



WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium

U.S. Ratifies Maritime Boundary Treaty with Mexico

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Overview

On October 23, 1997, the United States Senate ratified a maritime boundary treaty with Mexico that had lain in limbo for nineteen years. The two countries signed the TREATY ON MARITIME BOUNDARIES BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES¹ ("Treaty") in 1978. Mexico ratified the Treaty a year later. However, the U.S. Senate was satisfied to leave the treaty signed but unratified.

The Senate ratification means that the Treaty's maritime boundary formally comes into force between the two nations. The agreement draws a line through much of the western and central Gulf of Mexico where claims of the two countries might have otherwise overlapped. While allocating most of the western and central gulf areas to one or the other of the two nations, the boundary line leaves an opening ("western gap") where the 200 mile claims of neither side reaches (see illustration on page 7). The two nations may soon begin negotiations regarding oil and gas

development in that area.

The Treaty will allow each nation to lease valuable oil and gas areas to production companies without fear of territorial dispute claims by the other nation. In September, members of the Clinton Administration along with oil and gas industry representatives advocated treaty ratification before a subcommittee of the Senate Foreign Relations Committee. The administration and the industries lauded the treaty as a means of removing uncertainty over ownership of large expanses of valuable submerged lands. With no formal

see Treaty, pg. 5

Eleventh Circuit Finds Drainage Ditch Waters "Navigable"

United States v. Eidson, 108 F.3d 1336 (11th Cir. 1997).

Michael L. McMillan, 3L

Introduction

In March 1997, the Court of Appeals for the Eleventh Circuit upheld the conviction of Charles and Sandra Eidson for violating the Clean Water Act (the Act) by dumping sludge into a Tampa, Florida drainage ditch. The court gave "navigable waters" an expansive meaning by including waters flowing through the drainage ditch as navigable waters of the United States.¹ The court reasoned that the Act aims to protect our nation's

waters from pollutants whether the waters flow through natural waterways or man-made channels such as drainage ditches.

Background

Charles and Sandra Eidson owned and operated Cherokee Trading Partners, Inc. (Cherokee), a used oil recycling and disposal business.² On April 25, 1990, a Tampa, Florida police officer observed a Cherokee company truck releasing a sludge substance into a drainage ditch which eventually emptied into Tampa

see Eidson, pg. 3

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Recreational Red Snapper Fishery Closed

Richard K. Wallace

The recreational red snapper fishery in the Gulf of Mexico closed November 28, 1997, for the first time ever. It affected hundreds of small businesses in the form of charter boats, head boats and support industries. The closure came as a surprise, resulting in anger and dismay by the recreational fishing industry. But how and why did the closure occur?

Red snapper were first regulated under a fishery management plan in 1984 when the Gulf of Mexico Fishery Management Council set a thirteen inch minimum length limit. By 1988, computer models provided sufficient data to suggest that red snapper were severely overfished.

In 1990, the Council set a goal to rebuild the spawning potential of the snapper stock to twenty percent of its unfished condition by 2000. The Council imposed a seven fish recreational bag limit and a 3.1 million pound commercial quota. Later, the Council adjusted quotas to 3.06 million pounds for the commercial fishery, 2.94 million pounds for the recreational fishery, and lengthened the rebuilding time to 2019. Once the commercial fishery reached its quota, regulations required its closure, but the recreational fishery was not subject to a closure.

The second year the commercial quota was in place, the quota was reached in 53 days and the fishery closed. Despite attempts to lengthen the commercial season through trip limits and split quo-

tas, the quotas were met in short time periods. Meanwhile, the recreational fishery was exceeding its quota by 100,000 to nearly 3 million pounds from 1991 to 1994. As a result, the bag limit was reduced to five fish in 1995, but the recreational fishery still exceeded the quota by 1.2 million pounds. This problem appeared to be solved when the recreational quota was increased to 4.47 million pounds in 1996 and the fishery did not meet this limit.

For a time, anecdotal reports from recreational fishermen indicated that fish were abundant and the commercial sector was readily fulfilling its quota. But, in the halls of Congress, the Magnuson Fishery Conservation and Management Act was undergoing a scheduled reauthorization and numerous changes. It included a provision requiring the Gulf of Mexico recreational snapper fishery to close when it reached its quota. Other changes that could effect the red snapper fishery were the more generic requirements that redefined overfishing as the rate of fishing mortality that produces a maximum sustained yield on a continuing basis. It also required rebuilding times to be ten years or less unless circumstances indicated otherwise.

In November, the recreational red snapper fishery closed when it reached its quota. As late as October, however, National Marine Fisheries Service scientists were telling the charter boat industry that there was little chance that the fishery would reach its quota.

These inaccurate projections have focused the debate on methods of measuring the recreational catch.

The current method is to use data from the Marine Recreational Fishery Statistical Survey, Head Boat Survey, and the Texas Parks and Wildlife Department Survey. These surveys were not designed to specifically measure the red snapper catch, but are long standing surveys that have been adapted to determine when the quota is reached. Recreational interests are disputing the accuracy and precision of the surveys as they relate to closing the fishery.

While concern is high over this first ever closure, greater problems loom on the horizon. The red snapper fishery will open again on January 1, 1998. Recreational fishermen will be back in force catching fish. In all likelihood, the average fish will be a little bigger than in 1997. Since the quota is measured in pounds, it will take less fish to reach the quota than in 1997 and the fishery could close earlier than late November. Furthermore, the Council is currently debating whether to lower the quota based on recent reviews of the red snapper model. Lowering the quota would result in lower bag limits, earlier closures or both.

Perhaps even more troublesome for recreational and commercial interests are the other requirements in the Magnuson-Stevens Fishery Conservation and Management Act and their interpretation by the National Marine Fisheries Service. The Gulf

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Council has been advised by its Reef Fish Stock Assessment Panel that in order to meet the new definition of overfishing, the recreational and commercial quotas would have to be reduced from their current levels or bycatch reduced beyond levels that are currently achievable. The Panel has further advised that it is biologically impossible to achieve the new conservation standard within the recommended ten years even if all fishing for red snapper were stopped and the bycatch of red snapper completely eliminated.

Extreme solutions such as the recreational fishery closure are representative of the Gulf Council's dilemma. The new Magnuson-Stevens Act requires the Council to take a conservative approach in managing red snapper. The Council must rely on the computer model which is unyielding in its estimate of the status of red snapper and the course necessary to rebuild the stocks.

On the other hand, fishermen insist that the old management regime works fine. By their account, red snapper are more plentiful and larger than 10 or 15 years ago and further restrictions unnecessarily pose a serious threat to the sportfishing industry. Despite these observations and concerns, the Council will have little room to maneuver and will have to use the computer data as the best available data and comply with provisions of the Magnuson-Stevens Act. ■

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Eidson continued from pg. 1

Bay. Charles Eidson admitted to an environmental inspector that he directed the driver of the truck to empty the contents into the drainage ditch. Evidence later showed that Cherokee employees regularly discharged waste sludge into the ground, woods, and ditches while documenting that such material was discharged into a fictitious "Tank 8."³

Prosecutors charged Charles and Sandra Eidson in federal district court with violating the Clean Water Act by discharging pollutants into waters of the United States. After a jury trial, Charles and Sandra Eidson were convicted and this appeal followed.

Clean Water Act: Broad Interpretation of Navigable Waters

Congress enacted the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."⁴ The Act made it illegal to "knowingly discharge or cause the discharge of pollutants into navigable waters of the United States."⁵ Congress defined navigable waters as "the waters of the United States, including the territorial seas."⁶

Recognizing that water moves in hydrologic cycles, Congress mandated that discharge of pollutants must be controlled at the source. Accordingly, pollutants must be regulated in navigable waters, portions thereof, and their tributaries. The drainage ditch at issue channeled waters through a drainage canal and into Picnic

Island Creek, a tributary to Tampa Bay. Consistent with the broad congressional definition of navigable waters, the Eleventh Circuit found that the waters flowing through the drainage ditch were subject to Clean Water Act regulation because of their potential to pollute the waters of Tampa Bay.

The Eidson Appeal

On appeal, the Eidsons claimed their activities did not fall under the Clean Water Act for three reasons. First, the defendants argued that the Act did not govern the drainage ditch because the water flowing through the ditch is not "navigable-in-fact." The Eleventh Circuit denied this argument. The court explained that "Congress intended to regulate the discharge of pollutants into all waters that may eventually lead to waters affecting interstate commerce."⁷ In addition, the Eleventh Circuit followed the landmark Supreme Court decision, *U.S. v. Riverside Bayview Homes*, where the Supreme Court found that Congress granted navigable waters a wide degree of interpretation to protect the nation's water.⁸ The court concluded that actual navigation is not necessary to establish authority under the Clean Water Act.

Second, the Eidsons argued that the Act does not apply to the drainage ditch because the ditch is a man-made channel. The court dismissed this argument by holding that Congress did not intend to distinguish between man-made and natural water routes. The court recognized that "[p]ollutants

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are equally harmful to this country's water quality whether they travel along man-made or natural routes."⁹ The court noted that other courts have found sewers and mosquito canals to be navigable waters for purposes of regulating illegal discharges.¹⁰ The pollutants discharged by the Eidsons would reach Tampa Bay whether the ditch was natural or man-made. The court concluded that this pollution was the specific result Congress sought to prohibit.

Finally, the Eidsons argued that the Act should not apply because waters flowed only intermittently through the drainage ditch. Again, the court declined the argument. The court reasoned that pollutants need not reach bodies of water immediately or continuously to cause harm. Following a similar finding by the Tenth Circuit, the court stated that as long as the pollutants would potentially flow into a navigable waterway during significant rainfall, then the waterway may spread environmental damage and contains waters of the United States.¹¹

The court emphasized that the capacity for environmental damage was significant in Eidson. The ditch was part of a drainage system designed to discharge storm water into Tampa Bay. Thus, the ditch is a tributary of Tampa Bay and during heavy rainfall and high tide, its water carries pollutants into the Bay. By denying the Eidson appeal, the court ruled that a

drainage ditch can be a navigable waterway under the Clean Water Act.

Clean Water Act: Pollutants

The Eidsons also appealed the finding that the petroleum-based sludge pumped from the Cherokee truck was a pollutant under the Clean Water Act. The Eidsons argued that the term "pollutants," as defined under the Act, is unconstitutionally vague because the Act does not specifically include "petroleum-based product[s]."¹² The court denied the argument. It reviewed the Act's list of pollutants and found that while its contents



were broad, they were not unconstitutionally vague. Given the nature of the liquid dumped into the drainage ditch by Cherokee, the court concluded that "an ordinary person should have been able to understand that the petroleum-based, sludge-like substance was industrial waste within the meaning of the [Act]."¹³

Conclusion

In order to protect the waters of the United States, the court effectively expanded the Clean Water Act's authority to almost any avenue of drainage affecting interstate

waters. Consistent with the broad congressional definition, the Eleventh Circuit found that the waters flowing through the Tampa drainage ditch were navigable waters even though they are not navigable-in-fact, do not flow continuously, and flow through a man-made channel. ■

ENDNOTES

1. S.Rep. No. 1236, 92nd Cong., 2d Session 144 (1972) ("navigable waters" should receive the broadest possible interpretation).
2. Cherokee's primary activity was, for a small fee, the collection of oil, reduction of the water content and subsequent resale to oil recycling companies. For a larger fee, Cherokee disposed of industrial wastewater.
3. *United States v. Eidson*, 108 F.3d 1336, 1340 (11th Cir. 1997).
4. 33 U.S.C. § 1251(a) (1997).
5. 33 U.S.C. §§ 1311(a), 1319(c) (1997).
6. 33 U.S.C. § 1362(7) (1997).
7. 108 F.3d at 1341.
8. *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985).
9. 108 F.3d at 1342.
10. See *United States v. Velsicol Chemical Corp.*, 438 F.Supp. 945, 947 (W.D. Tenn. 1976) (sewers that lead to the Mississippi River are navigable waters); *United States v. Holland*, 373 F.Supp. 665, 673 (M.D.Fla. 1974) (mosquito canals that empty into bayou arm of Tampa Bay are navigable waters).
11. See *United States v. Texas Pipe Line Co.*, 611 F.2d 345 (10th Cir. 1979) (in deciding that a river tributary was a navigable water, the court stated, "it makes no difference that a stream was or was not at the time of the spill discharging water continuously into a river navigable in the traditional sense.").
12. 108 F.3d at 1343.
13. 108 F.3d at 1343.

Treaty continued from pg. 1
opposition, the Treaty ran its course through the Foreign Relations Committee to the full Senate for a ratification vote soon after the hearings.

Background

Vast oil and gas reserves located below the submerged lands of the gulf constitute enormous wealth for the nations who hold legal claim to the lands. However, as late as 1952, state of the art technology limited drilling to one hundred feet of water.² Eventually, offshore barge drilling allowed for oil and gas extraction in water depths up to 300 feet. Drilling at 300 foot-plus depths required floating drillships with stabilizing equipment that could withstand wind and currents and compensate for the roll and pitch of a surging sea.³

Exploration in one thousand-foot-plus depths required another quantum leap in engineering technology. Dynamic stationing, an anchorless method of mooring, uses position referencing systems to feed information to a drillship's thrusters to maintain a ship's location relative to the sea floor.⁴ By 1970, the technology existed to drill in 2,000 feet of water and actual exploratory drilling was taking place at 1,400 feet.⁵

Until recently, oil and gas development was prohibitively costly in the deep waters of the gulf in proximity of the provisional maritime division between the countries. After a century of engineering improvements, those areas have recently become potentially

profitable sites for oil and gas development.

In 1995, the United States amended its federal laws governing the royalty payment system on offshore oil and gas production and, in so doing, lowered the economic hurdle that had kept the technological advances on the blackboards and off the ocean floor. The recent surge in oil and gas exploration in the Gulf is due in large part to the Outer Continental Shelf Deep Water Royalty Relief Act.⁶

The royalty relief provisions in 1995 are relatively straightforward. They are designed to "promote development or increased production" on existing lease tracts and to "encourage production of marginal resources" on existing and as yet unleased tracts in the deepwater areas of the Gulf of Mexico.⁷ They do so by removing the initial royalty payments for a tiered level of production based on the depth from which oil and gas are recovered. As a result, oil and gas companies which would otherwise forego production may now reduce their costs of production.

The Act succeeded in spurring interest in leasing deepwater tracts of the western and central regions of the Gulf of Mexico. In 1995, the last year in which lease sales occurred without the Royalty Relief Act in place, high bids for OCS leases in the Gulf of Mexico totaled \$306 million.⁸ Two lease sales in 1996 brought in over \$850 million.⁹ And 1997 lease sales in the Gulf garnered over \$1 billion.¹⁰ The financial attractiveness of the new deepwater royalty relief provisions is illustrated by

the fact that over half of the tracts leased since the Act went into effect are in deepwater areas, i.e. 200 meters depth or greater.

The Boundary Delimitation and the Western Gap

In the 1970's, a number of nations made claims of extended ocean jurisdiction. In 1976, Mexico claimed a 200 nautical mile Exclusive Economic Zone (EEZ) while the United States extended its fisheries jurisdiction to 200 nautical miles (which would eventually be claimed as a U.S. EEZ in 1983).¹¹ A potential conflict arose since the extended jurisdictions overlapped in those areas of the Gulf where the distance between the landward baselines was less than the 400 nautical miles necessary to accommodate each state's full claim. The two nations agreed to provisional maritime boundaries on November 24, 1976.¹² Subsequently, they entered into negotiations that led to the 1978 Treaty.

The Treaty employs an equidistant method of calculating a boundary line to reach an equitable delimitation between the nations. Due to the geography of the Gulf of Mexico and the two states there exists a gap roughly triangular in shape in the western Gulf of Mexico where the respective EEZ's do not meet. That western gap was left open for future negotiations since either state might make some claim to the submerged lands lying thereunder pursuant to the principles employed in claiming appurtenant continental shelf areas.

In 1979, Mexico ratified the treaty. On January 23, 1979, the President of the United States transmitted the Treaty to the United States Senate to gain the necessary advice and consent via the domestic ratification process. While the United States Senate's Foreign Relations Committee held hearings and favorably reported the Treaty to the full Senate for its advice and consent in 1980, the Senate declined to ratify it. While no apparent reasons existed to object to Treaty ratification, neither was there a perception that boundary delimitation in the area was of any high priority. A number of Senators requested that a comprehensive study be initiated on the resources that might be obtained from the gulf. As a result, the Treaty lingered in limbo for another seventeen years.

Deepwater Leasing Near Boundary and Western Gap

The increased exploration and leasing activity that has taken place in the Gulf of Mexico as a result of the Deepwater Royalty Relief Act raised concerns in the energy production industries over the certainty of the territorial boundary between the U.S. and Mexico as well as the jurisdiction over the western gap.

Oil and gas producers were looking at prospective drilling sites which came close to or straddled a legally uncertain boundary line. They also indicated interest in potential lease sites within the western gap. In 1997, the U.S. Minerals Management Service, the agency with authority to solic-

it, accept, and administer lease tract bids, announced that it would offer offshore leases for tracts in the western gap contingent upon a successful agreement between the two nations on that area.¹³ The Government of Mexico indicated that no agreement on the gap could be considered until the U.S. first ratified the boundary treaty. The increased interest in the deep waters of the Gulf of Mexico prompted the U.S. Senate Foreign Relations Committee to hold hearings in September of 1997 regarding the maritime boundary in the Gulf.

Witnesses who addressed the Committee unanimously endorsed expedient ratification of the Treaty. Testifying on behalf of the U.S. Department of State, Deputy Assistant Secretary Mary Beth West indicated that deepwater oil and gas exploration in the Gulf of Mexico made prompt Treaty ratification an essential step in establishing a mutually recognized boundary line that would constitute the certainty sought by commercial industries.¹⁴

Senator Frank Murkowski, Chairman of the Senate Committee on Energy and Natural Resources, urged the Foreign Relations Committee to promptly and favorably report the Treaty to the full Senate in an effort to have it ratified before the adjournment of Congress in 1997.¹⁵ He noted the "tremendous positive impact" of the Deepwater Royalty Relief Act and urged Treaty ratification as a means of "settling a permanent boundary between the U.S. and Mexico." Ratification, posited Murkowski, would enable "the

orderly acquisition and development of oil and gas leases along the U.S. side of the international line."¹⁶ The Senator also envisioned a ratified Treaty as a step towards an amicable agreement that would allow for the allocation of lease sites in the western gap. "We are hopeful that resolution of the permanent boundary will facilitate agreement over division of that area of such great promise," noted Murkowski.¹⁷

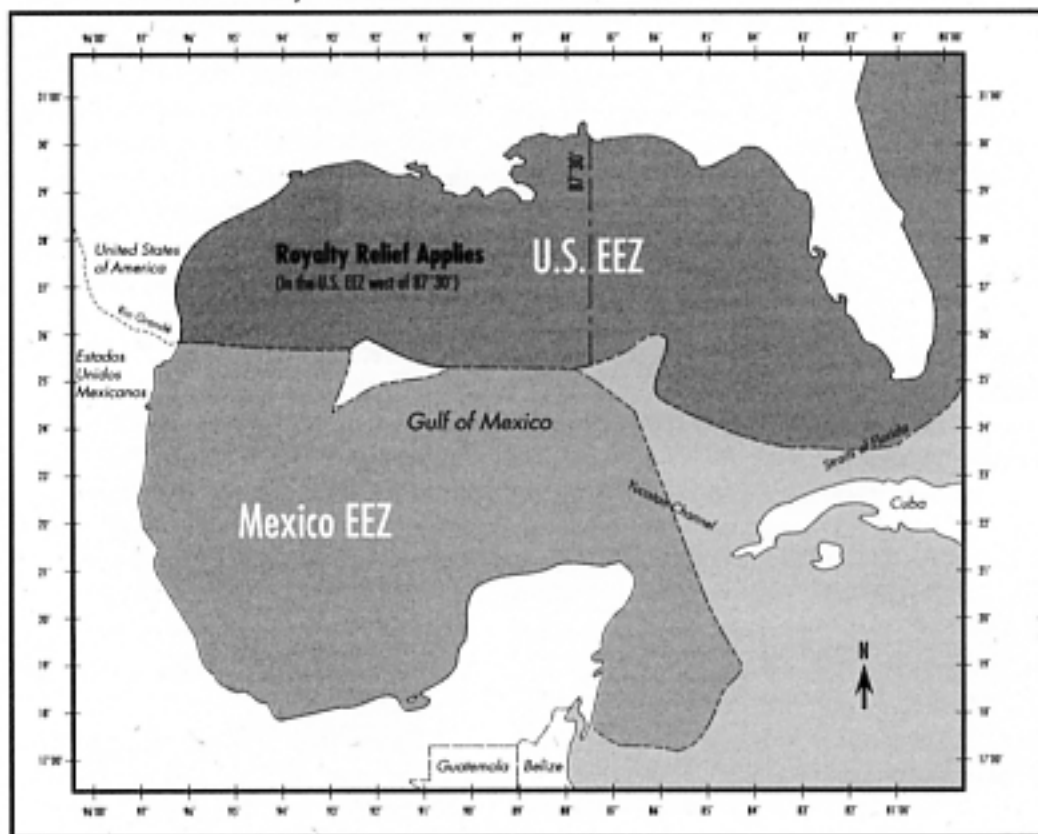
Oil and gas industries lined up in support of the Treaty. In a written statement submitted during the Committee hearings, oil and gas interests joined together to advocate quick ratification as a means of providing territorial stability upon which sound commercial planning could be based.¹⁸ The oil and gas interests reiterated that ratification is a vital element to allow negotiations to take place between the two countries regarding the western gap.¹⁹

Presidential Praise for Treaty

The Foreign Relations Committee favorably reported the Treaty to the Senate shortly after the hearings. The full Senate voted to ratify the treaty on October 23, 1997. The two countries' leaders made specific reference to the final formalization during a visit by Mexico's President Ernesto Zedillo to Washington in mid-November. In a joint declaration issued from the White House, Presidents Clinton and Zedillo emphasized the "ratification of our Maritime Boundary Treaty as an important step to fully demarcate our common maritime border."²⁰ ■

Maritime Boundary Line

Based on the Treaty on Maritime Boundaries Between Mexico and the U.S.



ENDNOTES

1. Treaty on Maritime Boundaries between the United States of America and the United Mexican States, May 4, 1978, 17 I.L.M. 1073.
2. Dillard Hammett, *Deepwater Drilling - Foresight, Risk, and Reward*, 22 EXPLORATION AND ECONOMICS OF THE PETROLEUM INDUSTRY 227, 231 (1984).
3. *Id.* at 231.
4. *Id.* at 234.
5. *Id.*
6. 43 U.S.C. § 1337(a) (1997); see *Law and Technology Spur Deepwater Oil and Gas Exploration in Gulf of Mexico*, 17:1 WATER LOG, 1.
7. Pub.L. No. 104-58 (codified at 43 U.S.C. § 1337(a)).
8. Data available at <http://mmspub.mms.gov/omn/gomr/homepg/lseale/>, December 9, 1997.
9. *Id.*
10. *Id.*
11. "Decree of 26 January 1976, Adding a New Paragraph 8 to Article 27 of the Constitution to Provide for an Exclusive Economic Zone Beyond the Territorial Sea," D.O., 7 June 1976.
12. Maritime Boundaries Agreement Between the United States and Mexico - Effected by Exchange of Notes, signed at Tlatelco and Mexico, November 24, 1976 TIAS 8805.
13. Barbara Shook, *MMS Offers Leases in "Doughnut Hole" Ahead of Senate OK*, THE OIL DAILY, July 25, 1997, at 3.
14. *Hearings on Maritime Boundaries Treaty with Mexico Before the Senate Committee on Foreign Relations*, 105th Cong., 1st Sess. (1997) available in LEXIS, NEWS Library, FEDNEW File (testimony of Senator Frank H. Murkowski).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* (written statement of the American Petroleum Institute, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the Mid-Continent Oil and Gas Association, and the National Ocean Industries Association).
19. *Id.*
20. Text of Clinton-Zedillo Declaration, U.S. NEWSWIRE, November 14, 1997.

Biloxi Tidelands Subject of Trust Land Exchange

Kristen M. Fletcher, J.D. and Rebecca Jordan, 2L

A year ago, the Mississippi Secretary of State's office transferred 6.73 acres of tidelands to Mirage Resorts in exchange for 4,225 acres of undisturbed habitat located in the three Mississippi coastal counties. The exchange is unique because Mississippi tidelands are public trust lands, meaning the State holds the lands for the benefit of the public and may convey the lands to private parties only under specific circumstances. By exchanging the Biloxi tidelands, the Secretary of State created a new avenue of transferring trust lands and, in the process, added over 4,000 acres of pristine habitat to state ownership.

Mirage Resorts planned a \$500 million investment including a floating casino, hotel, entertainment complex, and convention center. Mirage approached the Secretary of State Eric Clark in his capacity as trustee over the tidelands. The company hoped to buy the tidelands rather than lease the lands which is common on the Mississippi gulf coast. The land exchange which made the investment possible is the first of its kind in Mississippi history.

Mississippi's Public Trust Tidelands

Mississippi tidelands are those lands which are "tidally affected" or those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides.¹ The Mississippi tidelands are held in the public trust to preserve the public's ability to use and enjoy the trust lands for navigation, recreation, and fisheries.² The Secretary of State administers the trust including controlling and managing the trust assets: the tidelands.

The Mississippi Constitution states that public trust lands shall never be donated directly or indirectly to private corporations and can be sold only at fair market value or greater.³ The Mississippi Supreme Court has expanded this directive. In 1986, the court stated that a permanent conveyance of public trust land is subject to a two-step approval process: (1) the conveyance must further a higher public policy and (2) be enacted by the legislature.⁴ Therefore, no matter how compelling the public purpose may be, absent

an action by the Mississippi legislature, the Secretary cannot convey public trust land to a private party such as Mirage Resorts. The Mississippi legislature, however, granted the Secretary an exception for lands which were substantially filled prior to enactment of the Coastal Wetlands Preservation Act of 1973.⁵ Filled lands may be offered for sale without legislative enactment as long as the sale benefits the public trust. Unfilled lands may be leased but in order to sell them, the Secretary must follow the two-step process.

In recent years, the state's tidelands have substantially increased in value due to leases of the lands to casino barges. In 1989, the Mississippi Legislature created the Public Trust Tidelands Fund to hold and disperse revenue generated by these leases.⁶ Numerous casinos have lease agreements with the Secretary, paying \$300,000-\$700,000 per year into the Fund for use of the lands. In those cases, the Secretary determined that the trust gained more from leasing the lands than from leaving them in their previous state.

Rather than leasing, Mirage Resorts approached the Secretary of State wishing to purchase 6.73 acres of tidelands in Biloxi. The tidelands were of two types: 4.03 acres were filled lands and 2.7 were unfilled but scheduled to be filled for the Mirage casino development.

Conveyance of Public Trust Lands

The character of the 6.73 acres played an integral part in the Secretary's decision to permanently convey the tidelands. The filled 4.03 acres had been filled with concrete prior to World War II. The concrete-filled lands are considered "lost" to the purpose of the public trust because filling the lands prevented the use and enjoyment by the people of Mississippi. These acres, appraised at \$1.32 million, fell under the filled tidelands exception and were available for sale. Mirage agreed to purchase the 4.03 acres.

Mirage also sought ownership of an additional 2.7 acres of adjacent unfilled land in order to provide an even line for smooth docking. The Mississippi DMR and the Corps of Engineers granted Mirage a permit to fill the 2.7 acres. When Mirage approached

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the Secretary of State for ownership of the lands, the Secretary directed Mirage to seek approval and enactment by the legislature. The legislature had recessed for the summer, however, and Mirage wanted a quicker alternative to the 2-step process.

The Exchange

Clark analyzed the situation, acknowledging that because the DMR and the Corps granted the fill permits, the remaining 2.7 acres would soon be lost to the purpose of the public trust as filled lands. In determining that a land swap was the best alternative, Clark relied on the common law concept that trustees can exchange an old asset for a new asset as long as the new asset is of equal or greater value.

Clark determined that swapping the 2.7 acres for land of greater value would not be subject to the two-step process involved in a permanent conveyance of public trust lands. Mirage jumped at the chance to avoid the time-consuming legislative action.⁷

The Mississippi chapter of The Nature Conservancy offered to act as the "go-between" for the exchange. The proposal required Mirage to give the money for the combined 6.73 acres to The Nature Conservancy, which in turn would purchase non-tidally affected wetlands located upland from public trust tidelands. The Nature Conservancy would then convey the purchased uplands to the State of Mississippi as public trust lands for the people of Mississippi.

Following a long-standing trustee practice, Clark's office sought court approval for the proposed asset exchange. On May 6, 1996, the Chancery Court of Harrison County ruled that Clark, as trustee, has the authority to exchange the lands. Clark recommended that Mirage seek legislative ratification by approaching the legislature after it reconvened. While Mirage declined to petition the Legislature for after-the-fact approval, Clark's office notified the Mississippi legislature of the exchange. The legislature did not officially respond to this notice, impliedly consenting to the transfer of assets.

Clark and Mirage negotiated a \$580,000 fee for the transfer of the title to the 2.7 acres. In all, Mirage paid \$1.9 million to The Nature Conservancy, which in turn bought land tracts that total 4,225 acres. The

total cost of the lands transferred to the public trust tidelands program was \$2.3 million.

The "New" Public Trust Lands

The acquired wetlands and surrounding uplands are in four locations across the Gulf Coast. The acquisition added 3,238 acres to the Hancock County Marshes Preserve. In Harrison County, 223 acres were added to the Wolf River Marshes Preserve. Finally, Jackson County's Pascagoula Marshes Preserve grew by 764 acres.⁸ The Nature Conservancy acquired this property from private owners, paying a million dollars less than the land's estimated worth.⁹

Conclusion

By following common law trustee practices, Secretary Clark created an alternative to the established two step process necessary to convey trust land to a private party. This is the only exchange of its kind thus far but is described as a "win-win" for Mississippi.¹⁰ The 4,225 acres of undeveloped, pristine habitat better serve the purpose of the Mississippi public trust.¹¹ ■

To learn more about Mississippi tidelands, visit the Secretary of State's homepage at <http://www.sos.state.ms.us/msos/>.

ENDNOTES

1. MISS. CODE ANN. § 29-15-1(h) (1997).
2. *Cinque Bambini Partnership v. State*, 491 So.2d 508, 512 (Miss. 1986), *aff'd sub nom. Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988).
3. MISS. CONST. art IV, § 95.
4. *Cinque Bambini*, 491 So.2d at 513.
5. See MISS. CODE ANN. § 29-15-7(1) (1997).
6. MISS. CODE ANN. § 29-15-9 (1997).
7. *Historic Environmental Land Exchange Announced*, COAST BUSINESS, July 29, 1996, 9.
8. *Id.*
9. *Id.*
10. Telephone Interview with James Nelson, Assistant Secretary of State, Director of the Public Lands Division (December 10, 1997).
11. Mirage Resorts will also pay \$500,000 per year for lease of the submerged lands beneath the casino barge.



WATER LOG Joins the Web

<http://www.olemiss.edu/pubs/waterlog/>



This year, the Mississippi-Alabama Sea Grant Legal Program established its homepage to inform internet users of the Program's mission. We invite you to visit the homepage to learn more about the Sea Grant Legal Program and WATER LOG.

Pages ten and eleven provide a sample of what you will see when you visit our website. The cover page, figure 1, provides links to the Legal Program's publications, faculty and staff, and current research

projects. The "Coastal Links" page contains useful links to other internet sites with information on ocean and coastal legal information, scientific information, and organizations.

The Welcome Page, figure 2, features introductory material about the Legal Program, the Mississippi-Alabama Sea Grant Consortium, and the Mississippi Law Research Institute. For those of you who wish an on-line source of WATER LOG articles, the WATER

LOG page, figure 3, provides visitors with the text of articles found in current and past issues of the reporter. As always, suggestions for improvements to the legal reporter are welcome.

By entering the World Wide Web, we hope to become more accessible to our readers. Please visit our website and use the "Comments" link to let us know how we can better serve you through our web site and through WATER LOG.

Location: <http://www.olemiss.edu/pubs/waterlog/>



Mississippi-Alabama Sea Grant Legal Program

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WELCOME	FACULTY & STAFF	WATER LOG
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PRESS RELEASES	MS LAW RESEARCH INSTITUTE	COMMENTS

Figure 1. Sea Grant Legal Program Homepage

Location: <http://www.olemiss.edu/pubs/waterlog/welcmpg.htm>

Mississippi-Alabama Sea Grant Legal Program

The Mississippi-Alabama Sea Grant Legal Program is funded by a grant from the U.S. Department of Commerce administered through the Mississippi-Alabama Sea Grant Consortium. Matching funds are contributed by the State of Mississippi and the University of Mississippi.

The three major components of the Legal Program are:

1. **Outreach and Advisory Services** - The staff of the Legal Program respond to research advisory requests from other Sea Grant funded agencies as well as state and federal agencies dealing with marine resource policy matters.
2. **Scholarly Research** - Legal Program attorneys contribute to the field of marine, ocean and coastal legal research through the publication of scholarly works (see list of Mississippi-Alabama Sea Grant Legal Program funded research articles, monographs, and book chapters.)
3. **Education and Training** - The Legal Program's attorneys participate in continuing education programs, conference, and symposia which serve to educate policymakers, practitioners and laypersons on issues of ocean, coastal and marine resources policy issues. Attorneys also train law students in the field of ocean and coastal law.

Figure 2. Welcome Page

Location: <http://www.olemiss.edu/pubs/waterlog/watrlg~1.htm>



WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium

Most Recent Issue: Volume 17, Number 3

- Grand Bay Nominated Estuarine Research Reserve
- Paper Mill Prevails in River Dioxin Suits
- Alaska Loses Battle for Submerged Lands
- From Space Age to Ocean Age
- Titanic Reaches the Mississippi
- Shipwreck Management in Mississippi and Alabama
- Salvors Must Pay for Damaging Sea Grass
- Book Review
- Alabama Legislative Update 1997
- Articles from Past Issues

Water Log is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. *Its purpose is to increase public awareness and understanding of coastal problems and issues.*

If you would like to receive future issues of Water Log free of charge, please send your name and address to: Mississippi-Alabama Sea Grant Legal Program, University of Mississippi Law Center, University, MS 38677, or contact us via e-mail: waterlog@olemiss.edu. We welcome suggestions for topics you would like to see covered in Water Log.

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Figure 3. Water Log Page

Credit Available: Old Fort Bayou Wetlands Mitigation Bank

Kristen M. Fletcher, J.D.

In November, 1996, the Mississippi chapter of The Nature Conservancy acquired over 1,700 acres in Jackson County, Mississippi, to establish the Old Fort Bayou Mitigation Bank. Since then, The Nature Conservancy has worked with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers to launch Mississippi's first coastal wetland mitigation bank. Located six miles inland from the Gulf of Mexico, the bank offers wetland "credits" to developers to compensate for the unavoidable loss of wetlands associated with construction projects in four Mississippi counties. The proceeds from the sale of credits will allow The Nature Conservancy to restore and maintain the area in its historical wet savanna habitat.

A. Mitigation Banking

Federal regulations define mitigation banking as "wetland restoration, creation, enhancement, and preservation undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial."¹

Under the federal Clean Water Act, a developer whose project will alter or destroy wetlands must apply for a permit from the Corps of Engineers.² Corps regulations require that the developer avoid

adverse impacts on wetlands. If impacts are unavoidable, the applicant must take steps necessary to minimize the impact on the wetlands through restoration or rehabilitation. As a last resort, the developer can compensate for the destruction of wetlands by creating new wetlands. Corps regulations favor that the applicant create the new wetlands on the same site in order to provide similar characteristics and functions. If impossible, the developer may apply to a mitigation bank such as Old Fort Bayou to buy "credits" to compensate for the wetland losses.

B. Qualifying for Credit

Like other mitigation bank managers, The Nature Conservancy has discretionary authority to sell credits to developers. These credits represent actual wetland acreage inside the bank area which compensates for those unavoidable impacts to wetlands at the development project area.

The applicant may qualify for credits by meeting a number of requirements. First, the altered habitat type must occur within the mitigation bank area. Second, the quality of the wetland destroyed must meet the quality of that habitat created in the bank. Third, the bank wetlands must be able to replicate the functions of the destroyed wetlands. These requirements ensure that the replacement wetlands conform to the destroyed ones and that the bank does not result in a net loss of wetland benefits and functions.

The Nature Conservancy will determine the value of the wetland which is lost. If the wetland is particularly valuable to an ecosystem or a species, then the developer may have to buy additional acreage in the mitigation bank to compensate.

C. Why Old Fort Bayou?

In choosing a bank site, The Nature Conservancy considered several factors including diversity of habitat, contribution of wetland functions, and ease of restoration and management. Old Fort Bayou offered an attractive site for three reasons.

Composition. The purpose of the bank is to replace the chemical, physical, and biological functions of wetland and aquatic resources to compensate for the loss of these functions at impacted sites. For this reason, it was critical that the Old Fort Bayou site fall within the same coastal ecological unit and contain similar wetland and aquatic habitats to those found in the Mississippi coastal counties. The habitat types located within the Old Fort Bayou site include the pine dominated forested wetland, hardwood dominated forested wetland, pitcher plant emergent wetland, and emergent marsh. To be eligible for credit purchase, the impacted area must match one of these habitat types.

Mississippi Sandhill Crane Refuge. Old Fort Bayou will not only compensate for wetland losses of coastal habitats but will also provide a habitat corridor for the

cont.

endangered Mississippi sandhill crane. The Old Fort Bayou site adjoins two portions of the Mississippi Sandhill Crane Wildlife Refuge, managed by the U.S. Fish and Wildlife Service to preserve habitat for the Mississippi sandhill crane. The lands represent critical habitat for the crane, which was listed as an endangered species in 1973. Historically nested in small colonies along the gulf coastal plain in Louisiana, Mississippi, and Florida, the Refuge now harbors the only breeding population of the Mississippi sandhill crane.

By locating the Old Fort Bayou site in between the Crane Refuge units, the bank reaches several objectives. The Bank site makes the Refuge easier to manage since it is no longer disconnected lands. Also, it furthers the objectives of the National Wildlife Refuge System in providing breeding ground and habitat for the sandhill crane. Finally, The Nature Conservancy will receive valuable assistance from the Fish and Wildlife Service in restoring and managing the bank lands.

Pressures of Development. Finally, the Old Fort Bayou Bank is primarily located to alleviate development pressures of Mississippi coastal counties.

Positioned near coastal towns experiencing growth pressures, the bank achieves two purposes. First, developers in the coastal counties have an additional mitigation option when applying for a wetland permit. Second, the site has the potential to compensate for much of the wetland loss inherent in heavy development.

D. Old Fort Bayou's Future

The Nature Conservancy developed a management plan to provide the goals, objectives, and maintenance strategies for the Bank. The management plan includes land acquisition, site assessment, inventories, and restoration and conservation plans. Restoration will include removing roads, filling ditches and canals, monitoring, and acquisition and protection of important habitats outside of the bank area to offset cumulative impacts resulting from rapid growth and development.

In coordination with the Fish & Wildlife Service, The Nature Conservancy has begun restoration of the Old Fort Bayou area. The Fish & Wildlife Service manages the refuges on each side of the mitigation bank and will play a major role in restoring the mitigation bank area. So far, activities include

the removal of trees, prescribed burning, and the creation of water control features.

E. Conclusion

Developed in the early 1980s as a mechanism to compensate for unavoidable adverse impacts associated with future development activities, wetland mitigation banks represent a method of off-site creation, restoration, and enhancement of wetlands. Supporters herald the banking concept as a means of expediting the permitting process for development which alters or destroys wetlands. Old Fort Bayou represents a unique way for The Nature Conservancy and developers in coastal counties to maintain the chemical, physical, and biological functions of the wetland and aquatic resources of the Mississippi Gulf coast. ■

ENDNOTES

1. Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, 60 Fed. Reg. 58,605 (1995).
2. Federal Water Pollution Control Act, 33 U.S.C. § 1344 (1997).



U.S. Amends Tuna Dolphin Law



Kristen M. Fletcher, J.D.

On August 19, 1997, President Clinton signed into law the International Dolphin Conservation Program Act (IDCPA).¹ The law amends the Marine Mammal Protection Act to implement an international agreement governing tuna fishing in the eastern tropical Pacific Ocean (ETP). The IDCPA revises current law in four ways: first, it significantly changes the definition of "dolphin-safe" fishing methods for purposes of tuna labeling; second, it retracts the embargo on imported tuna caught with purse seine nets under certain circumstances; third, it establishes a Conservation Program requiring limits on dolphin mortality; and, fourth, it requires the Secretary of the Interior to conduct a study to determine the population of stocks in the ETP and the effect of tuna fishing methods on the stocks. The IDCPA represents a new chapter in U.S. legislative efforts to provide for international tuna harvesting while maintaining low levels of associated dolphin mortality.

Tuna-Dolphin Regulation in the ETP

Tuna Harvesting in the ETP. The backdrop for the passage of the IDCPA includes a diverse set of international and domestic laws and agreements aimed at lowering dolphin mortality in the ETP. The ETP is comprised of more than 5 million square miles of ocean between Chile and Southern California, including domestic and international waters. For unknown biological reasons, mature yellowfin tuna swim below dolphins in the ETP. In the 1950s, fishermen began exploiting this unique relationship.

Using the dolphins as locators for the schools of tuna, fishermen chased the dolphins, encircling both dolphins and the accompanying tuna in extensive purse seine nets. The net's bottom and top edges were then bunched up like a drawstring purse, trapping both fish and dolphins. Dolphins often became entangled in the net, seriously injured, or drowned. During the 1960s, the introduction of speed boats, helicopters, and larger nets dramatically increased the efficiency of the tuna catch but resulted in as many as 500,000 dolphins deaths annually.²

United States Response to Dolphin Mortality. Recognizing the high mortality rate, in 1972, Congress passed the Marine Mammal Protection Act to reduce the dolphin kills "to levels approaching zero" by requiring permits and a fixed maximum for dolphin kills.³ Congress also passed the Dolphin Protection Consumer Information Act, prohibiting use of the "dolphin safe" label if the tuna was harvested by the purse seine method.⁴

Due to the lack of efforts to reduce ETP dolphin mortality, during 1990 and 1991, the U.S. implemented tuna embargoes on several Latin American countries, holding their boats responsible for the high mortality rates. An international trade panel found the embargo illegal, increasing international pressure to amend U.S. policies.

This pressure led the U.S. to sign the Panama Declaration in 1995. The Panama Declaration sought to: (1) officially adopt an international standard for dolphin mortality; (2) set the cap on annual dolphin mortality at 5,000 in the ETP purse seine fishery for yellowfin tuna; and (3) allow use of the "dolphin-safe" label when fish are caught in accordance with the cap. The IDCPA is the U.S. codification of the terms of the Panama Declaration.

The IDCPA

The IDCPA codifies the provisions of the Panama Declaration and creates the International Dolphin Conservation Program.

1. *International Dolphin Conservation Program*

Under the IDCPA, the Secretary of the Interior must seek a binding international agreement to establish the International Dolphin Conservation Program. The Conservation Program incorporates the terms of the Panama Declaration requiring that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the ETP not exceed 5,000. In addition, the Program establishes per-stock per-year dolphin mortality limits and annual dolphin mortality limits

cont.

for each vessel. The Act provides incentives to vessel captains to reduce dolphin deaths and injury to eliminate dolphin mortality. Finally, it mandates that if a mortality limit is exceeded, all sets on dolphins shall cease for that fishing year.

2. Retracting the Embargo

The IDCPA allows the countries sanctioned under the U.S. tuna embargos back into the U.S. market under certain conditions. The Act lifts embargos for those exporting nations which provide specific documentation and which are members of the Conservation Program.

First, the nation must show that the tuna was harvested after the effective date of the IDCPA by vessels which participate in the Conservation Program. In addition, the harvesting nation must be a member of the Inter-American Tropical Tuna Commission (IATTC), meet the obligations of the Conservation Program and the obligations of membership in the IATTC.⁵ Finally, the nation must show that the total dolphin mortality limits do not exceed the limits set under the Conservation Program.

3. Dolphin Safe Labeling Changed

In one of its more controversial provisions, the IDCPA amends the provisions of the Dolphin Protection Consumer Information Act. Prior to the IDCPA, tuna harvested by chasing and netting dolphins could not be sold under guise of the dolphin-safe label. The IDCPA prohibits the use of dolphin-safe labeling by a vessel fishing in the ETP using a purse seine net "unless the tuna meets the requirements for being considered dolphin-safe" under the IDCPA.⁶ Tuna is dolphin-safe if it is accompanied by a written statement executed by the vessel captain or an observer providing certification that the observer did not witness dolphins killed or seriously injured during the sets in which the tuna were caught.

To ensure success, the IDCPA requires the Secretary to establish a domestic tracking and verification program to track tuna labeled under the Dolphin Protection Consumer Information Act. If the Secretary determines the use of a label is substantially undermining the goals of the Conservation Program, he must report such determination to

Congress for action. Also, the IDCPA authorizes the Secretary to issue findings of whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the ETP.

4. Dolphin Population Study

Finally, the IDCPA requires the Secretary to conduct studies to ensure dolphin stocks do not suffer under the amended provisions. Under the Secretary's guidance, the National Marine Fisheries Service will undertake a three year population study of stocks. The study will determine if intentional encirclement and chase has a significant impact on any depleted dolphin stock in the ETP.

Conclusion

By passing the IDCPA, U.S. lawmakers have made significant changes to current law regulating dolphin mortality in the ETP. The Act's stated objective of zero dolphin deaths as a result of tuna harvesting may be impossible. Some commentators argue that the law is counterproductive to its lofty objective because the Act removes the embargo and the tougher standards for use of the dolphin-safe label. They contend that the revised law provides little incentive to comply with mortality limits. It remains to be seen whether these amendments will decrease dolphin mortality. ■

ENDNOTES

1. Pub. L. No. 105-42, 111 Stat. 1122 (codified as amended in scattered sections of 16 U.S.C.).
2. Marine Mammal Commission, Annual Report to Congress 117 (1995).
3. Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 *et seq.* (1997).
4. Dolphin Protection Consumer Information Act, 16 U.S.C. § 1385 (1997).
5. The United States and Costa Rica established the IATCC under a bilateral agreement in 1949. Convention for the Establishment of Inter-American Tropical Tuna Commission, May 31, 1949, U.S.-Costa Rica, 1 U.S.T. 230. IATCC members now include the United States, Canada, Panama, Ecuador, Nicaragua, France, and Japan.
6. 16 U.S.C. § 1385(d) (1997).

Federal Legislative Update 1997

Kristen M. Fletcher, J.D.

The following is a summary of coastal, fisheries, water and natural resources related legislation enacted during the first session of the 105th Congress.

105 Pub. L. 18 - 1997 Emergency Supplemental Appropriations Act

Provides for the following:

- assistance for red tide damages;
- funds to implement the Magnuson-Stevens Fishery Conservation and Management Act;
- amendment to Section 101 of the Marine Mammal Protection Act (16 U.S.C. § 1371) by adding the "good samaritan exemption" allowing takings of a marine mammal if the taking is imminently necessary to avoid injury or death to a marine mammal entangled in fishing gear or debris; reasonable care ensures the safe release of the marine mammal and no further injury; and the taking is reported to the Secretary.
- authority to federal agencies to defer consultation under the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) if the agency is repairing a flood control project to avoid threat to human lives and property; and
- funds to the Fish and Wildlife Service for fish replacement after natural disasters and for payments to private landowners for use of restored wetlands.

105 Pub. L. 33 - Balanced Budget Act of 1997

Section 9201 extends tonnage duties on vessels entering the U.S. from a foreign port from 1998 to 2002.

105 Pub. L. 34 - Taxpayer Relief Act of 1997

Section 902 repeals the tax on diesel fuel used in recreational boats effective January 1, 1998.

105 Pub. L. 36 - National Geologic Mapping Reauthorization Act of 1997

Amends the National Geologic Mapping Act of 1992 (43 U.S.C. § 316 *et seq.*) to establish a national cooperative geologic mapping program between the U.S. Geological Survey and states. The 1992 Act establishes an advisory committee to study potential environmental damage before specific projects commence.

105 Pub. L. 42 - International Dolphin Conservation Program Act

See page 14 for comprehensive analysis and history.

The Act amends the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) to:

- authorize issuance of permits to purse seine fishing vessels for the taking of dolphins;
- redefine "dolphin-safe" for purposes of tuna labeling;
- establish a Conservation Program setting dolphin mortality limits; and
- eliminate the ban on imports of tuna from those nations that comply with the Program.

cont.

105 Pub. L. 57 - National Wildlife Refuge System Improvement Act of 1997

Amends the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. § 668 (dd) *et seq.*) to:

- require the Secretary to monitor the status and trends of fish, wildlife, and plants in each refuge;
- require comprehensive conservation plans for each refuge, considering fish and wildlife distribution, plant populations, archaeological and cultural values, and habitat problems; and
- authorize the Secretary to temporarily suspend any refuge activity when necessary to protect the health and safety of the public or any fish or wildlife population.

105 Pub. L. 62 - Energy and Water Development Appropriations Act

Appropriates funds for river, harbor, and shore protection and maintenance, flood control, and water development projects including Natchez Bluff, Mississippi; Walkiah Bluff, Mississippi; Sardis Lake, Mississippi; Red River Waterway, Louisiana; Panama City beaches, Florida; Tampa Harbor, Florida.

105 Pub. L. 104 - Apalachicola-Chattahoochee-Flint River Basin Compact

Grants the consent of Congress to the Apalachicola-Chattahoochee-Flint River Basin Compact between Alabama, Florida, and Georgia to apportion surface waters and engage in water planning. Federal agencies must assist in the development of the allocation formula used to determine an equitable apportionment of surface water. Upon passage, 1997 Alabama Acts 67, the Alabama law authorizing the Compact, took effect.

105 Pub. L. 105 - Alabama-Coosa-Tallapoosa River Basin Compact

Grants the consent of the Congress to the Alabama-Coosa-Tallapoosa River Basin Compact between Alabama and Georgia to apportion surface waters and engage in water planning. Federal agencies must assist in the development of the allocation formula used to determine an equitable apportionment of surface water. Upon passage, 1997 Alabama Acts 66, the Alabama law authorizing the Compact, took effect.

105 Pub. L. 119 - Departments of Commerce, Justice, and State Appropriations Act

Section 616 limits trawler fishing by prohibiting the use of federal funds to issue or renew a fishing permit for any fishing vessel greater than 165 feet in length, 750 tons, with engine capability of 3,000 horsepower or more, engaging in fishing for Atlantic mackerel or herring.

TREATY RATIFICATION**U.S. - Mexico Treaty on Maritime Boundaries**

See comprehensive analysis on page 1.

On October 23, 1997, the Senate ratified the Treaty on Maritime Boundaries between the United States of America and the United Mexican States, signed at Mexico City on May 4, 1978, agreeing to boundary delimitation of the Gulf of Mexico with respect to deepwater drilling of petroleum reserves.

cont.

RESOLUTIONS

The House passed the following resolutions relating to ocean and coastal issues. A resolution is a formal expression of the will or opinion of the House which does not carry the force of an enacted law.

House Concurrent Resolution 8

Expressing the Sense of Congress With Respect to the Significance of Maintaining the Health and Stability of Coral Reef Ecosystems.

The House recognizes the significance of maintaining the health of coral reef ecosystems through

- discouraging unsustainable fisheries or other practices harmful to coral reefs and human health; and
- coordinating coral reef activities of Federal agencies, academic institutions, non-governmental organizations, and industry.

House Concurrent Resolution 124

Expressing the Sense of Congress Regarding Acts of Illegal Aggression by Canadian Fishermen with Respect to Pacific Salmon Fishery.

The House condemns the July 1997 acts of Canadian fishermen who blocked the passage of a United States vessel. The House recommends that the President protect the interests of the United States Pacific salmon fishery, prevent any further illegal or harassing actions, and resume treaty negotiations.

House Concurrent Resolution 131

To Express the Sense of Congress Regarding the Ocean.

The House recognizes the U.S. responsibility to promote stewardship of its ocean resources. The resolution encourages federal agencies to take advantage of 1998 as the International Year of the Ocean to review management programs, streamline interagency cooperation in marine research, and develop scientific, educational, and resource management programs to advance the exploration of the ocean.

1996 FEDERAL LEGISLATIVE UPDATE

Below is a summary of a law passed by the 104th Congress which was not reported in the 1996 Federal Legislative Update.

104 Pub. L. 303 - Water Resources Development Act of 1996

Provides for the following:

- extends the authority of the Mississippi River Commission;
- creates the National Erosion Control Program establishing one study site on the Gulf;
- amends the 1986 Water Resources Development Act to authorize the Secretary to consider alternatives to Gulf disposal of dredged material in Mobile Harbor, including alternatives for beneficial uses of dredged material such as environmental restoration; and
- amends the 1986 Act to add a Community Impact Mitigation Plan, providing mitigation and compensation for impacts of projects in the Mississippi River - Gulf Outlet area.

Lagniappe *(a little something extra)*

Around the Gulf . . .



The Gulf was plagued by **red tide** events during the fall of 1997. The Texas Department of Health banned clam, oyster, and mussel harvesting along the lower Texas coast and estimated that red tides have killed 14 million fish since late September. A red tide event is also blamed for the death of 9 manatees near the mouth of the Caloosahatchee River in Lee County, Florida.

Florida fishermen have developed a **tarp-seine net** (plastic tarps and mesh sewn together) which is legal even under the state's ban on net fishing. This year, the Florida legislature established a limited pilot three-year tarp-net fishery, authorizing tarp-seine quotas on nine species, including the ladyfish and menhaden.

On September 9, Florida Governor Lawton Chiles and the state's cabinet voted that Coastal Petroleum Company must first post a \$4.25 billion bond to cover environmental costs before it may drill an **exploratory oil and gas well** in the Gulf of Mexico.

In early October, 1997, the Texas Department of Parks and Wildlife confirmed the presence of non-native **Pacific white shrimp** in Matagorda Bay. Cultivated by shrimp aquaculture operations, the species may have escaped from one of the four shrimp farms in Matagorda Bay.

On October 20, a sea turtle with a chain attached washed ashore on a Texas beach, suffering from mutilations. In November, eighteen sea turtles washed ashore, thirteen of which were endangered **Kemp's ridleys** with similar mutilations. The National Marine Fisheries Service is offering rewards for information which leads to an arrest.

In November, Florida and NOAA announced an emergency rule to prevent vessels fifty meters or greater in length from anchoring on living coral within the **Florida Keys National Marine Sanctuary**.



Around the Nation and the World . . .



During this term, the Supreme Court will hear arguments from the states of New York and New Jersey to determine who has sovereignty over filled areas of submerged lands of **Ellis Island**.

The fish-killing microbe, *Pfiesteria piscicida*, was responsible for the closing of three mid-Atlantic waterways and the decline of seafood sales this fall. Scientists attribute Pfiesteria and toxic algae blooms to an increase in nonpoint source pollution runoff and increasing water temperatures due to global warming.

In October, the **International Whaling Commission** adopted a quota that allows the Makah Indian Tribe a five-year aboriginal subsistence hunt of an average of four non-endangered gray whales a year. The Washington State tribe will use both and hunt only for subsistence, not commercial trade.

On November 13, the National Marine Fisheries Service, acting under authority of the Magnuson-Stevens Act, declared a **commercial fishery failure** in the Bristol Bay and Kuskokwim region of Alaska as a result of poor runs of sockeye and chum salmon.

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MASGP-97-004-04

This publication is printed on recycled paper.

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