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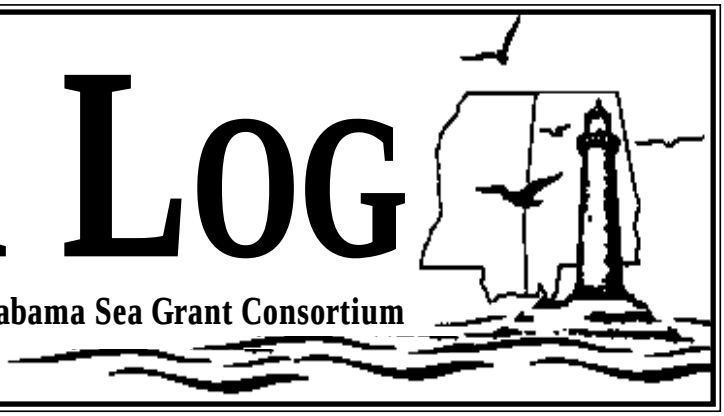

Bycatch Reduction Device Required in Gulf

Kristen M. Fletcher, J.D.

In April, the National Marine Fisheries Service (NMFS) announced the adoption of a rule requiring Gulf shrimp trawlers to use bycatch reduction devices (BRDs) in their nets. The rule went into effect on May 14 and it follows recommendations made by the Gulf of Mexico Fishery Management Council last year. The NMFS and the Council anticipate saving millions of juvenile red snapper and other finfish from being caught as bycatch in shrimp trawls.

A BRD is a device installed in a shrimp net that provides a small opening in the top of the shrimp trawl for red snapper and other finfish to escape while retaining the shrimp catch. Gulf shrimpers trawl in areas where juvenile red snapper and other finfish are found, picking up these fish as bycatch, resulting in high mortality. In 1997, the Gulf of Mexico Fishery Management Council called for use of the BRDs on most trawls used by the offshore Gulf shrimp fleet due to the severe bycatch of juvenile red snapper in shrimp nets. Several stock assessments have cited shrimp trawling

see BRD pg. 2

U.S. Ban on Imported Shrimp Deemed Illegal

Tim Wilson, J.D. and Kristen M. Fletcher, J.D.

In April, the World Trade Organization ruled that the United States violated international law by banning imports of shrimp from nations that do not use devices to prevent bycatch mortality as a result of shrimp trawling.[1] Specifically, the U.S. aimed its ban at nations whose shrimp boats are not required to use turtle excluder devices (TEDs) to protect sea turtles that are caught in shrimp nets and maimed or killed. American shrimpers must use TEDs in federal waters and complain of unfair competition from nations without such requirements.[2]

The importing nations of India, Pakistan, Malaysia, and Thailand complained to the World Trade Organization (WTO) that the U.S. was imposing its own environmental standards internationally. The WTO ruled that the U.S. cannot use such an import ban to force other nations to comply with U.S. environmental or endangered species protection standards.[3] The U.S. plans an appeal but has also stepped up negotiations with these nations to form a treaty allowing imports of shrimp in return for the use of TEDs or other measures to protect sea turtles.[4]

I. TEDs in the United States

When the nets of a shrimp trawler drag shallow waters for shrimp, the nets often pick up other species including sea turtles that can get caught in the nets as bycatch and die. Many endangered sea turtles are caught as bycatch when shrimp trawls pass through waters and are often killed. Since 1987, the U.S. has required all shrimp boats in U.S. waters to use TEDs in their nets to protect sea turtles. A TED is a trapdoor installed in a net to allow shrimp to pass to the back of the net while directing sea turtles

see U.S. Ban pg. 18

In This Issue. . .

WATER LOG is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its goal is to increase awareness and understanding of coastal problems and issues.

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BRD continued from page 1

as the cause of bycatch and mortality of up to 80% of the annual juvenile red snapper. The NMFS acted on this recommendation by adopting the BRD rule.

NMFS has approved three types of BRDs: the Gulf fisheye BRD, the Jones Davis BRD, and the Fisheye BRD.[1] As of May 14, the BRDs are required in try nets with a headrope length greater than 16 feet for shrimp trawlers in federal waters of the Gulf of Mexico west of Cape San Blas, Florida. (*See figure A, page 3.*) During the first two weeks of implementation, the NMFS enforced the rule on an educational level, informing shrimpers in noncompliance of the rule rather than citing them. On May 29, the NMFS began enforcing the rule using citations and fines.

BRDs & the Red Snapper Fishery

The NMFS bycatch rule is decidedly tangled with red snapper management and corresponding regulations. Recognizing the severe impact of shrimp trawls on the red snapper fishery, the Gulf Council relied upon the reduction in bycatch when it adopted a 9 million pound quota for the red snapper fishery for 1998.[2] The NMFS accepted the Council's quota but designed the season so that if bycatch is not significantly reduced, the NMFS may still close the commercial and recreational fisheries.

Specifically, the 1998 red snapper fishing year is divided into two seasons: January through August and September through December. During the January - August period, the NMFS released 6 million pounds of the 9 million pound quota for harvest. In May, the NMFS began a study to test the effectiveness of BRDs at reducing the mortality of juvenile red snapper under actual operating conditions. If the study shows a 60% reduction in bycatch, as anticipated by the Council, then the remaining 3.12 million pounds of the red snapper quota will be released for the September - December period. If not, then the commercial fishery will remain closed for the year.[3]

Along with splitting the 1998 red snapper season, the NMFS also reduced the current recreational red snapper bag limit from 5 to 4 fish so that the recreational fishery can remain open until at least October even if the results of the bycatch study reveal less than 60% reduction in bycatch.

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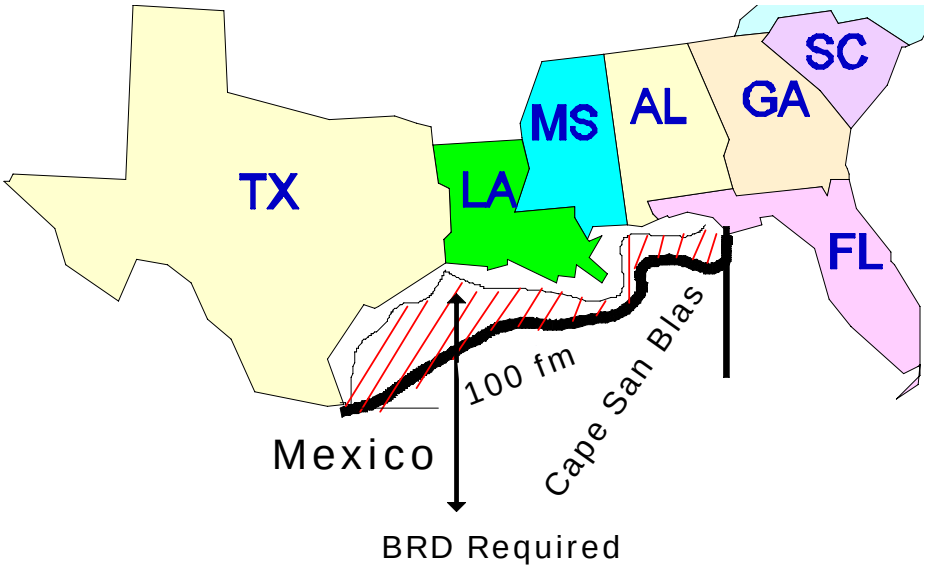
Figure A

The BRD is required on shrimp trawlers using try nets with a headrope length greater than 16 feet in the Exclusive Economic Zone of the Gulf of Mexico west of Cape San Blas, Florida.

**Graphic from Southeast Fishery Bulletin NR98-024 (1998).*



Reactions to the Rule

While the red snapper fishery may benefit from the BRD requirement, Gulf of Mexico shrimpers view it as a raw deal. Led by a number of shrimper industries including the Texas Shrimp Association, the Louisiana Shrimp Association, and the Alabama Seafood Association, the Gulf shrimpers filed suit against NMFS for violation of federal procedure in imposing BRDs regulations. The complaint alleges violations of the Magnuson-Stevens Fishery Conservation and Management Act, the Regulatory Flexibility Act, and the Administrative Procedure Act, noting that the government failed to adequately consider alternatives for reducing unintended bycatch.[4] The shrimpers claim to be the "scapegoat for the mismanagement of the red snapper fishery," specifically citing lack of enforcement of the recreational red snapper fishery. The associations disagree with NMFS science and assert that juvenile red snapper have a natural high rate of mortality with or without bycatch and are not excludible from shrimp trawls. Finally, the associations allege that NMFS has overestimated the total mortality of red snapper due to bycatch.

The U.S. Congress has become aware of the shrimpers' discontent. In April, Representative Ron Paul of Louisiana introduced H.R. 3735 to "disapprove a rule requiring use of bycatch-reduction devices in the shrimp fishery of the Gulf of Mexico."[5] It asserts that the bycatch rule violates the Magnuson Act and the Administrative Procedure Act. Specifically, the bill disapproves the rule because it is not based on the best available information, the information used significantly understates the negative impact on the shrimp fishery and coastal communities, and because the NMFS has not established that BRDs are practicable.

Conclusion

While the BRD rule remains in effect during this season, it faces many obstacles from regional and national levels. Its impacts on the red snapper bycatch may be the driving force in the rule's success.

ENDNOTES

1. *See* http://caldera.sero.nmfs.gov/fishery/newsbull.98/nr98-029.evy for information regarding the three approved BRDs (May 12, 1998). The Jones-Davis and Gulf Fisheye BRDs have been approved through November 16, 1998.
2. *See The Red Snapper Fishery: High Stakes in Limited Entry*, 18:1 WATER LOG 10 (1998) for a discussion of the 1998 red snapper quota.
3. If the research demonstrates that the reduction is greater than 50% but not 60%, then a portion of the remaining 3.12 million pounds will be released proportional to the efficiency of the BRDs. *See* 63 Fed. Reg. 18, 144 (1998).
4. Texas Shrimp Association Press Release, May 11, 1998.
5. H.R. 3735 (1998). The bill is co-sponsored by representatives from Texas, Louisiana, Mississippi and Alabama.

Federal Managers Issue Fisheries Management Guidelines

Adapted from a Press Release of the National Oceanic and Atmospheric Administration

In response to the Sustainable Fisheries Act of 1996, the National Marine Fisheries Service (NMFS) has issued guidelines for the National Standards for rebuilding overfished fish stocks and reducing bycatch. The National Standards are the principles by which fishery conservation and management programs are developed. The National Standard Guidelines are advisory in nature: they interpret the national standards, provide guidance to the regional fishery management councils in the development of fishery management plans, and act as a guide to NMFS in the review and approval of fishery management plans for both commercial and recreational fisheries around the nation.

The NMFS revised guideline language after more than four months of comment and input by stakeholders and the public. Relatively minor revisions were made to the guidelines for National Standards 2 (scientific information), 3 (management units), 4 (allocations), 5 (efficiency), and 7 (costs and benefits). No revisions were made to the guidelines for National Standard 6. A summary of the guidelines for Standards 1 (overfishing), 8 (effects on fishing communities), 9 (bycatch), and 10 (human safety on the sea) follow.

National Standard 1 Guidelines: Overfishing

The guidelines for Standard 1, which calls for ensuring healthy fisheries and rebuilding overfished stocks, reflect the Food and Agriculture Organization's International Code of Conduct for Responsible Fisheries that has been adopted by the United States. The guidelines provide managers with the latitude to rebuild fisheries while respecting the socio-economic needs of fishing communities and providing flexibility in multi-species management. Where numerous species are harvested, overfishing of a minor species could occur to avoid closure of the fishery, but the minor species could not be fished to the point of endangerment.

The guidelines also add more detail to the rebuilding time frame. The starting point in a rebuilding program is the length of time in which a stock could be rebuilt in the absence of fishing. If that period is less than the 10-year statutory time limit, then consideration of the biology, communities and international recommendations could lengthen the rebuilding period to 10 years. Where the rebuilding in the absence of fishing will take more than 10 years, the rebuilding period is set at the no-fishing period plus no more than one mean generation time (generally, the average time it takes to reach maximum reproductive capability).

National Standard 8 Guidelines: Impacts on Communities

The guidelines for Standard 8, which requires managers to consider the importance of fishery resources to fishing communities, provide for the sustained participation of communities while minimizing adverse economic impacts. Fishery managers will consider the importance of the fishery to communities and provide those communities with continuing access to fishery resources without compromising conservation goals.

National Standard 9 Guidelines: Bycatch

The Standard 9 Guidelines make avoiding bycatch species, where possible, the first priority to reduce bycatch. Councils must also consider net benefits to the nation in evaluating minimization measures.

National Standard 10 Guidelines: Safety of Human Life at Sea

National Standard 10 requires that conservation and management measures, to the extent practicable, promote the safety of human life at sea. The guidelines direct fishery management councils to reduce risk when developing management measures, as long as those measures achieve the goals of the management program.

A copy of the National Standard Guidelines can be obtained on the Internet at **www.nmfs.gov/sfa** .

Efforts Made to Save Salmon

US and Canada Move to Protect Certain Stocks

John A. Duff, M.A., J.D., LL.M

Faced with declining coho and chinook salmon populations, the United States and Canada recently increased their management efforts to conserve certain west coast fisheries. With the 1998 salmon fishing seasons fast approaching, fishery administrators in both countries are faced with difficult decisions in trying to sustain the fish stocks without unnecessarily impacting the people and communities that may be affected by the various conservation and management efforts.

In the United States, the National Marine Fisheries Service (NMFS) has recommended designating a number of evolutionarily significant units (ESUs) of salmon as either threatened or endangered under the Endangered Species Act. If the NMFS recommendations result in listings, the regulations and restrictions required to protect the species and their habitat may negatively impact water use, sewage treatment, housing development, surface water management, and hydro-electric energy production. In Canada, the federal Department of Fisheries and Oceans (DFO) recently announced that fishing for coho salmon will be strictly prohibited in 1998 and fishing for other stocks that may result in coho bycatch could be severely restricted. The restrictions are bound to affect employment in the commercial, recreational, and tourist economies of British Columbia.

Over the course of the last twelve months, both countries have taken various steps to reduce the myriad detrimental impacts on salmon stocks. The efforts illustrate the concern of the two countries attempting to manage valuable fish stocks which face the same type of overfishing threats that wiped out once plentiful cod stocks in the Atlantic. Adding to the complexity of the issue are the wide range of land-based activities that impact often critical salmon habitat areas such as timber production and agricultural activities. In addition, mixed responses are coming from those communities that will be impacted by the protective measures.

The Resource

Pacific salmon constitute enormous value to the commercial, recreational, and aboriginal groups that harvest them. In a good year, commercial and recreational salmon fishing represents hundreds of millions of dollars to west coast economies. The five species of salmon that spawn in the western rivers of North America from California to Alaska play a significant role in the economy, culture, and society of American, Canadian, and native peoples.

Unlike species that spend their entire life cycle in salt water, salmon are anadromous: that is, when they mature to reproductive age, they return to spawn in the same fresh water rivers from which they originated. Scientists have observed that salmon return with great precision to the stretch of a river where they were born and that even within a particular species, ESUs exhibit identifiably unique genetic characteristics. But while science has been helpful in identifying particular salmon and their geographic origins, questions remain regarding population dynamics and methods of sustaining stocks.

Threats to the Resource

In broad terms, the two major threats to a fishery are overfishing and habitat degradation. Each of those has a number of components or factors to consider. Overfishing may occur as a result of an increase in the targeting of a particular species or stock. Alternatively, a non-target species could be overfished as a result of a high bycatch rate in another directed fishery. The inherent difficulty in accurately assessing fish stocks often means that overfishing threats are usually only acknowledged after the fact.

While overfishing is often pointed to as the primary, if not exclusive, threat to the sustainability of a fishery, anadromous species are subject to a wider array of impacts. The proliferation of dams in the Northwestern United States and British Columbia

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over the course of the last century is considered to be the most significant human-caused change impacting salmon.[1] While many innovative efforts have been made to enhance upstream access, such as fish ladders, a dam significantly reduces the number of salmon that would traverse an otherwise unimpeded river. Other inland activities also affect salmon habitat. Intensive logging alters the land surrounding rivers and causes erosion and siltation. Agricultural and stock-raising waste can seriously pollute rivers and raise water temperature. Water diversion for irrigation and drinking water reduces the flow of rivers.

Efforts to Maintain Sustainable Salmon Stocks

ESA Listing

Some stocks or ESUs of a particular species may be abundant while others may have been wiped out or be on the brink of extinction. In some instances, fishery administrators may impose regulations or restrictions aimed at protecting the species as a whole. In other cases, individual stocks or units may be identified for protection. In the United States, recent actions by the NMFS illustrate a unit-by-unit approach to conservation. Recent Canadian efforts illustrate a whole-species approach.

In February, a NMFS Biological Review Team (BRT) concluded that nine ESUs of Chinook Salmon were either "currently at risk of extinction" or "at risk of extinction in the foreseeable future." [2] The BRT recommended that the ESUs be designated either as "endangered" or "threatened" under the Endangered Species Act.[3] Listing under the ESA would prohibit all fishing of the listed ESUs and trigger the requirement of designating critical habitat areas. Critical habitat designation could require the imposition of land use restrictions in or near the habitat areas of the listed ESUs.

Faced with the specter of stringent federal regulations, state and local governments have attempted to devise their own protective measures to pre-empt federal efforts. Washington state governor Gary Locke noted the importance of finding solutions at the local and state level to curtail possibly more onerous federally imposed regulations, "If we don't respond, if they don't like our plan, then they take over regulation of our land and water and our daily lives."[4]

The Salmon Resource

Anadromous species of fish are born and spend the early months of their life cycle in freshwater rivers. As they mature they head out to sea where they spend most of their lives. Some species stay in the coastal waters of the ocean in relatively close proximity to their place of origin. Other species may migrate across a range of hundreds of miles. Upon reaching the age of reproductive maturity they return to spawn in the same location from which they came.

There are five species of pacific salmon:

- pink (*Oncorhyncus gorbuscha*)
- sockeye (*Oncorhyncus nerka*)
- coho (*Oncorhyncus kisutch*)
- chum (*Oncorhyncus keta*.) and,
- chinook (*Oncorhyncus tshawytscha*);

as well as two other anadromous forms of species of the genus *Oncorhyncus*:

- steelhead form of rainbow trout (*Oncorhyncus mykiss)*
- sea run form of cut-throat trout (*Oncorhyncus clarki*).

Fishing Restrictions

In the United States, two regional fishery management councils are responsible for administering the commercial and recreational harvesting of pacific salmon. In April, the Pacific Fishery Management Council called for restrictive salmon seasons to ease

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the pressures of overfishing of coho and salmon stocks. Under the restriction, no coho can be harvested in areas south of the northern Oregon coast. North of that area, coho and chinook quotas were reduced approximately 40% from 1997 harvests levels.

In Canada, federal fisheries minister David Anderson announced that there will be a total ban on all forms of targeted coho fishing in 1998.[5] Anderson also indicated that efforts to conserve coho were likely to include restriction on other salmon fishing where coho bycatch would be likely. While most of the commercial, recreational, and aboriginal fishers acknowledged that steps are necessary to avoid a total collapse of the coho fishery, many continue to argue that the broad ban is overly burdensome and that some healthy stocks will be wasted by the restrictions aimed at coho bycatch reduction. One sports fishing advocate claimed that the move would have "devastating consequences on the economy of the recreational fishing industry."[6] Anderson responds that the ban "is about taking the necessary steps before it is too late."[7]

Conclusion

A number of important issues will remain unresolved as the 1998 salmon fishing seasons commence. The U.S. and Canada are unlikely to reach agreement on stock assessments and a common concept of proper conservation limits on fishing. In the United States, the proposed ESA listing of certain stocks raises additional questions. Critical habitat designation for salmon spawning areas and corridors lay in the future; and state efforts to curtail federally imposed restrictions continue. In Canada, efforts by the province of British Columbia to wrest some authority away from the federal government pits the fisheries minister in a two front campaign to both maintain federal credibility on fisheries issues while addressing legitimate concerns of west coast fishers. Yet while the disputes over jurisdiction, scientific evaluation, and fishery allocation continue, some of the recent efforts in both countries indicate that there is a recognized need to address the threats facing salmon stocks. Whether the obstacles to addressing that fundamental issue can effectively be overcome remains to be seen.

ENDNOTES

1. National Research Council-Comm. on Protection and Management of Pacific Northwest Anadromous Salmonids, UPSTREAM: SALMON AND SOCIETY IN THE PACIFIC NORTHWEST 60 (1996).
2. Myers, J.M., R.G. Kope, G.J. Bryant, D. Teel, L.J. Lierheimer, T.C. Wainwright, W.S. Grant, F.W Waknitz, K Neeley, S.T. Lindley, and R.S. Waples. U.S. Department of Commerce, *1998 Status review of chinook salmon from Washington, Idaho, Oregon, and California*, NOAA Technical Memo NMFS-NWFSC-35 (1998). With eight ESUs, the conclusion was reached by a majority of the BRT: Central Valley Spring-Run; Central Valley Fall-Run; Puget Sound; Lower Columbia River; Upper Willamette River; Upper Columbia River Spring-Run; Snake River Fall-Run. The BRT unanimously concluded that the Southern Oregon and California Coastal ESU was likely to become at risk of extinction in the foreseeable future. The BRT also noted that the Sacramento River Winter Run ESU was classified as "endangered" in 1994 while the Snake River Spring- and Summer-Run ESU was already listed as "threatened." *Id.* at xxi - xxv.
3. NOAA Press Release 98-R112, FISHERIES SERVICE PROPOSES PROTECTION FOR 13 SALMON, STEELHEAD POPULATIONS ON WEST COAST (February 26, 1998).
4. Rob Taylor, *Compromises Likely on Salmon Protection*, SEATTLE POST-INTELLIGENCER, March 5, 1998, at 1.
5. *See* Celia Sankar and Miro Cernetig, *Ottawa Bans B.C. Coho Fishery*, TORONTO GLOBE AND MAIL, May 22, 1998, at 1.
6. *Id.* quoting Gerry Kristianson.
7. *Id.* quoting David Anderson.

Pacific Salmon Treaty Negotiations

In 1985, the United States and Canada signed the Pacific Salmon Treaty addressing the challenges of managing the five species of pacific salmon. Some stocks originate in one country's rivers but may be caught in the other country's waters (called "interception" in the treaty). The objectives of the Pacific Salmon Treaty are to:

- allocate catches between the two states;
- maintain historical fisheries; and,
- balance the interceptions of foreign spawned salmon.

For the past five years, the countries have not reached a mutual understanding of treaty implementation and how the stocks should be estimated and allocated. As 1998 negotiations near a close, it seems that the United States and Canada have failed to agree once again. Stay tuned to WATER LOG for further analysis of the treaty.

The Origins of Submerged Lands Law in Mississippi:
The Vicksburg Flatboat War of 1838

Richard McLaughlin, J.D., LL.M., J.S.D.

Ownership and control of submerged lands have played a pivotal role in the nation's economic, political, and cultural development. Because of their economic value and social importance, submerged lands have been the subject of laws and policies that try to balance the competing pressures from those user groups that seek to exploit the lands for private gain versus those that wish to protect the lands for the public's benefit. In Mississippi, the historical origins of submerged lands law lay in an interesting yet little known episode in the state's history, that we will call the Vicksburg Flatboat War of 1838. Although the episode had relatively little intrinsic historical importance, it has left a profound mark on the state's submerged lands law, the court decisions that settled the dispute, and Mississippi's political and economic development.

A. Introduction to Submerged Lands

Although most legal rules governing ownership of submerged lands in the United States were settled long ago in a series of judicial decisions in the nineteenth century, the current legal regime is far from uniform or coherent. Many of the rules depend upon whether the land is located in coastal or inland areas. Submerged lands that are subject to the ebb and flow of the tide are owned by the state in which they are located and are subject to the ancient doctrine known as the public trust doctrine: title to submerged lands is held in trust for the people of the state for purposes of navigation, fishing, and commerce and may only be conveyed to private parties if the proposed use is in the state's higher public interest.

In contrast, there is no uniform set of legal rules regarding ownership of navigable rivers and streams that are not subject to the ebb and flow of the tide. Some states such as Pennsylvania and Arkansas retained public ownership of submerged lands under navigable freshwaters believing that control over these resources was too important to be left to the dictates of private owners. Other states, including Mississippi, allow private riparian owners to own the bottoms of navigable rivers and streams subject only to a public right of navigation. As a result, in Mississippi, private ownership of water bottoms has even been applied to great rivers such as the Mississippi and Yazoo.

B. Vicksburg in the 1830s

By the early 1830s it has been estimated that some 4,000 flatboats descended the Mississippi River each year to deliver cargo to New Orleans and other southern ports. One contemporary observer wrote that the river was "literally covered with crafts conveying off produce, property, and articles of every kind and denomination that you could possibly think of, and many that you, nor no other person except a Yankey, would not think of taking to market."[1] During the winter months, it was not unusual to have as many as four or five hundred flatboats tie up along Vicksburg's waterfront.

Because these boats averaged about four crew members each, nearly 1500 to 2000 transient flatboatmen found their way into the city each winter leading to altercations between the townsfolk and the visitors. As early as 1831, a militia company was formed to protect citizens from the "prospect of a great many visitors the coming winter."[2] Many of the disputes involved moral and political issues between the permanent residents and transient crewmembers such as public drunkenness, assault, theft, prostitution, and gambling.

However, of perhaps greater concern to the local population was the economic and moral consequences presented by the large influx of strangers from the north. Through the eyes of local merchants, the flatboats were seen as serious and unscrupulous business competitors. Although the merchants depended on the boats for their wholesale supplies, they deeply resented the fact that local citizens were going down to the waterfront and buying their goods directly from the boatmen.

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The long simmering animosity that existed between the townspeople and community of "strangers from the north" erupted into violent confrontation on the Fourth of July in 1835 when a well known and highly inebriated gambler rudely disrupted the city's holiday celebration. After serving out his day in jail, he showed up at city hall the next day, heavily armed, and threatened revenge. A group of citizens quickly disarmed him and took him to the city limits where he was whipped, tarred and feathered, and told never to return. That evening, rumor spread among the townsfolk and in a preemptive strike, the townspeople hastily established an organization known as the Anti-Gambling Society to close the gambling halls and run their proprietors out of the city.

What began as a limited effort to rid the city of gambling became in reality an opportunity to purge the city of all kinds of perceived undesirables. The militia suspended the law for a twenty day period while mobs gathered up and burned all gambling devices and told the owners to get out of town. Most in the gambling community took the threats quite seriously and quickly complied. However, five gamblers barricaded themselves inside their structure and refused to come out. When a group of citizens tried to rush the premises, a respected physician was shot in the chest and killed. The door was eventually broken down, and all five of the gamblers were quickly taken to the outskirts of town and unceremoniously executed by hanging.

C. Flatboat War of 1838

Any easing of tensions between the Vicksburg townspeople and outsiders as a result of the gambling riots of 1835 was shortlived. Soon, the economic boom that had transformed Vicksburg into the second largest and commercially important city in the state disappeared. The national financial crisis of 1837 hit Vicksburg especially hard.[3] Previously valuable land could not be sold at any price as a result of the crash in cotton prices and the unavailability of currency.

As the economy worsened, local merchants focused on the damage that flatboats were doing to their increasingly scarce business and pressured the City Council to run the flatboats from the city's landing. The City Council enacted a series of escalating taxes and wharfage fees to prevent the flatboats from undercutting the prices of established merchants. The flatboat operators seemed willing to pay the taxes until they were raised to fifty dollars per day. Although the reported tax may be an historical exaggeration, evidence shows the city's intent to price the flatboats out of the Vicksburg waterfront.

In the winter of 1838, tensions escalated when the flatboatmen rebelled, demanding a hearing to determine the legality of the taxes and fees. The Chief of Police called in the militia leaving two companies with muskets, fixed bayonets, and a cannon facing flatboatmen armed with clubs, rifles and a cannon. But, after "quarreling and threatening and some feeble attempts at casting off the lines of some boats, disgust at the situation suddenly seized the citizens and soldiers, and they 'marched up the hill again,' concluding it was best to let the courts decide the question."[4] So ended the armed phase of the Flatboat War of 1838. The dispute between the City of Vicksburg and the flatboatmen next moved to the courts and legislature.

D. Subsequent Court Decision & Legislation

In the litigation that followed, the flatboatmen premised their defense on the issue of submerged lands ownership. Historical writing shows that the original Circuit Court decision went against the city.[5] In the absence of a written opinion, we can only speculate about the court's reasoning, but it is likely that the decision was based on the fact that the Court did not believe that Vicksburg had legal jurisdiction over submerged lands of the Mississippi River. This conjecture is grounded upon the actions that the city took in February 1839 when it went to the State Legislature to amend its city charter to expand the limits and boundaries of Vicksburg to the point of the state boundary in the Mississippi River. In addition, the new charter created a Mayor's Court, which had the legal authority to usurp all of the duties that had formerly been entrusted to the Warren County Circuit Court and authorized sizeable fines and imprisonment for any violation of a city ordinance. These actions indicate that the city was attempting to correct the legal deficiencies that caused the unfavorable Circuit

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Court ruling preventing it from carrying out its aim of forcing the flatboats out of Vicksburg.

The following year, Vicksburg again amended its charter. The newest charter authorized the city to require all flatboats to obtain a city license and pay *ad valorem* taxes on all merchandise sold within the city limits. The city thus laid the legal groundwork necessary to aggressively enforce its policy against flatboats.

E. Mississippi Supreme Court Ruling

On May 6, 1841, William Harrison of Ohio, the owner of a flatboat loaded with flour, whiskey, pork, and bacon, landed at the port of Vicksburg and proceeded to dispose of his cargo. Harrison was a longtime trader on the river and balked when the city requested that he obtain a license and pay *ad valorem* taxes. He also refused when the private owner of the land fronting the river where his boat was located demanded that he pay a wharfage fee of one dollar per day for tying up to the riverbank. Harrison argued that the public had a legal right to navigate on the Mississippi and that a private landowner could not charge vessels for exercising this right. The city quickly issued a warrant from the Mayor's Court to recover a civil fine of fifty dollars and the private owner attached his boat for failure to pay rent. Harrison lost in the lower court and appealed the decision to the High Court of Errors and Appeals (as the State Supreme Court was known at the time).

The dispute reached the Supreme Court as two separate yet factually related appeals. The first appeal, *William Harrison v. The Mayor and Council of Vicksburg*, challenged whether the tax on merchandise sold within the City of Vicksburg violated the Interstate Commerce Clause of the United States Constitution.[6] The Court quickly disposed of this case finding that intra-state and inter-state commerce was taxed identically and leaving no impermissible burden on interstate commerce.

The second appeal, *Daniel Morgan and William Harrison v. Abraham B. Reading*, addressed the broader and important issue of who owned the submerged lands of the Mississippi River, and whether a private riparian landowner could charge rent for their use.[7] The flatboatmen presented a wide-ranging and eloquent attack on the notion that the lands beneath the great rivers of the United States should be subject to private ownership. They cited historical authority based on treaties between the United States, France, and Spain; treatises by noted international scholars; and precedent in other states such as Pennsylvania and South Carolina, that rejected private ownership of large rivers. Their legal brief concluded with a passionate, if somewhat hyperbolic, appeal to the Justice's sense of economic and social fairness as follows:

> The efforts . . . to render the great body of the people tributary to a few quasi riparian and city lords, have kindled a flame throughout the whole valley of the Mississippi, which will never be extinguished until this lawless system of plunder is suppressed. [8]

Abraham Reading, the riparian landowner, argued that the English Common Law provided that submerged lands under navigable freshwaters are subject to private ownership and no distinction should be made between small streams and large rivers. He recognized that the public had a right to navigate over privately owned submerged lands, but refused to equate this right of navigation with the seasonal mooring of flatboats as a place to sell goods.

Chief Justice Sharkey upheld private ownership of submerged lands and rejected the policy determinations of other states that exempted large navigable rivers like the great Mississippi from this rule.

Chief Justice William Sharkey upheld private ownership of submerged lands and the practice of charging rent for their use. He interpreted the Common Law rule as providing for private ownership of any waterway that was not subject to the ebb and flow of the tide and, in doing so, rejected the policy

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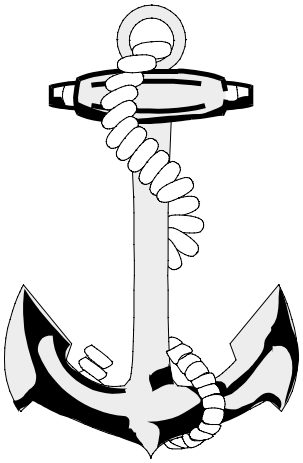
determinations of several other states that exempted the largest navigable rivers from the Common Law rule.[9] Finally, he held that the riparian proprietors on the Mississippi River probably own out to the middle thread of the river, but at a minimum, at least to low water mark.

While the opinion was well-researched, it also seemed to be predetermined. It is possible that Chief Justice Sharkey and the other two Justices truly believed their assertion that, "the protection of the riparian owner, so far from being detrimental to navigation, is important to its perfect enjoyment." However, there is also evidence that politics and self-interest played more than a minimal role in the decision.[10] All of the lawyers, judges, and defendants who were involved in the case were wealthy and politically powerful citizens of Vicksburg with direct financial interests or relationships with riparian property owners. Much of Vicksburg's waterfront was in fact owned by the famous lawyer, orator, and Whig politician, Seargent S. Prentiss, who was also a close friend and former colleague of Chief Justice Sharkey.



Regardless of whether Chief Justice Sharkey's decision was influenced in any manner by his personal friendship or business dealings with Prentiss, there is no question that the *Morgan* decision substantially benefitted any party that owned land along the state's navigable waterways. The individuals that benefitted most, excluding Prentiss, were planters who owned rural property in the Mississippi Delta region and business people that lived in Vicksburg, Natchez and other river communities because they were now able to exclude flatboat competitors. Clearly, the constituency that benefitted most from the *Morgan* decision was the same constituency that formed the nucleus of the Whig party.

G. Conclusion

The rampant land speculation, bank failures, cotton fortunes, and flatboat trading that dominated the Mississippi frontier period of the 1830s and 1840s created a unique economic, political, and legal environment that will not be duplicated. Under our common law system, decisions made more than 150 years ago continue to govern today's world. We are still living with the consequences of Justice Sharkey's decision in *Morgan*. For example, it is possible that hundreds of millions of dollars of revenue has been lost to the state as a result of the Supreme Court's decision in 1844 that turned over all submerged lands to private owners. We may only speculate at how many millions of dollars in oil and gas or other mineral royalties have been foregone, the amount of eminent domain damages paid to private individuals for public improvements to submerged lands, or how many acres of fragile aquatic areas have gone without necessary state management or protection.

Like the 1830s, Mississippi is currently enjoying an economic boom period. The state's dockside gaming industry has triggered a new wave of land speculation. Today's courts are dealing with many of the same submerged lands issues that confronted their judicial brethren during the Sharkey era. The same types of economic and political pressures that led to the 1838 Flatboat War and the *Morgan* decision are still with us. It is up to today's judiciary to foresee how its decisions will be perceived by future generations and to rule accordingly.

ENDNOTES

1. Harry N. Scheiber, *The Ohio - Mississippi Flatboat Trade: Some Reconsiderations*, in THE FRONTIER IN AMERICAN DEVELOPMENT 283 (David M. Ellis, ed. 1969).
2. *See* Christopher Morris, BECOMING SOUTHERN: THE EVOLUTION OF A LIFE, WARREN COUNTY AND VICKSBURG, MISSISSIPPI, 1770-1860 120 (1995).
3. *See* G. Prentiss, A MEMOIR OF S.S. PRENTISS, Vol. I (1881).
4. H. S. Fulkerson, RANDOM RECOLLECTIONS OF EARLY DAYS IN MISSISSIPPI 98-99 (1937).
5. *Id*. at 99.
6. *3 Smedes & M.* 581 (1844).
7. *3 Smedes & M.* 366 (1844).
8. *Id. at* 390.
9. *Id.* at 402-406.
10. *Id.* at 407.

Supreme Court Decides Shipwreck Management Case

California and State Lands Comm'n v. Deep Sea Research, Inc. , 118 S.Ct. 1464 (1998).

Tammy L. Shaw, 2L

On April 22, 1998, the Supreme Court reviewed the Ninth Circuit's ruling in *Deep Sea Research vs. Brother Jonathan* to determine ownership rights to the *Brother Jonathan*, a vessel found off the California coast in 1993.[1] The Supreme Court affirmed in part but remanded the case to determine actual ownership of the shipwreck. The Court found that California is not immune to such a suit under the Eleventh Amendment but remanded for the district court to find whether the *Brother Jonathan* was "abandoned" for purposes of determining ownership.

As reported in WATER LOG Issue 17:3, the Ninth Circuit Court of Appeals affirmed a district court ruling in favor of the salvage company that located the wreck.[2] Thus, Deep Sea Research was granted the exclusive salvage rights to the 133 year old shipwreck, despite California's assertion of ownership of the wreck and claim of sovereign immunity. A number of states, including Alabama and Mississippi, awaited the Supreme Court's decision as an indicator for shipwreck management in state waters of the Gulf of Mexico.

The Supreme Court first addressed the issue of state sovereign immunity. In rem admiralty cases have been retained under federal jurisdiction since the first Judiciary Act in 1789 but California argued that the Eleventh Amendment bars federal adjudication of this case. While it is undisputed that the Eleventh Amendment bars federal jurisdiction over general title disputes relating to state property interests, the Court held that in rem admiralty cases do not necessarily fall under this immunity. Recognizing that the Eleventh Amendment may provide immunity from federal jurisdiction, the holding requires a state to have a "colorable claim" of ownership to invoke such immunity. The Court noted that a bare assertion to ownership was not enough to establish immunity and held that because California did not have the res within its possession, it could not call on the Eleventh Amendment for immunity from a federal court's jurisdiction.

The second issue in the case turned upon whether the shipwreck is "abandoned" under the terms of the Abandoned Shipwreck Act of 1987 (ASA).[3] If the *Brother Jonathan* is considered abandoned, then the ASA transfers title to the state. The Supreme Court clarified that "abandoned" under the ASA has the same meaning as under admiralty law, i.e., a shipwreck is abandoned if the title has been affirmatively renounced or when an inference of abandonment can be made from the circumstances.[4]

But, the Court declined to determine if the *Brother Jonathan* met the abandoned requirement and remanded for this determination. The Court also failed to address whether the federal ASA preempts California's historic preservation statute. Like many state shipwreck statutes, the California statute transfers title of those shipwrecks that do not fall under ASA jurisdiction to the state. The Supreme Court declined to answer this question in hopes that the district court "abandoned" determination on remand might negate the need to address the issue of pre-emption.[5]

For Mississippi, Alabama and other states interested in the outcome of this case, the Court has effectively limited the Eleventh Amendment sovereign immunity argument, by raising the "colorable claim" standard for disputed ownership. The holding in *Deep Sea Research* could leave those shipwrecks which do not meet the ASA requirements at the mercy of federal adjudication. However, the validity of state statutes enacted to deal with this question and the actual ownership of the *Brother Jonathan* remain unresolved.

ENDNOTES

1. *California and State Lands Comm'n v. Deep Sea Research, Inc.*, 118 S.Ct. 1464 (1998).
2. *See Shipwreck Management in Mississippi and Alabama,* 17:3 WATER LOG 13 (1997).
3. Abandoned Shipwreck Act, 43 U.S.C. §§ 2101-2106 (1997).
4. *California and State Lands Comm'n v. Deep Sea Research, Inc.*, 118 S.Ct. at 1466.
5. *Id.* at 1473.

Coastal Debate

Introduction: Corps Imposes Programmatic Environmental Impact Statement

On the following pages, two practitioners debate the value of the recent call for a Programmatic Environmental Impact Statement for the Mississippi coast.

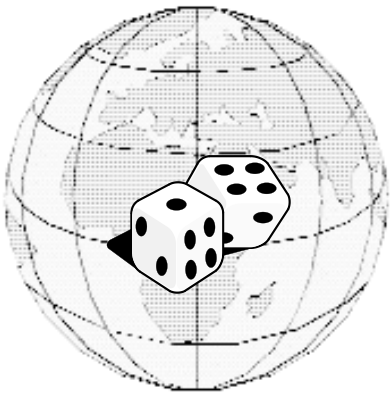
Introduction

In the eight years since casino gambling became legal on Mississippi waterways, casino barges have taken up residence on the tidelands of Harrison and Hancock counties, two of the three Mississippi Gulf Coast counties. As a result of this new gaming industry, the Mississippi coast has been dubbed the "Playground of the South" and tourism and related industries have boomed providing both income and heightened environmental concerns in coastal communities.

To locate on tidelands, a casino must go through a number of permitting steps, including a permit from the U.S. Corps of Engineers (Corps). The Corps may require the applicant to complete an individual environmental impact statement to review the project's impacts on coastal resources. For years, environmentalists and a number of homeowners have urged the Corps to require more. Instead of looking at individual impacts, they called for a "coast-wide" environmental impact statement to review the comprehensive environmental impacts of the increased development. Advocates of development opined that such a review was a waste since the permitting process already in place provided adequate protection.

The Call for a Review

Both development advocates and environmentalists were surprised when the Corps decided to perform this comprehensive review. In March, the Corps halted the issuance of casino permits in ecologically sensitive areas to conduct a Programmatic Environmental



Impact Statement (EIS) over a two year period. The Corps reasoned that it was necessary to halt some casino development in order to comprehensively study the possible environmental impacts the casinos and related developments are having on Mississippi coastal resources.

Specifically, the EIS will only affect those sites which are relatively pristine, undeveloped, or residential areas of bay systems, their tributaries, and certain Gulf islands. The order specifically delayed four planned casino developments but authorizes the Corps to issue permits if it finds that the proposed casino will not locate in an ecologically sensitive area.

The Coastal Debate

These issues are having national and local impacts. Several federal agencies, the EPA, Fish and Wildlife Service, and National Marine Fisheries Service, urge the Corps to perform a EIS to protect aquatic resources. The opposition includes Senator Trent Lott who has requested that the Corps re-evaluate the study because it may halt economic growth. Due to the debate, the district Corps recently agreed not to act until they have received an official order to proceed with the EIS.

Coastal communities are also divided. Does the EIS benefit Mississippi by reviewing impacts on coastal resources? Or, does the EIS hinder development and take federal intervention too far?

On the next four pages, these issues are presented by two authors located in the center of the debate. First, Reilly Morse who represents various environmental groups on the coast presents the "Pro": the Corps was correct to impose an EIS for the Mississippi Gulf Coast to protect its resources. Next, Michael Olivier, Executive Director of the Harrison County Development Commission, presents the "Con": the EIS represents an unfair and unnecessary impediment to economic development.

Both articles present important points, the strength of which will help to determine the outcome of this Mississippi coastal debate. The opinions expressed are the authors' own.

The Corps EIS: A Vital Precaution

Reilly Morse
Attorney at Law

Unprecedented development along the Mississippi coast, fueled by the casino industry, has raised increasing concern about environmental impacts of casinos proposed in sensitive wetlands areas. The speed of initial development took Mississippi officials and the Corps by surprise. Local residents saw and smelled early environmental effects of the casino industry - sewage discharge violations, a large fish kill, and increased marine debris. Other impacts - wetlands loss, degraded water and air quality - accumulate in relatively smaller but steady increments.

Although individually minor, these cumulative effects cause greater harm over time. Coastal wetlands provide 90% of the food for marine life, filter pollutants, and protect against erosion and flooding. Without implementation of coastal wetlands regulations, development would have cut in half the state's tidal marsh areas by 1990.

As casinos pressed into relatively pristine wetlands classified for residential and recreational uses, local citizens urged Corps Headquarters to review permits issued by the Mobile District Corps. Finally, Corps Headquarters directed the Mobile District Office to conduct programmatic environmental impact statement (EIS) on the cumulative and secondary impacts of casino development. Local citizens groups and some individual members who urged preparation of an EIS, have been sued for their support. Yet, public support for the environment remains strong. In fact, 75% of Mississippians polled recently said that the amount of growth and development brought on by casinos was a serious environmental threat.

Development advocates assert that an EIS is unnecessary because the state has a comprehensive coastal wetlands plan known as the Mississippi Coastal Program. This long range plan was prepared in cooperation with, and funded by, federal agencies. The plan included input from local government, regional planners, industries and the public. The overriding goal was to promote decisions that balance development with the environment. Maps classify the uses for every segment of coastal wetlands. Like any plan, however, the Coastal Program is only as effective as those who implement it. Casinos, backed by local politicians, have a nearly unbroken string of victories in rezoning residential or recreational areas into industrial sites, a trend jeopardizing the Program's integrity.

In 1994, the office of Ocean and Coastal Resource Management (OCRM), the federal agency responsible for oversight, found that Mississippi failed to properly administer the Coastal Program when it came to casinos.[1] In response, the Department of Marine Resources (DMR) commissioned a report from the Mississippi-Alabama Sea Grant Consortium to review the laws and recommend changes to current regulatory policy.[2] The Sea Grant report was delivered in 1996, but OCRM found in 1997 that no changes had yet been made. In the meantime, the Commission on Marine Resources (CMR), a board of political appointees which administers the Coastal Program, had approved two casinos in undeveloped parts of St. Louis Bay.

Several major problems hamper state regulation of casinos. A casino does not fit any category of water-dependent industry in the Coastal Program, which predates dockside gambling. The Coastal Program has general policies to guide waterfront development as new uses arise, but CMR has not adopted any policies into the Coastal Program.

As OCRM reported in 1994 and again in 1997, there has been inadequate staff assigned to administer the Coastal Program: two staff members with a case load of over 400 applications per year. Addressing the direct, indirect, and cumulative effects of large casino proposals overtax the time and

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skills of the staff. More discouraging, however, is that staff recommendations to deny a casino project are almost always ignored by CMR. In the past, DMR staff has "strongly recommend[ed] the denial of permits for casinos in general use districts."[3] In 1996, DMR staff urged CMR to turn down two such proposals for St. Louis Bay, but DMR's advice went unheeded.

Lack of effective cooperation between DMR and other involved state and federal agencies is another problem. Preliminary approval by one state agency subjects later agencies to increased levels of local political pressure to conform to the earlier ruling. In addition, casino developers and their allies bring powerful financial and political pressures of their own. A two-term member of CMR was not reconfirmed by the Senate due to his opposition to casinos in undeveloped parts of St. Louis Bay.[4]

Almost without exception, CMR has ruled that any casino development serves a higher public interest than preservation of the affected wetlands and their ecosystems. Alternative commercial sites are ruled out solely because the developer insists on strict adherence to its site selection criteria. The CMR also ruled that its approval of two casinos for pristine shorelines of St. Louis Bay sets no precedent and creates no cumulative impacts. These continuous changes prompted EPA to raise concerns that the Coastal Program was not being followed. Similarly, the fact that the Mobile Corps had issued 23 permits for casinos with more on the horizon, prompted the decision to order an EIS.

An EIS is a tool to assess the potential impacts both individually and cumulatively so that as individual permit actions come up in the future, there will exist a database to understand these impacts. The decision to issue a permit must be based upon the probable impacts, including cumulative impacts, of the proposed activity, but as recently as 1990, the Corps admitted that it did not give adequate consideration in the permit process to cumulative impacts. At a recent Gaming Summit, a Mobile Corps representative stated that environmental impacts from casinos to date have been "pretty insignificant." However, a study prepared for DMR on pollution effects of casinos points out that wetlands loss is bound to increase significantly if casinos are granted land use changes and begin to locate in sensitive areas. DMR itself has acknowledged the existence of a threshold at which "impacts associated with 25 or 30 casinos especially if they are allowed to locate in our more fragile bay systems could be very serious."[5] Before developments proliferate in St. Louis Bay, Back Bay of Biloxi, and Deer Island, it is prudent to take a longer-term perspective on wetlands and other environmental degradation.

An EIS is an appropriate tool to use when an important ecosystem is threatened by a development boom or when significant threats to water quality exist. Experts note that the environmental impact of a casino is about the same as that of a small town. As things now stand, St. Louis Bay will face impacts equivalent to that of two towns before water quality regulators complete a pollution budget for this severely stressed water body. At least three projects have been announced for Deer Island and adjacent water bottoms. Given the problems with administering the Coastal Program and the unrelenting pressure to intrude into pristine wetlands, an EIS is the right action to take, right now.

ENDNOTES

1. Ocean and Coastal Resource Management, NOAA, Final Evaluation Findings for Mississippi's Coastal Program, May 1991 through April 1993, 35.
2. R. McLaughlin and M. Hess, CASINO GAMING ON PUBLIC WATERS, report to Dept. of Marine Resources 36 (1996).
3. Jeffrey P. Reynolds and Daniel L. Singletary, *Environmental Concerns and the Impact of Wetlands Regulations on Mississippi's Gaming Industry*, 64 MISS. L.J. 530 (1995) (quoting BMR attorney Runnells).
4. *Three more nominees in wings*, SUN-HERALD, March 22, 1997, B-1.
5. Reynolds, 64 MISS. L.J. at 546 (citing the Gill Report).

Mr. Morse is a third-generation Gulfport lawyer in solo practice. He is a graduate of Millsaps College and Ole Miss Law School. He clerked for Justice Michael Sullivan of the Mississippi Supreme Court. He has worked on environmental issues relating to dockside gaming for four years.

Super-Imposed EIS?

Michael J. Olivier, CED, FM
Executive Director,
Harrison County
Development Commission

Property rights are a foundation of our Constitution and our country. States' rights have been an issue since the United States was formed and continue to be a struggle as "*in loco parentis*" remains an issue in communities and states. These issues loom as a federally mandated Programmatic Environmental Impact Study has been imposed.

This is more than just a wetlands issue; it is an issue of land use planning and an issue of "who" will plan and zone our land. Recently, federal regulatory agencies led by the EPA directed the Corps to perform the EIS and the EPA is offering to pay all costs incurred by regulatory agencies associated with the project. The reason is to "check the growth and development in Harrison and Hancock Counties." The third coastal county, Jackson County, is not included, although Jackson County is the most industrialized county on the Mississippi Coast.

Interpretations of "a wetland" have been determined not only by one federal regulatory agency, but by many, as well as interpreted by state agencies. The result is a subjective combination of definitions impacting private and public property utilization. The loss of property use due to wetlands designation has cost private landowners market-driven benefits, as well as placing a burden on the taxpayers. Further loss accumulated from the consequences of forcing a public entity to acquire new property for proposed development in the form of public infrastructure, including recreational areas, public buildings, etc. continues to force greater expenses on taxpayers.

Regulatory bodies wish not only to slow development on the Mississippi Coast, but stop development, stating that sensitive areas are impacted; therefore, there should be a plan for protecting the environment. It is important to note that any development on the Mississippi Coast must already get a series of permits before proceeding. Usually, the permitting agencies from the local, state and federal governments require certain standards and tests of environmental quality covering everything from the mitigation of wetlands impact to water quality, sanitary services and air quality. The study is designed to help Coast citizens decide how to balance economic development and environmental protection but carries with it a two-year halt on coast casino permits. The federal government should not single out two counties in any one state with a moratorium on development issued without public input from local and state authorities and the citizenry. In fact, had there been a dialogue, the federal regulatory bodies would learn that it is the design of local authorities and the citizenry that casino and other economic development can provide the money to preserve the Coast environment. It was reported by Sam D. Hamilton, Regional Director of the U. S. Fish and Wildlife Service in Atlanta "while you have an engine of growth here, think about what's really important, it's not just the environment, it's the economy, too." And that is what we are about…creating a new economy while protecting our environment to make a higher standard of living. We don't want to stop development but rather use the development to fund the protection of the environment, thus maintaining and improving our quality of life.

During a recent conference, a project manager and civil engineer with the Corps stated casino development on the Coast has had "pretty insignificant" environmental effects. The official further stated that "up 'til now, casinos are not in sensitive wetland areas." Only 11 acres of wetlands have been filled, seven of which were for a golf course development, while mitigation efforts have created 13 acres of tidal marsh and non-tidal wetlands. "When you put it in perspective, it's really not that severe," said Bill Bunkley, project manager with the Corps in Mobile.

cont.

Over $2 billion in casino development on the Coast has not even maintained pace with non-casino growth in other states. The Coast has had a 13% population increase in the last five years, while Baldwin County, Alabama, with no casinos, had a 22% increase. Casino development does not affect the environment differently from other development. The larger issue of any development is potential pollution from development, such as traffic and wastewater treatment. Casino development allows communities to improve infrastructure through impact fees and taxes of significant amounts to pay the costs of adequate infrastructure as evidenced by casino development on the Mississippi Coast.

Other examples of federal intervention in Mississippi are mounting. These acts will harm economic opportunity, job growth, and our ability to achieve a higher quality of living. The Mississippi Department of Economic and Community Development was recently notified that the U.S. Department of Labor is analyzing the Job Training Partnership Act funds utilized by Mississippi in implementing training programs for Mississippi workers. Further, the Food and Drug Administration plans to investigate the Mississippi seafood processing industry. Why is the State of Mississippi singled out for scrutiny?

Ultimately, Mississippi citizens do not need federal regulatory agencies stopping economic development and determining how to balance development and environmental protection. Mississippi has regulatory bodies at the State and local levels to monitor and guide development and protect the public interest. We have public entities for permitting, zoning and policing every aspect of development. We don't need federal entities implementing de facto zoning of our community, stunting growth and depriving our citizenry their quality of living. We need to manage and conserve our water and land; private solutions should be an important part of the effort to manage and conserve our natural resources.

In 1988, the Mississippi Coastal Program established a Comprehensive Resource Management Planning effort so that federal, state and local agencies regulate coastal activities. Thus, no one agency oversees all aspects of coastal development or protection.

The Mississippi Department of Marine Resources initiated a cooperative planning process involving all stakeholders in the three coastal counties aimed at protecting Mississippi's coastal environment while accommodating sustainable development. This comprehensive planning effort was initiated by Mississippians, not federal bodies. The management approach encompasses all geographical parts of the three coastal counties and the functional elements which influence coastal protection and conservation.

Comprehensive management provides for economic growth and predictability within federal, state and local decision-making systems while protecting, enhancing and renewing coastal resources. This approach accrues benefits not only to the Mississippi Coast from a natural resource and economic development perspective as well as all levels of planning and decision-making, but also to all citizens who enjoy the multitude of natural resources in the coastal area. Comprehensive management provides a tool for the integration of development and environmental protection needs while recognizing the interdependence of economic growth and environmental quality of our coastal area.

Thus, it remains a question why the federal bureaucracy wishes to super-impose another federally-controlled study on two counties in Mississippi when we are already engaged in a comprehensive management activity involving all stakeholders to sustain a foundation of renewable resources while accommodating sustainable development.

Mr. Olivier is an economic developer with the Harrison Co. Development Commission with 20+ years of experience. He has served four terms on the Board of Directors of the American Economic Development Council and currently serves as V.P. of Sections. Olivier is the past president of the Southern Economic Development Council. He has earned the distinction "Certified Economic Developer" and has been designated "Fellow Member" of the American Economic Development Council for contributions to the profession.

U.S. Ban continued from page 1

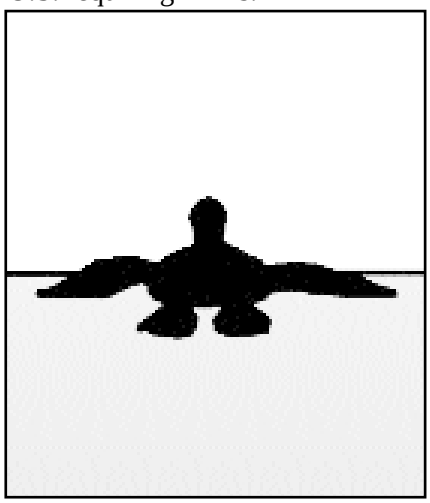
and other large objects out of the net. TEDs cost between $100 and $300 and while some users of TEDs consider them an overregulation, others recognize that TEDs can prevent sea turtles and other ocean debris from crushing shrimp.[5]

Since 1989, the U.S. has banned imports of shrimp from nations that do not require TEDs or other protective measures. The primary purpose of the law is to protect sea turtles outside of U.S. waters. A secondary purpose is to make the domestic use of TEDs more palatable by protecting U.S. boats from competition with foreign boats that are not required to install TEDs. The law bans shrimp imports unless the nation of origin complies with U.S. standards for the protection of sea turtles.[6]

II. The WTO Ruling

India, Pakistan, Malaysia, and Thailand complained to the W.T.O. that the U.S. import ban violated international law. The nations claimed that the U.S. gave up its sovereign right to ban imports when it joined the General Agreement on Tariffs and Trade (GATT). The nations argued that under Article XI of the GATT, a member nation cannot institute quantitative restrictions such as this ban on other member nations.

The U.S. countered that under Article XX of the GATT, a member nation may ban imports when necessary to protect endangered species. Specifically, Article XX allows import bans to protect human, animal, or plant life or health. Article XX also allows import bans to conserve exhaustible natural resources if the ban is made in conjunction with restrictions on domestic production or consumption, such as the U.S. requiring TEDs.



The U.S. argued that the shrimp import ban was intended to protect an endangered species and not intended to protect U.S. shrimp boats from competition. The U.S. presented evidence of an international consensus of the need to use TEDs to protect sea turtles and that the ban had not led to a decrease in shrimp imports or to a rise in shrimp prices. However, the U.S. did not show that it had exhausted alternative methods, such as treaty negotiations, to persuade other nations to use TEDs or similar measures.

On April 6, 1998, the WTO ruled that Article XI expressed the primary purpose of the GATT, the elimination of trade barriers. It determined that the U.S. ban was a method to force environmental standards on other nations. The WTO determined that allowing the U.S. to dictate environmental standard to India, Pakistan, Malaysia, and Thailand could lead to member nations imposing a number of conflicting standards.

The WTO dismissed the U.S. arguments and decided to apply Article XX exceptions narrowly. The panel noted that because Article XX was an affirmative defense to a violation of Article XI, the U.S. had the burden of proof that the shrimp import ban was not arbitrary nor unjustified and that no alternative means existed to protect sea turtles. The U.S. did not meet this burden; rather, evidence showed that the U.S. had taken unilateral action without first trying to negotiate with other member nations to form multilateral standards for sea turtle protection.

III. The Tuna Dolphin Precedent

The WTO decision was not necessarily a surprise. In 1993, the GATT Dispute Resolution Panel, the predecessor to the WTO, determined that a similar U.S. ban on tuna imports to for protection of dolphins violated Article XI of the GATT. In that case, the U.S. banned imports of tuna from those countries that failed to meet U.S. standards for the protection of dolphins. The decision held that the U.S. improperly relied on exclusions under Article XX, which cannot be used unless all other alternatives, including the negotiation of international cooperative agreements, have been exhausted.[7]

The tuna dolphin precedent and the ruling on the U.S. shrimp ban represent a rejection of U.S. unilateralism in global environmental policy.

cont.

IV. Enforcement & Appeal

Enforcement of the WTO ruling may have no impact on the U.S. import ban. It cannot force the U.S. to withdraw the import ban. The only enforcement mechanism available to the WTO is to allow Nations harmed by the U.S. import ban to levy compensating tariffs on exports from the U.S. to those Nations.[9]

The WTO decision also does not impact the prohibition of TEDs in U.S. waters. Federal law will continue to require TEDs to be used by all shrimp boats in U.S. waters. At present, no foreign boats are allowed to harvest shrimp is U.S. waters; however any foreign boats licensed to do so will be required to use TEDs.

The U.S. has reacted to the ruling with two actions. First, in May, the U.S. announced its intentions to appeal the ruling and continue to enforce the import ban during the appeal. Even if the appeal is denied, the U.S. will likely maintain the import ban.

Second, the U.S. has begun negotiations with the complaining Nations to form a treaty creating multilateral standards for the protection of sea turtles. The result of the WTO decision, regardless of the success of the appeal, may lead to a multilateral agreement for the protection of sea turtles.

The U.S. public reaction to the ruling has been one of resentment. Especially those shrimpers in the Gulf of Mexico fear repercussions resulting from the perceived foreign advantage of less regulation. Environmentalists remain supportive of the U.S. position and hope that the appeal will uphold the shrimp ban as an acceptable and necessary tool for international protection of endangered sea turtles.

The international consensus on the need to protect sea turtles, combined with the insistence of the U.S. enforcement of the import ban and the importance of U.S. markets, make an international treaty a likely result of the WTO ruling, leading to a modification of the U.S. import ban so that it complies with the GATT.

ENDNOTES

1. USTR Press Release, March 17, 1998, Office of the United States Trade Representative, Washington, D.C., available at http://www.ustr.gov (May 5, 1998).
2. Pub. Law 101-162, § 609 (1987).
3. World Trade Organization, UNITED STATES - IMPORT PROHIBITION OF CERTAIN SHRIMP AND SHRIMP PRODUCTS, FINAL REPORT, April 6, 1998.
4. WTO Press Release, May 18, 1998, Second Ministerial Conference of the World Trade Organization, available at http://www.wto.org/anniv/press (May 20, 1998).
5. Telephone interview with Will Seidel, National Marine Fisheries and Wildlife Service, Pascagoula, MS (May 19, 1998).
6. Interestingly, one of the Nations filing the Complaint, Thailand, requires use of TEDs, but objects to the imposition of a U.S. standard. Thailand Environmental Institute, Home Page, May 20, 1998, available at http://www.tei.or.th/.
7. World Trade Organization, United States - Restrictions on Imports of Tuna from Mexico, Panel Report Not Adopted by the GATT Contracting Parties, 39th Supp. BISD 155 (1993).
8. United Nations Conference on the Environment and Development, 31 I.L.M. 874, 978 (1992).
9. General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 194, Article XXIII.

TURTLE SITES

The following web sites contain useful information about the life cycles and habitat of sea turtles as well as laws, regulations and policy documents regarding their conservation.

Turtle Trax - dedicated to educating the public about sea turtles
http://www.turtles.org/

Caribbean Conservation Organization - sea turtles in the Caribbean & useful links to other sites
http://www.cccturtle.org/linkpg.htm

National Marine Fisheries Service Sea Turtle Page - conservation policies
http://kingfish.ssp.nmfs.gov/tmcintyr/turtles/turtle.html

Department of State: Oceans and Marine Conservation - Ocean Policy and Law of the Sea
http://www.state.gov/www/global/oes/oceans/index.html

Gulf Information Network - EPA Gulf of Mexico Program Sea Turtle Page
http://earth1.epa.gov/gumpo/seast12.html

Marine Turtle Newsletter Online - for the latest news on sea turtle research and policy
http://www.seaturtle.org/mtn/

Gulf States Taking the Lead in Property Rights Legislation

Kristen M. Fletcher, J.D.

Since 1994, four states bordering the Gulf of Mexico have enacted private property rights legislation: Florida, Texas, Mississippi and Louisiana. These statutes provide a cause of action to property owners to challenge a regulation that may have lowered the value of their property, i.e., "taken" the property without compensation, prohibited by the Fifth Amendment. According to the Supreme Court, when a regulation significantly lowers the value of property or renders it useless, a regulatory taking has occurred. In the last decade, the U.S. Supreme Court and state courts have focused attention on regulatory takings of coastal property. State legislatures responded with statutes that provide protection above those available under constitutional analysis.

The result has been a rush to pass takings statutes combining three primary components. First, the statutes usually call for a "takings impact assessment," requiring regulators to analyze the potential for a taking before a regulation takes effect. Second, the statutes define a taking, usually by a specific percentage of diminution in value of the property. Third, they provide compensation for a temporary taking, purchase of the property, or rescission of the intrusive regulation.

In 1995, Texas and Florida passed comprehensive statutes providing compensation for the taking of private property. Also in 1995, Mississippi and Louisiana passed statutes providing compensation for a taking of agricultural or forestry lands. These statutes raise a number of issues for the gulf region. What impact will these property rights statutes have on the natural resources of the Gulf region? Will these statutes prevent unfair burdens to private property owners without hindering protection of coastal ecosystems? Finally, as the gulf region increases in population and development, will the mere presence of these laws prevent effective environmental regulations because state agencies fear the impact of stiff compensation measures? Analysis of these statutes reveals that they may negatively impact protection of coastal resources forcing state legislatures and state agencies to provide more effective regulations without causing a taking.

Florida
Private Property Rights Protection Act & Dispute Resolution Act

As early as 1974, Florida policymakers were reviewing the potential for a takings statute. In 1995, the state enacted two statutes to create it property rights scheme. First, the Private Property Rights Protection Act[1] provides a cause of action to property owners whose land has been "inordinately burdened" by a state regulation. Second, the Florida Land Use and Environmental Dispute Resolution Act[2] creates an administrative process where a special master conducts a hearing with the property owner and agency to make recommendations of nonbinding alternatives. Neither specifically requires a takings impact assessment of regulations.

Under the Florida Act, a landowner's property has been taken if it is "inordinately burdened," defined as so restrictive that the property owner cannot attain her investment-backed expectation or causes her to bear a disproportionate share of a burden imposed for public good. Florida's definition is unique because it does not assign a specific diminution amount to define a taking. The Act applies to laws and regulations enacted on or before May 11, 1995. If a taking exists the governmental agency can rescind the regulation and pay compensation to the landowner for a temporary taking or it can purchase the property for full value.

Florida's taking scheme has impacted Florida's coastal regions in several ways. Pam and Mel McGinnis are landowners who challenged the denial of a permit to fill wetlands. They first engaged in the special master proceeding but were led into court several years later while their five acre tract of land on Tampa Bay remains undeveloped. Their struggle and the perceived failure of the Florida Acts to assist them has kept coastal property issues at the forefront. Also, critics claim that agencies have enacted fewer regulations since the laws took effect, including ordinances aimed at lower development, building height restrictions, and wildlife habitat designations which are key issues in Florida's coastal protection.[3]

cont.

Texas
Private Real Property Rights Preservation Act

In 1995, Texas enacted its Private Real Property Rights Preservation Act[4] as a preventive measure to ensure that the state does not mirror intrusive federal regulatory actions. The Texas Act requires detailed planning by agencies to analyze the regulation's purpose, burdens on property owners, and possible alternatives. An agency must also give 30 days notice before it can pass a possibly intrusive regulation. Failure to comply can result in rescission of the regulation.

The Texas Act defines a taking as a reduction of 25% in the value of property "in whole or in part or temporarily or permanently."[5] By including "in whole or in part," the Act leaves the fact finder a choice between analyzing the entire parcel of property in question or only that parcel affected by the regulation in order to determine diminution in value. This approach leaves the potential for judicial inconsistency and is in direct conflict with current Supreme Court takings jurisprudence which has consistently analyzed takings cases according to the entire parcel of property in question.

The Act is limited in its applicability, however. The Act applies to those regulations first proposed on or after September 1, 1995. The Act specifically excludes actions to fulfill a federal or state mandated obligation; certain rules regarding water safety, hunting, and fishing; specific provisions of the Texas Natural Resources Code; and actions to regulate construction in a floodplain area or to prevent subsidence. If a taking exists, the court orders the governmental entity to rescind the action or purchase the property.

While property rights remain at the forefront of Texas politics, the language of the Act will limit its impact on the Texas coast. Arguably, the Act does not apply to regulations adopted to fulfill an obligation under the Texas Coastal Management Program because it is taken to fulfill a state-mandated obligation. In addition, the Act seems to exempt regulations adopted to meet obligations under federal law, such as the Coastal Zone Management Act, leaving Texas' primary tools for protection of coastal resources intact.

Mississippi
Agricultural & Forestry Activities Act

In 1995, Mississippi enacted the Agricultural and Forestry Activities Act to provide compensation for takings of agricultural or forestry lands because the use of land in the state "as forest and agricultural lands are essential factors in providing for the favorable quality of life in the State of Mississippi."[6] The Act does not specifically provide for a takings impact assessment of proposed actions. Instead, the Mississippi Legislature amended the Administrative Procedures Act to require government agencies to prepare an economic impact statement when they propose a new rule or regulation or significantly modify an old rule. These statements must analyze the need for the proposed action, the cost of the rule to the agency and landowners, and any reasonable alternatives.

The Mississippi Act defines a taking as a 40% reduction in the fair market value of *any part or parcel* of forest or agricultural land. This so narrowly defines the relevant unit of property that almost any environmental regulation will amount to a taking. When a taking occurs, the state may rescind the regulation and pay for temporary damages or the state entity may pay the amount of diminution of the property value without resulting in state ownership. The Mississippi Act specifically exempts state actions which are taken to protect public health and safety, including those taken by the Mississippi Air and Water Pollution Control Commission and the Mississippi Commission on Wildlife, Fisheries and Parks.

The statute's impact on the Mississippi gulf coast is questionable. Agricultural and forestry lands make up less than 15% of the land of the three Mississippi coastal counties.[7] Coastal communities have not experienced takings challenges. An interesting question remains for the coast, however. With its recent increase in casino complexes and associated development, the possibility of zoning changes or new regulations on the coast will cause changes in agricultural and forestry properties. These changes may cause increases in the value of some properties and takings of others. This may awaken activity under the Mississippi Act.

Louisiana
Right To Farm & Right To Forest Acts

The Louisiana Legislature considered several takings bills from 1992 - 1995. Prior to 1995, Louisiana's "Right to Farm Act" protected those engaged in agricultural practices from legal actions in various situations.[8] In 1995, the Louisiana Legislature amended this Right to Farm Act to include compensation and assessment provisions for regulatory takings of both agricultural and forestry lands.

The Louisiana Act has three distinctions from other gulf state statutes. First, its impact assessment scheme has unique procedural requirements. A governmental agency must prepare a written assessment if the action is likely to result in a diminution in value of agricultural or forestry lands. The governmental entities must deliver the written impact assessment to *any affected landowner*, as well as the Governor and Commissioner of Agriculture and Forestry.

The Louisiana Act requires only a 20% diminution in fair market value of the "affected portion of any parcel" to show a taking. Similar to the Mississippi statute, the Louisiana Act's definition of "governmental action" excludes those actions taken in compliance with federal law or regulation, directed or mandated by a court, or taken to protect public safety and health.[9] It also exempts state agricultural and forestry agencies from the Act. As a result, the Act does not apply to those regulations with the greatest potential to cause takings. Once a taking occurs, the statute provides that the owner of agricultural land may choose to recover a sum equal to the diminution in value of the property and retain title or recover the entire fair market value and transfer title. For forestry lands, the owner may recover a sum equal to the diminution in value and retain title.

Louisiana's Act has a great chance to impact coastal resources. Louisiana's coastal counties contain significant agricultural and forestry lands and the diminution rate for a taking is only 20%. In recent years, the number of farms operating in Louisiana coastal counties increased.[10] Thus, the Act may impact Louisiana's coastal management program which has been credited with reducing tidal wetland losses. The Act, however, will more likely affect inland properties.

Alabama
Proposed Legislation

Alabama does not have a takings statute but its legislature considered takings bills from 1994 - 1997. In 1997, the proposed bill, the Alabama Right to Farm and Forest Act, proposed protection for agricultural and forestry lands.[11] Its assessment scheme required analysis of the regulation's potential for a taking, interference with agricultural or forestry development, the cost to reimburse landowners and where in the agency budget reimbursal money is located. The bill defined a taking by *any* diminution in value, representing the most expansive definition in the nation. Finally, it provided remedies such as compensation and purchase of the property. The bill did not pass and the legislature did not consider a bill this session.

With regard to impacts to the Alabama coast, the state has few acres set aside as agricultural or forest lands on its coast and its coastline does not appear to be assisted or impaired by the proposed scheme.

Future of Takings & the Gulf Coast

Property rights legislation in the gulf region has the potential to greatly impact coastal resources. The immediate impact is a tension between the right to develop coastal properties and the regulations passed to protect coastal resources. While the gulf coast represents a unique ecosystem, the state legislatures are calling for a balance between regulations and property rights. The long-term impact may be fewer regulations or those that are less effective in protecting coastal resources. State agencies must ensure the new statutes do not prevent necessary actions.

ENDNOTES

1. FLA. STAT. ANN. § 70.001 (1997).
2. FLA. STAT. ANN. § 70.51 (1997).
3. *See* Victor Hull, *Little-Used Law Having Wide Impact*, SARASOTA HERALD-TRIBUNE, April 20, 1997, at A17.
4. TEX. GOV'T CODE ANN. § 2007.001 (1997).
5. TEX. GOV'T CODE ANN. § 2007.002 (1997).
6. MISS. CODE. ANN. §§ 49-33-1 to 49-33-19, 49-33-5 (1997).
7. 1992 AGRICULTURAL ATLAS OF THE UNITED STATES (1995).
8. LA. REV. STAT. ANN. § 3:3603 (West 1997).
9. LA. REV. STAT. ANN. § 3:3622 (3)(a) - (h) (West 1997).
10. 1992 AGRICULTURAL ATLAS OF THE UNITED STATES (1995).
11. 1997 AL H.B. 485.

Mississippi Legislative Update 1998

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The following is a summary of coastal, fisheries, marine, and water resources related legislation enacted by the Mississippi legislature during the 1998 session.

1998 Mississippi Laws 310. (HB 351)

Approved March 13, 1998. Effective July 1, 1998.

Reenacts Mississippi Code § 49-4-39 which authorizes the Commission on Wildlife, Fisheries and Parks to regulate guide and outfitter services for hunting, fishing, and wildlife viewing until July 1, 1999.

1998 Mississippi Laws 344. (SB 2667)

Approved March 16, 1998. Effective July 1, 1998.

Requires courts to keep records of people charged with violating game and fish laws and provide the Department of Wildlife, Fisheries and Parks with an abstract of the record of convictions.

1998 Mississippi Laws 345. (SB 2668)

Approved March 16, 1998. Effective July 1, 1998.

Revises § 49-5-31 to incorporate all federal conservation acts and regulations for the protection of game and fish into the Mississippi Code. Prior law provided for only the incorporation of the federal Migratory Bird Treaty Act.

1998 Mississippi Laws 347. (SB 2673)

Approved March 16, 1998. Effective March 16, 1998.

Revises § 49-7-27 to authorize the Commission on Wildlife, Fisheries, and Parks to revoke the hunting, trapping, or fishing privileges of a person for game violations.

1998 Mississippi Laws 348. (SB 2681)

Approved March 17, 1998. Effective March 17, 1998.

Amends § 49-15-313 to establish July 4 as Free Saltwater Sports Fishing Day to allow any person to saltwater sport fish without a license.

cont.

1998 Mississippi Laws 360. (SB 2861)

Approved March 16, 1998. Effective July 1, 1998.

Creates an Act that prohibits any person from stocking, placing, or releasing any aquatic species into public waters of the state without first obtaining a permit from the Department of Wildlife, Fisheries and Parks. It also directs the Department to:

- Study the species and its possible detrimental effects on the environment;
- Maintain a list of approved, restricted, and prohibited species; and
- Establish rules governing importation, possession, sale and escape of those species.

1998 Mississippi Laws 370. (SB 3041)

Approved March 16, 1998. Effective July 1, 1998.

Revises § 49-5-115 to increase the penalty for selling nongame wildlife, failure to obtain a permit, or violation of the terms of the permit.

1998 Mississippi Laws 378. (HB 238)

Approved March 17, 1998. Effective July 1, 1998.

Revises § 59-21-53 to require that boating accident reports be made available upon request to the persons involved in a boating accident.

1998 Mississippi Laws 381. (HB 464)

Approved March 17, 1998. Effective July 1, 1998.

Amends § 49-7-45 to allow for the dismissal of a citation for failure to possess a boat registration card if the operator can verify that the boat was properly registered prior to the date of the violation.

1998 Mississippi Laws 384. (HB 654)

Approved March 17, 1998. Effective July 1, 1998.

Revises § 79-22-9 to extend the repealer on issuing permits for producing and selling certain cultured game fish in a pilot program. An aquaculturist must obtain a permit for cultured aquatic products produced from specified plants and animals, and the Department of Wildlife, Fisheries and Parks must approve the proposed aquaculture facility before a permit can be granted.

1998 Mississippi Laws 395. (SB 2740)

Approved March 17, 1998. Effective March 17, 1998.

Amends § 49-15-19 to clarify that the Attorney General is counsel and attorney for the Department of Marine Resources and the Commission on Marine Resources.

cont.

1998 Mississippi Laws 409. (HB 1214)

Approved March 24, 1998. Effective March 24, 1998.

Amends §§ 49-7-9 and 49-7-81 to enact a slat basket fee to be charged in addition to a commercial fishing license fee and to require that each slat basket must have a tag bearing the tag number of the owner. It also repeals § 49-7-99 in order to designate new penalties for the violation of the Act and forfeiture of prohibited or untagged net or fishing gear.

1998 Mississippi Laws 446. (HB 1698)

Approved March 23, 1998. Effective July 1, 1998.

Amends § 27-65-103 to exempt from sales tax the proceeds of certain sales of cotton, livestock, poultry, fish and other agricultural products, as well as proceeds from sales of certain medications used to produce and grow fish, livestock, and poultry.

1998 Mississippi Laws 469. (HB 47)

Approved March 26, 1998. Effective July 1, 1998.

Revises § 27-31-1 to clarify that watercraft used in connection with gaming operations are not exempt from *ad valorem* tax.

1998 Mississippi Laws 478. (HB 1211)

Approved March 26, 1998. Effective March 26, 1998.

Creates a Natural and Scenic River Study Committee. The Act mandates that the Department of Wildlife, Fisheries and Parks conduct a study of certain natural and scenic rivers to assess ecological characteristics of the rivers and explore the possibility of conserving the quality of these rivers. Further, the department shall provide incentive programs to encourage landowner participation in any stream protection program that may be recommended.

1998 Mississippi Laws 479. (HB 1211)

Approved March 26, 1997. Effective March 26, 1998.

Amends § 49-5-71 to authorize the Department of Wildlife, Fisheries and Parks to exchange property of equal value with the city of Jackson, in addition to the right to sell and convey, for agency purposes.

1998 Mississippi Laws 480. (HB 1256)

Approved March 26, 1998. Effective July 1, 1998.

Revises § 49-15-38 to delete the requirement that an equal amount of oyster shells be replanted in each county bordering on the Mississippi Sound each season.

cont.

1998 Mississippi Laws 481. (HB 1783)

Approved March 26, 1998. Effective March 26, 1998.

Authorizes the Mississippi Soil and Water Conservation Commission to issue general obligation bonds to provide funds for the Mississippi Watershed Repair and Rehabilitation Cost-Share Program under § 51-37-3.

1998 Mississippi Laws 499. (SB 3044)

Approved March 26, 1998. Effective March 26, 1998.

Authorizes the conveyance of the Great River Road State Park to the National Park Service for the establishment of the Great River Explorers National Historical Park.

1998 Mississippi Laws 509. (HB 1257)

Approved March 31, 1998. Effective July 1, 1998.

Amends § 49-15-36 to abolish the requirement that at least one oyster reef per county be opened each season.

1998 Mississippi Laws 512. (HB 1377)

Approved March 31, 1998. Effective March 31, 1998.

Amends § 49-15-30 to direct the Commission on Marine Resources to use the following guidelines when issuing a commercial fishing license to a nonresident:

- Charge a nonresident the same fee charged to a resident to obtain a commercial fishing license;
- If the applicant's state charges nonresidents a greater amount than residents, the nonresident applicant must pay the same amount that a Mississippi resident must pay in the applicant's state; and
- If the applicant's home state does not issue a nonresident license for a particular activity, the nonresident applicant cannot obtain a license for that activity in Mississippi.

1998 Mississippi Laws 528. (SB 2989)

Approved April 8, 1998. Effective July 1, 1998.

Creates the Mississippi Brownfields Voluntary Cleanup and Redevelopment Act directing the Commission on Environmental Quality to make brownfield agreements and promulgate application and approval procedures.

Notable Veto:

1998 Mississippi Senate Bill 2950. *Vetoed April 15, 1998.*

The bill provided that port commissions that have continuously operated public facilities on Public Trust Tidelands may retain the revenue therein granted.

Lagniappe *(a little something extra)*

Around the Gulf . . .

In late April, the **Florida Marine Fisheries Commission** backed away from a proposal to severely limit gag and black grouper harvest in the Gulf. The Commission will determine future limits after a stock assessment performed by the Gulf of Mexico Fishery Management Council is complete.

On May 14, environmentalist **Marjory Stoneman Douglas** died at the age of 108. She was well known for leading the fight to preserve the Everglades and her cremated remains will be scattered over the portion of the Everglades National Park that bears her name.

In April, seashore managers reported that two endangered **Kemp's ridley sea turtles** came ashore and laid 190 eggs at Padre Island National Seashore in Texas.

In May, the NMFS announced the approval of a new soft **Turtle Excluder Device**, the Parker soft TED, for use in Texas, Louisiana, Georgia, and South Carolina which are areas with high sea turtle abundance. After an 18-month trial period, the Parker TED will be approved for permanent use if NMFS enforcement and observer data verify the effectiveness and correct use of the TED under commercial fishing conditions.

Around the Nation and the World . . .

In April, President Clinton instructed U.S. representatives to the **International Maritime Organization** to pursue strong measures to protect northern right whales from ship collisions, including a reporting system for commercial ships that operate in the whale's calving and feeding grounds along the U.S. Atlantic coast.

In May, the National Geographic Society announced the **Sustainable Seas Expeditions** project that will allow researchers to use a minisubmarine called "Deep Worker" to explore the depths of the nation's 12 marine sanctuaries for the first time. Dr. Sylvia Earle will pilot Deepworker.

In June, Dr. Sylvia Earle received the prestigious **United Nations Environmental Award**. She was honored for her life-long commitment to deep sea exploration.

In May, Greenpeace recommended that the world's **industrial fishing fleet** be cut in half to maintain sustainable fisheries because nearly 70% of global fish stocks are depleted or overfished and the industrial fishing fleet has increased 22% since 1991.

In May, NASA combined Space Day and the Year of the Ocean to study oceans not on the Earth's surface. A **"Day on Europa"** was a series of educational activities focusing on the prospect of liquid oceans under the icy surface of Europa, Jupiter's moon, and its similarities to Earth's arctic regions and sea floor volcanoes.

The Water Log Staff wishes to congratulate the following Sea Grant Research Associates who earned their Juris Doctorate during the 1997-1998 year.
Lanny Acosta - Richard Brownlow - Heath Franklin - Michael McMillan
We wish these lawyers great success in their future endeavors.

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