industry following the events of 2005. By our calculations, the Port of New Orleans is on track to handle nearly 1 million cruise passengers in 2012, cementing our place as a top 10 cruise port in the United States.”

Carnival's two cruise ships will homeport at the Erato Street Cruise Terminal and Parking Garage, which opened in the fall of 2006. Norwegian Cruise Line and Royal Caribbean will share the new Julia Street Cruise Terminal – which is currently nearing the end of a \$17 million complete renovation. Royal Caribbean's *Voyager of the Seas* is the largest cruise ship ever to homeport in New Orleans.

Prior to the arrival of the new ships, the *Carnival Triumph* and *Norwegian Spirit* combined for a capacity of 4,776 passengers. With the additions, the combined passenger capacity of the four cruise ships is 10,158 passengers per voyage, a 112 percent increase.

Economic impact studies determined the cruise industry contributes \$226 million annually to the local and regional economy and supports 2,800 jobs.

In addition to the popular cruise lines sailing regularly from New Orleans to the Caribbean, LaGrange pointed out inland cruising on the Mississippi River will return in 2012, as well. American Cruise Line will debut a new sternwheeler built for navigating the Mississippi River named the *Queen of the Mississippi* in June and Travel Dynamics International will begin sailing its 257-foot *Yorktown* coastal ship from New Orleans in November 2012. In April, the Great American Steamboat Company will return the *American Queen* to New Orleans and Blount Small Ship Adventures will begin sailing inland itineraries aboard the *Grande Caribe* in March.

The surge of cruise activity is not coincidence. Port officials launched aggressive, multi-year public relations campaigns through travel professionals and cruise lines over the last five years to ensure the cruising public knew New Orleans' tourism infrastructure is better than ever. And Port officials are not resting on their laurels. Plans are underway to further expand cruise capacity with a third cruise ship terminal at the Poland Avenue Wharf.

Louisiana Economic Development News

Louisiana's Business Climate Earns Highest Ranking Ever

Site Selection magazine has ranked Louisiana the No. 7 business climate in the country - the state's highest ranking ever. The overall business climate ranking improves Louisiana's standing from No. 9 in 2010 and No. 25 in 2009. In the 6 categories used to generate the business climate rankings, Louisiana ranked No. 1 in the U.S. for per capita project expansions, No. 1 in competitiveness, and No. 3 in new projects attracted in 2011. *Site Selection*, the official publication of the Industrial Asset Management Council, is distributed to more than 44,000 executives responsible for site selection and facility planning decisions around the world.

Legal News



Right to Recover Maintenance and Cure Paid a Seaman

A seaman brought suit against his employer, seeking \$1 million in damages for reduced earning capacity and \$250,000.00 for past and future maintenance and cure. Plaintiff claimed that in May, 2005 he sustained injury to his back as a result of the employer's negligence while performing anchor maintenance aboard his vessel.

When the employee reported his alleged injury to his low back, his employer began maintenance and cure payments. (Maintenance, a daily living allowance and cure, payment for medical treatment the employer is obligated to pay the ill or injured seaman). By the time the seaman filed his lawsuit in Federal Court in New Orleans, his employer had paid a total of \$276,263.36.

Through discovery, it was established that the seaman intentionally concealed from his employer at the time of his post-hire medical interview significant back injuries, including treatment for back pain in 1997, 1998 and 2000. He also concealed an MRI conducted on October 24, 2004, revealing an annular disc fissure at L4-5 and disc protrusion at L5-S1 with neural impingement; and a 50-pound lifting restriction from the physician who performed a prior pre-employment physical for Diamond Offshore, a prior employer.

After it discovered that the seaman had concealed his true history of longstanding and well documented low back problems, the employer took two actions. First, it moved for partial summary judgment to dismiss the seaman's maintenance and cure claims, pursuant to the precedent set by *McCorpen v. Central Gulf S.S. Corp.*, 396 F.2d 547 (5th Cir. 1968), (under *McCorpen*, a Jones Act employer is not bound to make maintenance and cure payments if the employee intentionally withheld pre-existing health conditions material to the employer's decision to hire him and there is a connection between the withheld pre-existing condition and the injury complained of in the lawsuit.)

The seaman, realizing that the evidence of his deception was indisputable, sought to dismiss his maintenance and cure claim. Judge Ivan Lemelle, however, granted the motion and dismissed the seaman's maintenance and cure claim.

The employer then filed a Counterclaim against the seaman seeking restitution of the maintenance and cure payments and brought a motion seeking declaration that it was legally entitled to said restitution.

Judge Lemelle recognized this was an issue that the courts had not previously addressed. However, the employer contended that the seaman who receives benefits by fraudulently concealing his true medical condition has been unjustly enriched and that restitution is the appropriate remedy. The employer also relied on Louisiana law principals of unjust enrichment and workers' compensation laws that allow for restitution based on the employee's fraud. The seaman countered saying that the general maritime law does not provide for this remedy, and that the Louisiana Fourth Circuit Court of

Appeal had previously rejected such a claim in its 2010 opinion in *Cotton v. Delta Queen Steamboat Company*.

After a comprehensive analysis of decisions of other courts and various compensation schemes from across the nation, Judge Lemelle concluded that restitution was proper. He noted, "the facts of this case are unique because the seamen not only failed to disclose his condition during the initial stages of employment, but he also concealed it by failing to timely disclose it to his employer and his own attorney until years later, and then only on the eve of the ruling on the *McCorpen* issue. This seaman's inactions were more than unreasonable; they were intentionally done and void of good faith."

Significantly, the judge noted that the employer would have a right of credit for its maintenance and cure payments against any judgment it may pay with respect to the seaman's still viable Jones Act negligence and unseaworthiness claims.

This is an important decision about which maritime employers should be aware. It recognized the right to restitution and the right of the employer to credit against any adverse judgment on the negligence/unseaworthiness dispute, as the seaman will likely not have the resources to make restitution himself. See, *Boudreaux v. Transocean Deepwater, Inc.*, 2011 WL 5025268 (E.D. La.).

It should also be noted that this is one of several recent decisions from the U.S. District Judges in New Orleans in which seaman's claims for maintenance and cure have been dismissed. If there is clear evidence of fraud or misconduct, the Judges will provide relief to the employer.



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MARK YOUR CALENDARS

America's Wetlands



The World Trade Center and the Small Business Administration are offering a special seminar on Wednesday, November 16, from 2:00 - 5:00 p.m. that will answer many questions for anyone looking to grow his or her business through international trade. Sandro Murtas with the SBA's Export Solutions Group will discuss such topics as export fundamentals, determining your readiness to export, and how the SBA and World Trade Center can assist you. The cost of the seminar is \$60 for WTCNO members and \$80 for future members.

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September Exports Hit Record \$180.4 Billion

The U.S. trade deficit fell in September to the lowest point this year as foreign sales of American-made autos, airplanes and heavy machinery pushed exports to an all-time high. The deficit narrowed 4 percent to \$43.1 billion, the third straight decline and the smallest imbalance since last December, the Commerce Department reported on Nov 10. Exports increased 1.4 percent to a record \$180.4 billion, reflecting a big increase in shipments of U.S. made autos and auto parts.

November 30- December 2, 2011, 35th Conference on Caribbean and Central America (CCAA) Marriott, New Orleans, LA For an updated conference agenda and speakers list, please visit: www.wtcno.org/ccaa_agenda.pdf.

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

Welcome New Associate Member

PAL welcomes TMG Consulting – a planning, economics and engineering firm located in New Orleans. Will be represented by Ms. Suzanne Leckert.

