

# TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy  
August 1, 2019

## One EPA giveth environmental protection, and the other taketh it away

On July 30, the EPA [announced](#) that it is reversing a restriction that limited the controversial Pebble Mine project near Bristol Bay, Alaska. The EPA had restricted the project because scientists found that the copper and gold mine would devastate the bay's fish habitat, which includes one of the most valuable wild salmon fisheries in the world. In particular, [the EPA found](#) in 2014 that a mine would cause "complete loss of fish habitat due to elimination, dewatering, and fragmentation of streams, wetlands, and other aquatic resources" in some areas of the bay. The agency therefore invoked Section 404(c) of the Clean Water Act to protect the bay and halt the project.

The EPA has changed since then (even if those findings haven't). For instance, former EPA Administrator Scott Pruitt [took a meeting](#) with the CEO of the company behind the project in 2017 and ordered the agency to reverse those findings an hour later. In the end, they couldn't find a way to reverse those findings, but this does the same thing. Although the EPA's latest move does not guarantee that the mine will be developed, it abdicates much of the EPA's duty to ensure the nation's waters are safe. Rather, the EPA said it will be moving forward with the Army Corps of Engineers on the permit-review and National Environmental Policy Act review processes. If the project does move forward, BBC will have to scratch Bristol Bay off the list of potential filming locations for [neat videos of bears trying to catch salmon](#). Before that happens, expect the fishermen, tribes, and [their friends](#) to continue to fight the project, with or without the EPA's help.

## Happy Shark Week!

Haven't gotten your fill of sharks from the kickoff of [Shark Week](#), the [Baby Shark song on repeat](#), or news stories about [babies wearing shark onesies](#)? Well, in case you missed it, here's some more shark news. Recently, scientists (including two from Tulane) discovered that a shark found in the Gulf of Mexico in 2010 is actually [a new shark species](#). The scientists have named the species the American pocket shark, or *Mollisquama mississippiensis* (try saying that ten times fast). Like the only other pocket shark known to science, this 5.6-inch newborn male has a pouch next to each front fin. The muscular glands are lined with pigment-covered fluorescent projections, [indicating they squirt luminous liquid](#), which might conceal the shark from prey or from predators. This pocket shark is only the third out of more than 500 known shark species that may squirt luminous liquid. The shark also has clusters of light-emitting cells dotted on its belly. Regarding the discovery, one of the Tulane scientists, Henry Bart,

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:

#### [Coastal Connections](#)

August 6, 2019; Port Sulphur, LA

#### [Gulf Intracoastal Canal Association Seminar](#)

August 7-9, 2019; New Orleans, LA

#### [Impacts of Oil Spills on Underdog Species](#)

August 13, 2019; Lacombe, LA

#### [Sip to Save the Wetlands](#)

August 15, 2019; New Orleans, LA

#### [CPRA Board Meeting](#)

August 21; Baton Rouge, LA

#### [LSU Science Café: Coastal Voices—Stories of Resiliency](#)

August 27, 2019; Baton Rouge, LA

### Water jobs:

#### [Consortium Administrator](#)

LUMCON; Chauvin, LA

#### [Deputy Director](#)

Audubon Louisiana; New Orleans, LA

#### [Water Resources Associate or Manager](#)

Metro Planning Council; Chicago, IL

#### [Vice President, Programs & Strategy](#)

US Water Alliance; Oakland, CA

#### [Postdoctoral Employee \(Water Policy\)](#)

UC Irvine; Irvine, CA

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stated: “the fact that only one pocket shark has ever been reported from the Gulf of Mexico, and that it is a new species, underscores how little we know about the Gulf — especially its deeper waters — and how many additional new species from these waters await discovery.” Pocket shark doo doo doo doo doo!

**Don't cry over spilt river water? The spillway is no longer spilling, but that doesn't mean everything is back to normal.**

With water levels in the Mississippi River starting to drop, the [Army Corps of Engineers finally began closing the Bonnet Carre Spillway](#) on July 22 after an historic year for the spillway. As of that date, the spillway had been open for a total of 118 days of the year, which represents the longest opening in the spillway's history. Additionally, this year marked the first time that the Corps used the spillway in consecutive years and the first time that the Corps operated the spillway twice in one year. The Corps said it will continue to operate in “flood fight” mode until the river drops below 11 feet, a level that is not yet shown on current forecasts. As a result, regular inspections of the levees and restrictions on construction near them will continue. [And cue the collective sigh of relief.](#)

Senator Cindy Hyde-Smith of Mississippi has proposed the Commercial Fishing and Aquaculture Protection Act of 2019, which is co-sponsored by Louisiana Senator John Kennedy, to assist seafood industry workers on the Gulf Coast who may have been affected by the opening of the spillway, as well as algae blooms in the Mississippi Sound. This bill would establish a revenue-based disaster program to “[either replace or serve as an alternative to the fishery disaster relief provided by the Department of Commerce.](#)” If the bill were to pass, those who qualify would receive a payout of 85 percent of the average total gross revenue for three previous years, minus actual total gross revenue during the loss year.

### **Spill the tea, not the oil**

We have written [many, many, many](#) times about the Taylor Energy oil spill in the Gulf of Mexico AKA the country's longest-running offshore oil spill. Recall that in late 2018, amid disagreement among the Taylor Energy Co. LLC, the Coast Guard, and activists over how much oil continued to leak from the site 14 years after the collapse of the oil platform, the Coast Guard seized control of the cleanup because Taylor Energy balked at installing a containment device. In May 2019, the Coast Guard [announced](#) that the spill was finally being contained, [though not capped completely](#). The latest news is that after installation of the containment system was completed, the Coast Guard has allowed Taylor Energy (now just a trust fund that exists only to clean oversee this cleanup) to resume shared oversight of the cleanup.

Speaking of oil spills, under the Endangered Species Act, the National Marine Fisheries Service is required to measure the impacts of federally authorized oil and gas operations on species listed as threatened or endangered, as well as on critical habitat. However, the Fisheries Service has not issued such a biological opinion in 12 years. That last opinion was intended to cover the five-year period from 2007 to 2012. After the 2010 Deepwater Horizon explosion and spill, the Department of Interior requested that the Fisheries Service update that 2007 opinion to account for the massive spill. The Fisheries Service began an analysis in 2013 but never issued an opinion. In 2018, Earthjustice on behalf of the Center for Biological Diversity, the Sierra Club, and Healthy Gulf filed a federal lawsuit calling on the Fisheries Service to issue an updated opinion. [The parties recently reached a settlement agreement](#) under which the Fisheries Service agreed to finish an assessment by [Guy Fawkes Day](#) (November 5 for non-history buffs). Better late than never?

[Healthy Gulf also filed a lawsuit](#) against the Bureau of Safety and Environmental Enforcement challenging the rollback of offshore drilling regulations by President Trump's administration. The bureau was formed 19 days after the Deepwater Horizon disaster to oversee safety and environmental protection in offshore energy development. The lawsuit alleges that the bureau is now weakening measures that were deemed necessary after the disaster to reduce the risk of workers' deaths and oil spills. The changes include the removal of certain requirements for real-time monitoring of offshore operations by onshore engineers; an extension of the date by which blowout preventers must comply with certain requirements; and an avenue for companies to more easily obtain waivers from meeting the minimum "safe drilling margin," a measure designed to reduce the risk of sudden changes in well pressure that could cause a blowout. Healthy Gulf believes that the bureau has not provided adequate reasons for relaxing its rules. This has all the makings for an administrative law hypo – the only difference is that this is real life with lives on the line and not just an opportunity for law students to celebrate their triumph with a drink or drown the sorrows of their poor showing with a drink. Either way, break out the [White Claw](#)!