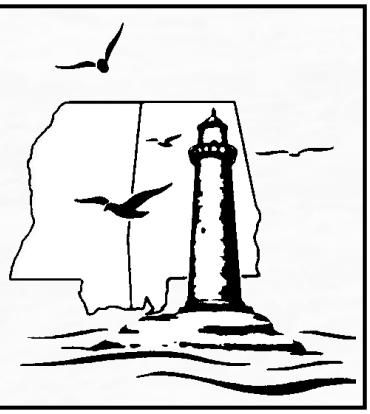
Volume 20, Number 1, 2000

WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium



Supreme Court Rejects State's Maritime Laws

United States v. Locke, Governor of Washington, 2000 U.S. LEXIS 1895.

Tammy L. Shaw, J.D.

On March 6, the United States Supreme Court ruled that maritime laws enacted by the state of Washington are unenforceable in the face of pre-emptive federal statutes. The laws at issue seek to provide the "best achievable protection" (BAP) from oil spill damages in Washington's heavily-traveled coastal waterways. The Court held that the regulations addressing safety requirements for oil tankers and specific requirements for general navigation watch procedures, crew training and qualifications, and maritime casualty reporting are pre-empted by a longstanding and comprehensive federal regulatory scheme. Justice Kennedy, writing for the Court, expressed that while the Washington coast lies adjacent to some of the Nation's most significant waters and vulnerable coastal regions and is a major artery for oil transit, a state may not enact shipping laws that conflict with or, in some cases mirror, federal laws.

History

In response to some of the most notorious oil spills in recent time, including a supertanker spill off the coast of England in 1967 and the grounding of the Exxon Valdez in Alaska in 1989, Congress enacted a series of maritime laws. These laws supplement longstanding interna-

See U.S. vs Locke, page 11

Civil Penalties Provide Relief for Environmental Plaintiffs

Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., 120 S.Ct. 693 (2000).

Tammy L. Shaw, J.D.
Brad Rath, 3L

In January, the United States Supreme Court held that an environmental group may seek civil penalties under the Clean Water Act even though the defendant company has voluntarily come into compliance with its required permit. Laidlaw argued that its subsequent compliance with the permit limitations rendered the citizen suit moot and that the environmental plaintiff, Friends of the Earth (FOE), lacked standing to seek civil penalties because such an award would not redress the plaintiff's injuries. The Supreme Court disagreed, finding that the defendant's voluntary compliance with the permit and subsequent shutdown of the facility did not render the case moot. The Court further held that an award of civil penalties

See Laidlaw, page 13

In This Issue . . .

The Internet: Not Just for Surfing Anymore

Water Log E-Mail Service Available

For the last year, the *Water Log Legal Reporter* has been available in text and Adobe Acrobat format on the Legal Program website, http://www.olemiss.edu/orgs/masglp allowing visitors to access issues published over the last four years. Many subscribers have suggested, as a method to conserve both paper and shelf space, that an e-mail alert that the legal reporter is available would be sufficient.

As a result, the Legal Program is now offering a notice by e-mail that the latest issue of *Water Log* is available on the Internet. Subscribers interested in receiving a *Water Log* e-mail notice can either

- Send a message to waterlog@olemiss.edu specifying the following:
  Subscriber Name and E-mail address to which the notice should be sent.
  Whether the subscriber would like to continue receiving paper issues of *Water Log* in addition to the e-mail.
  Please note: subscribers who sign up for the e-mail notice will no longer receive paper issues unless specifically requested.
- Or, visit the Sea Grant Legal Program website (http://www.olemiss.edu/orgs/masglp) and complete the Water Log E-mail Service form that has a link on the main page.

The Internet is also a valuable tool in staying current regarding and having a voice in shaping, coastal and ocean policy. Most public notices are now available on the Internet at the Federal Register Site (http://www.access.gpo.gov/nara/) and offer options to submit public comments over the Internet. Recent reports and rules available on the Internet include the following:

HYPOXIA in the Gulf of Mexico - Drafts of the scientific reports developed by the National Science and Technology Council address the extent of the hypoxic zone, sources of nutrients, economic implications of hypoxia, and solutions. See http://www.nos.noaa.gov/products/pubs_hypox.html#Topic6 .

National Marine Fisheries Service Report & Rule - NMFS recently published the 1998 Marine Mammal Protection Act Annual Report which can be found at: http://www.nmfs.gov/prot_res/PDF_docs/1998_MMPA_Annual _Report.pdf .

NMFS also published the Interim Final Rule implementing the provisions of the International Dolphin Conservation Program Act to meet standards for protecting dolphins in the eastern tropical Pacific Ocean. See http://www.nmfs.gov/prot_res/main/tunadolphin.html .

Sea Grant

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.

To subscribe to WATER LOG free of charge, contact: Mississippi-Alabama Sea Grant Legal Program, 518 Law Center, University, MS, 38677, or contact us via e-mail at: waterlog@olemiss.edu . We welcome suggestions for topics you would like to see covered in WATER LOG.

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For information about the Legal Program's research, ocean and coastal law, and issues of WATER LOG, visit our homepage at
http://www.olemiss.edu/orgs/masglp

In the Next Issue:

- Review of case upholding the limited authority of the EPA to regulate nonpoint source pollution under the Total Maximum Daily Load (TMDL) mandate of the Clean Water Act.
- Review of the closing of federal waters to longline fisheries.
- Review of Mississippi legislation passed in 2000.

From the Editor's Desk . . . Celebrating 20 Years of Water Log

About twenty years ago, President Carter signed the American Fisheries Promotion Act, the Tennessee-Tombigbee Waterway was nearly 55% complete, the nation was considering the impacts of offshore oil and gas exploration, and members of the Sea Grant Legal Program began writing informative articles on these and other concerns in the first issue of *Water Log*.

This issue marks the 20th anniversary of the *Water Log Legal Reporter* which has been informing citizens, policy-makers, academics, and members of Sea Grant institutions about marine policy and law since March of 1981. The inaugural issue proudly announced the approval of the Mississippi Coastal Program but included an Editor's Note that the OMB recommended that federal financial support of state Coastal Zone Management Programs be ceased, along with the funding of the national Sea Grant program. Fortunately, both Sea Grant and CZM Programs are still in action across the nation today but funding for ocean and coastal issues is meager considering the challenges we face.

These challenges are surprisingly similar to those of two decades ago: with the development of the gaming industry in Mississippi waters, changes to the state Coastal Program are under consideration; regulation of wetland activities is still contentious with new regulations and rulings; the shipping and port industries face challenges with the threat of spills and the release of exotic species that can devastate ecosystems; and, we continue to struggle with balancing resource protection with resource use. This anniversary issue addresses issues that parallel similar topics covered in our inaugural volume with contemporary issues such as world trade that are shaping the future policy of the world's oceans.


WATER LOG

During these twenty years, the subscribers of *WATER LOG* have been a constant source of new ideas, questions, and critiques. The staff of the Legal Program greatly appreciates your interest in and commitment to coastal policy. As we offer topics in *WATER LOG* useful to our readers and utilize tools such as e-mail and the Internet that were unavailable twenty years ago, we sincerely hope that *WATER LOG* will remain a source of valuable information for you for another twenty years.

Sincerely,

Kristen M. Fletcher
Editor

The Legal Program Welcomes Tammy Shaw

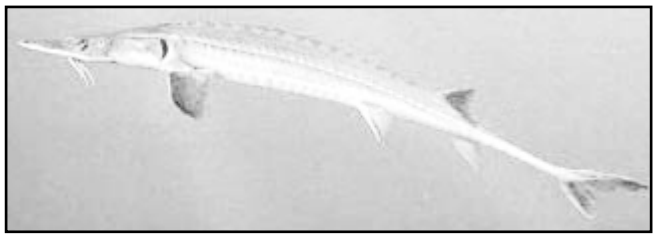
In March, Tammy L. Shaw joined the Mississippi-Alabama Sea Grant Legal Program as Research Counsel. She will conduct research and publish papers on ocean, coastal, natural resources and related environmental legal issues, provide assistance to governmental agencies concerning interpretation of statutes, regulations and case law, assist in the publication of the *Water Log Legal Reporter* and supervise law student research and legal writing projects. Ms. Shaw received her B.A. in Anthropology from the University of South Alabama in 1996 and her law degree from the University of Mississippi in 1999. Before moving to Oxford, Mississippi, Ms. Shaw worked as an archaeological assistant for the Center for Archaeological Studies, in Mobile, Alabama where she participated in excavation and research on prehistoric and historic archaeological sites. Her interests lie in coastal and ocean law, natural and cultural resource law, and historic preservation.

Since her arrival, Shaw has researched advisory requests, participated in editing student writing projects and attended the Gulf of Mexico Symposium. She looks forward to continuing the Program's mission of researching and teaching about ocean, coastal and natural resource law and policy issues and to assist in the effort to bring about solutions for our ocean, coastal and marine resource problems.

You may contact Tammy at tlshaw@olemiss.edu .

Federal-State Alabama Sturgeon Conservation Agreement Signed

Kristen M. Fletcher, J.D., LL.M.



Photograph courtesy of Patrick O'Neil, Geological Survey of Alabama

This winter, the U.S. Fish and Wildlife Service and Alabama Department of Conservation and Natural Resources announced the formation of a Conservation Agreement for the conservation and enhancement of the Alabama sturgeon and its habitat.[1] The Alabama sturgeon, a small, freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi, has been the subject of potential Endangered Species Act listings for two decades. The Conservation Agreement and Strategy for the Alabama Sturgeon (2000 Agreement) originated as an informal voluntary plan but was formalized in order to continue collaboration between state and federal resource agencies and the private sector. The Conservation Agreement names the Alabama Department of Conservation and Natural Resources (ADCNR) as the lead agency in conservation efforts with coordination from the Fish and Wildlife Service (FWS), the Army Corps of Engineers (Corps) and the Alabama-Tombigbee Rivers Coalition (Rivers Coalition).

Alabama Sturgeon: Endangered or Extinct?

Recent surveys indicate that the Alabama sturgeon has disappeared from 85% of its historic range. The fish's historic range consisted of approximately 1,000 miles of river habitat but now occupies about 130 miles of the lower Alabama River in Clarke, Monroe, and Wilcox Counties, Alabama. Unrestricted commercial harvesting is blamed for the initial decline but the curtailment of the sturgeon's habitat has resulted from over 100 years of cumulative impacts to rivers as they were developed for navigation, power production, flood control, recreation and human uses.

The FWS first reviewed the status of the Alabama Sturgeon in 1980 as a result of the Tennessee-Tombigbee Waterway Project. The channel dredging, removal of streamside vegetation, increased turbidity and construction activities threatened "one of the last strongholds" for the species.[2] Then known as the Alabama shovelnose sturgeon, the FWS first considered it as a candidate for listing under the federal Endangered Species Act in 1982[3] but found that there was not sufficient data to support a proposed listing of the fish. Following a series of public notices, the FWS found that the sturgeon was "a species for which FWS has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule" in 1989.[4]

The proposed rule to list the fish as an endangered species and to delineate areas of critical habitat, as authorized under the Endangered Species Act, was issued in 1993 but the process was plagued with questions raised regarding whether the species continued to exist.[5] As a result, the FWS convened a panel of scientists to examine the classification of the Alabama Sturgeon and to provide an opinion on the likely existence of the species.[6] The solicitation of the panel report resulted in litigation and a preliminary injunction that restrained the FWS from disseminating the report to the public or utilizing the report in the decision to list the sturgeon and designate its critical habitat.[7] By late 1994, the FWS withdrew the proposed rule on the basis of insufficient information that the Alabama sturgeon continued to exist.

The effort to list the fish was revived in 1997 after the capture of several individuals confirmed that the species did still exist.[8] The FWS recently solicited public comment on listing the sturgeon as endangered based on the updated Conservation Agreement and Strategy.

Strategy to Reduce Threats

In 1997, a voluntary conservation effort was implemented and coordinated by ADCNR under authority of the Endangered Species Act which encourages Federal agencies to cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species such as the Alabama sturgeon.[9] The 1997 Agreement was to address the primary threats to the Alabama sturgeon

and to remedy the small population size through a captive breeding and restocking program. The effort also aimed to provide habitat restoration measures and research to determine life history information essential to effective conservation and management of the species. The effort was implemented by a variety of public and private entities, including the FWS, Corps of Engineers, the Rivers Coalition, the Geologic Survey of Alabama, and the Mobile River Basin Coalition. During the three years of this effort, the participants had less success capturing Alabama sturgeon than was initially expected but resulted in the establishment of protocols for handling, transporting, and propagating Alabama sturgeon. As a result, on February 9, the FWS, ADCNR, the Corps, and the Rivers Coalition entered into the ten-year Agreement that expands upon the initial efforts undertaken in 1997.

The stated goal of the 2000 Agreement is to "eliminate or significantly reduce current threats to the Alabama sturgeon and its habitat to the extent necessary to foreclose the possibility that the Alabama Sturgeon will become extinct . . . or the likelihood that the Alabama sturgeon will become endangered within the foreseeable future throughout its currently occupied habitat in Alabama."[10] In addition to enhancing the sturgeon and its habitat, the agencies hope to increase the numbers of sturgeon through hatchery propagation and augmentation and develop information on the sturgeon's life history and habitat needs.

Agreements v. ESA Listing

If listed under the Endangered Species Act, the Secretary of the Interior would be responsible for designating the critical habitat of the Alabama Sturgeon, that geographical area essential to the conservation of the species and preventing activities in that area that would jeopardize the continued existence of the species.[11] The 2000 Agreement does not provide the "hammer" to halt development or activities in the sturgeon's habitat; rather, it calls for improved collaboration between the signees to study habitat, minimize impacts through implementation of Best Management Practices, and monitoring of habitat protection efforts.

A similar voluntary state agreement was created in the Pacific Northwest in 1997, called the Oregon Coastal Salmon Restoration Initiative[12] but a Federal judge refused to allow the National Marine Fisheries Service to rely on its voluntary measures over listing explaining that "voluntary actions, like those planned in the future, are necessarily speculative."[13] Thus, the Oregon Plan is being implemented *in addition to* restrictions under the Endangered Species Act. The Sturgeon Agreement may meet the same fate as a lawsuit was filed in late March by the Biodiversity Legal Foundation and Wild Alabama to compel the Secretary of the Interior to list the species.

In addition to the Alabama sturgeon, there are three federally listed mussel species and the threatened Gulf sturgeon located in or adjacent to identified Alabama sturgeon habitat. The ultimate goal of the 2000 Agreement is to ensure a self-sustaining population of the sturgeon in the Alabama River.[14] To do this and protect other listed species, efforts must focus on the primary threats to the sturgeon which include habitat modifications resulting from dams, channelization and dredging, sand and gravel mining, water quality, and a consistently declining population.

The FWS is currently reviewing comments on how the efforts in the 2000 Agreement affect the need to list the Alabama sturgeon under the Endangered Species Act.

The Conservation Agreement and Strategy for the Alabama Sturgeon can be accessed by visiting the Legal Program website at http://www.olemiss.edu/orgs/masglp .

ENDNOTES

1. *See* Notice of Reopening of Comment Period on the Proposed Rule To List the Alabama Sturgeon as Endangered, 65 Fed. Reg. 7,817 (Feb. 16, 2000).
2. 45 Fed. Reg. 58,177 (Sept. 2, 1980).
3. 47 Fed. Reg. 58,454 (Dec. 30, 1982).
4. 54 Fed. Reg. 554 (Jan. 6, 1989).
5. 58 Fed. Reg. 55,036 (Oct. 25, 1993).
6. 58 Fed. Reg. 55,036 (Oct. 25, 1993).
7. 59 Fed. Reg. 288 (Jan. 4, 1994).
8. *See* Notice of Review, 62 Fed. Reg. 49,403 (Sept. 19, 1997).
9. 16 U.S.C. § 1531(c)(2) (2000).
10. Conservation Agreement and Strategy for the Alabama Sturgeon at 1 (2000).
11. 16 U.S.C. § 1532(5)(a) (2000).
12. The Final Plan can be viewed at http://www.oregon-plan.org/Final.html (visited 4/5/00).
13. *See Oregon Natural Resources Council v. Daley*, 6 F. Supp. 2d 1139 (D.Or. 1998).
14. The Strategy explains that "natural reproduction of hatchery spawned sturgeon in the lower Alabama River is not likely to occur for at least eight years following successful augmentation." 2000 Agreement at 10.

Landowner Expectations Dashed in the Florida Keys

Supreme Court Declines Review, Decision Stands

Good v. United States, 189 F.3d 1355 (Fed. Cir. 1999), *cert. denied*, 2000 U.S. LEXIS 2387 (2000).

Kristen M. Fletcher, J.D., LL.M.

Thirty years after purchasing upland and marsh property in the Florida Keys, the U.S. Supreme Court has declined review of a landowner's takings claim, ending his quest to develop a residential subdivision on Lower Sugarloaf Key. Lloyd A. Good, Jr. filed suit in 1994 alleging that the Army Corps of Engineers' permit denial effected an uncompensated taking in violation of the Fifth Amendment of the U.S. Constitution which prohibits the government from "taking" private property for public use without reasonable compensation. The Court of Federal Claims and Court of Appeals for the Federal Circuit held in favor of the United States finding that the landowner lacked the reasonable, investment-backed expectations that are necessary to establish a taking.

The Long Road to Development

The 1973 sales contract for the forty acre tract, which consisted of thirty-two acres of salt marsh and freshwater marsh, stated "The Buyers recognize that certain of the lands covered by this contract may be below the mean high tide line and that as of today there are certain problems in connection with the obtaining of state and Federal permission for dredging and filling operations."[1] By 1980, when Good began his efforts to develop the property, Good and his land planning firm acknowledged that obtaining the necessary permits was "at best difficult and by no means assured."[2] Development plans included filling 7.4 acres of salt marsh and excavating another 5.4 acres of salt marsh in order to create a 54-lot subdivision and a 48-slip marina. The landowner initially obtained federal, state, and county approval to develop the property by 1984 but hurdles from newly enacted state law prevented development and Good eventually submitted a scaled-down plan to the Corps. The court noted that "although the new plan greatly reduced the overall number of houses, it located all of them in the wetlands area."[3] The proposed wetlands loss was only reduced from 10.53 acres to 10.17 acres.

Good ran into further problems, however, even with a scaled-down development. The Lower Keys marsh rabbit was listed as an endangered species in 1990 and the silver rice rat was listed in 1991, triggering review by the Fish and Wildlife Service. Ultimately, the Service recommended that the Corps deny the permit or amend it to include alternatives such as locating all homesites in upland areas and limiting water access to a single community dock. Following the Corps' permit denial in 1994 based on the development's threat to endangered species, Good filed suit.

Court Finds No Taking

The Court of Federal Claims granted summary judgment in favor of the United States finding that the Corps' denial of the permit did not constitute a "per se" taking because the Endangered Species Act did not require that the property be left in its natural state and because the property retained value, either for development or for sale of transferrable development rights.[4] In addition, the court held that Good lacked reasonable, investment-backed expectations because federal and state regulations imposed significant restrictions on his ability to develop his property both at the time of purchase and of development.

For any takings claim to succeed, the claimant must show that the government's regulatory restraint interfered with his investment-backed expectations in a manner that requires the government to compensate him and limits recovery to those owners who can demonstrate that they bought their property in reliance on the non-existence of the challenged regulation. On appeal to the Federal Circuit, Good argued that the Supreme Court has removed the requirement for reasonable, investment-backed expectations, at least in cases where the challenged regulation eliminates virtually all of the economic value of the landowner's property.[5]

The Federal Circuit disagreed with this rationale, holding that Supreme Court doctrine still requires Good to prove that he had reasonable, investment-backed expectations of building a residential subdivision on Lower Sugarloaf Key. Good also claimed that because his permit was denied as a result of listings under the Endangered Species Act, which did not exist

at the time he bought his property, he could not have anticipated being denied a permit under that statute. The court noted that Good's claim was "not entirely unreasonable" but rejected it explaining that "surely Appellant was not oblivious to this trend" of rising environmental awareness and ever-tightening land use regulations. Citing Good's inaction between 1973 and 1981 and the original contract noting potential difficulties in obtaining permits, the court held that Good must have been aware that the standards and conditions governing the issuance of permits could change to his detriment. Without analyzing the lower court's determination that Good's property retained value, the Federal Circuit affirmed the decision finding that Good could not have reasonably expected to develop the property.

ENDNOTES

1. 189 F.3d at 1357.
2. *Id.*
3. 189 F.3d at 1359.
4. Transferrable development rights (or TDRs) programs aim to direct development away from environmentally sensitive land to land more suitable for development by creating a market for development rights. *See Good v. United States*, 39 Fed. Cl. 81, 107 (1997).
5. Good bases this argument on *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

NOAA Fisheries Implements List of Allowable Fisheries, Gear

Adapted from a NOAA Press Release

The National Marine Fisheries Service has completed its implementation of a list of allowable fisheries and fishing gear that is expected to provide better management of fish stocks and habitat essential to their long-term health, the Commerce Department's National Oceanic and Atmospheric Administration announced today. Required under the Magnuson-Stevens Fishery Conservation and Management Act, the list incorporates substantial input from fishing industry members, fishing managers, and others concerned that some gear types or fisheries may have been left off a proposed list earlier this year.

By completing the list, managers in NOAA Fisheries and the regional fishery management councils now have a new tool that will inform them on any potential adverse effects of a fishing gear before it is used, thus enabling them to take action to protect fish stocks before fishing is begun, if necessary.

"We can now proactively manage new gear or fisheries," said Penny Dalton, assistant administrator for NOAA and director of NOAA Fisheries. "In the past, fishermen were free to fish for any species or use any gear unless managers took action to restrict them. These new regulations are part of a precautionary approach to fisheries management, adopted under the Magnuson-Stevens Act and by the United States under the international code of conduct for responsible fisheries." In late January, NOAA Fisheries managers published a list of allowable fisheries and fishing gear that could be used in U.S. fisheries. The regulations, which affect all federally managed marine waters, were to have become effective July 26, 1999, and prohibited any person or vessel from using fishing gear or participating in a fishery that was not included in the published list, without notifying fishery managers 90 days in advance.

The 180-day delay in implementing the rule, from January until July, was to allow fishermen the opportunity to identify any final changes needed in the list. However, fisheries managers received comments asserting that the list did not include all gear currently used in some fisheries, nor all of the fisheries in federal waters. So, NOAA Fisheries managers delayed the effective date of the list of allowable gear and fisheries until Dec. 1, 1999, and added a comment period that ended on Sept. 13, 1999. The list has now been revised and the new requirements are now in effect.

New gear types can be used and/or new fisheries can be opened, but only after one of the regional fishery management councils, or NOAA Fisheries in the case of Atlantic highly migratory species, has an opportunity to review the impact the gear or fishery may have on fish stocks under its stewardship.

A copy of the implementing rule, including the list of fisheries and gear, can be obtained on the Internet at: http://www.nmfs.gov/sfa

Balancing Approach Would Inject Fairness into WTO Disputes

Richard J. McLaughlin, J.S.D.

Editor's Note: The following is an excerpt from Dr. McLaughlin's paper "Sovereignty, Utility, and Fairness: Using U.S. Takings Law to Guide the Evolving Utilitarian Balancing Approach to Global Environmental Disputes in the WTO" that will be published in the OREGON LAW REVIEW this spring. For a copy of the paper, contact the Legal Program.

For nearly two decades, the United States has used threats of trade restrictions as a fundamental instrument of international fisheries and marine conservation policy. Trade embargoes have been threatened or actually imposed for a variety of extraterritorial marine conservation purposes including concerns over commercial whaling, dolphin mortality in tuna fishing operations, the use of high seas driftnets, and most recently the drowning deaths of sea turtles in shrimp fishing nets.

On several occasions these restrictions have been challenged as illegal obstacles to free trade under the dispute settlement provisions of the General Agreement on Tariffs and Trade (GATT) and its successor organization the World Trade Organization (WTO). Most recently, on October 12, 1998, the Appellate Body (AB) of the WTO ruled that the U.S. violated the WTO agreement when it imposed an embargo on shrimp from India, Malaysia, Pakistan, and Thailand for failing to adopt sea turtle protection policies that were comparable to U.S. policies.[1] The AB, although acknowledging that the trade restrictions served a legitimate environmental objective recognized under the treaty, found that the restriction was applied in an unjustified and arbitrary manner in violation of the treaty.

Environmentalists charge that this and other decisions undermine world-wide environmental efforts and assembled the "Battle in Seattle" this past December to force the WTO to strike a better balance between corporate interests and the interests of workers, consumers and the environment. The leaders of labor, environmental and human-rights groups whose protests disrupted the meeting were quick to claim victory when the trade ministers failed to set an agenda for the next three years. The trade ministers said it was the complexity of the negotiations and the failure to compromise that ultimately doomed the talks. The negotiations, demonstrations, and resulting failure pave the way for a new approach to free trade including a better balancing by the WTO of nations' sovereignty and environmental actions.

Environmental Measures & World Trade

The WTO provides a regime to encourage free and open trade but contains exceptions in Article XX that provide justification for measures necessary to carry out policies such as protecting the global environment. Each exception is conditioned upon meeting the requirements in what is commonly termed the "chapeau" or preambular clause of the article. The chapeau prohibits any exception if it constitutes (1) arbitrary or unjustifiable discrimination between countries where the same conditions prevail; or (2) a disguised restriction on international trade.

Early tribunal decisions viewed the Article XX exceptions narrowly and questioned the validity of conflicts between the promotion of free trade and environmental protection. They believed that the continuing process of trade liberalization was the overriding intent of the organization and as a consequence, placed obstacles in the path of any nation seeking to invoke an exception under Article XX by limiting them to a narrow class of activities.

In 1996, soon after the U.S. imposed a world-wide import ban on shrimp from nations that were not certified as having sea turtle protection programs equivalent to U.S. programs, India, Malaysia, Pakistan, and Thailand brought a legal challenge to the Dispute Settlement Body of the World Trade Organization (WTO) for violation of free trade obligations. On April 6, 1998, in a widely-criticized and analytically suspect decision, the settlement panel found against the U.S. on every substantive point and ordered it to bring its law into compliance with the treaty.[2] In reaching its conclusion, the panel described as especially risk-producing, the fact that the United States did not adequately engage in negotiations with each nation prior to imposing its measures that were intended to coerce nations into adopting environmental standards comparable to those in the U.S.

The U.S. appealed and, although harshly critical of much of the legal analysis employed by the original panel and supportive of the U.S. on a couple of key issues, the AB ultimately ruled that the trade restrictions employed by the U.S. were an arbitrary and unjustifiable discrimination and ordered it to either bring its measures into conformance or pay compensa-

tion to the four claimants.

Several aspects of the decision seem to signal a more environmentally friendly outlook by the WTO. For example, the AB ruled for the first time that unsolicited *amicus* briefs by non-governmental environmental organizations were allowed and the AB found that the trade restrictions on shrimp, despite their extraterritorial nature, did qualify for exception under Article XX(g) which allows States Parties to adopt measures "relating to the conservation of exhaustible natural resources . . . ."

The AB then examined whether the U.S. measures constituted "unjustifiable discrimination between countries where the same conditions prevail" and found that the shrimp embargo was coercive in nature because it was placed on all nations that did not adopt conservation policies that were identical to those in effect in the U.S. As a consequence, nations like Australia, which has strict turtle conservation policies in place, but has chosen not to use turtle excluder devices (TEDs) as the centerpiece of that policy, were still subject to the embargo. The AB asserted that the measure was more concerned about requiring other members to adopt the same environmental regulations that it imposed on its domestic shrimp fishermen than in protecting and conserving sea turtles.

A Balancing Approach for the WTO

The U.S. has agreed to bring its policy into compliance with the AB decision rather than pay compensation to the four nations. However, the decision does little to clarify the circumstances under which member states may use trade restrictions for environmental purposes without risking future conflicts. Many of the same concerns that have been expressed in regard to the aims and moral approaches of allocating resources through international trade, have also been raised in regard to domestic laws governing the allocation of private property rights in the United States. This concern is framed as a debate over the aims and purposes of the "takings clause" in the Fifth Amendment to the U.S. Constitution and its impact on the ability of the government to regulate or "take" private property without due compensation. More specifically, the parallel debate in the context of trade law and U.S. takings law involves finding an answer to the following question: under what circumstances should a government be permitted to regulate conduct that is determined by that government to be either detrimental to the public interest or necessary to promote a public interest without having to compensate those whose rights are affected by that regulation?

The question as posed to the international trade community involves the authority of one nation, for example, the United States, to impose a trade embargo as a method of regulating the environmental policies of another nation, for example, Thailand, in order to protect a natural resource of international concern, such as sea turtles. Weaknesses in the current system can be addressed by implementing a balancing approach based on three primary utilitarian principles based on domestic laws proffered by Professor Frank Michelman in 1967: public benefit to the international community, demoralization costs to the targeted nation, and the cost to settle the dispute.[3]

By explicitly and openly balancing the benefits to the international public with demoralization and settlement costs to achieve fairness, GATT/WTO dispute settlement tribunals can incorporate the legitimate expectancy interests of its members into its decision-making processes. By using a set of discrete criteria in its balancing effort, members will be provided with a more understandable and defensible method of identifying "arbitrary or unjustifiable discrimination" than the current interpretations allow. The factors below are examples of those that a GATT/WTO tribunal should examine when conducting a balancing analysis.

In many ways, the AB is currently balancing these concerns in its recent decisions but the development of a list of specific criteria would allow for a balancing of the benefit to the international community, the demoralization costs to the targeted nation, and the costs to settle the conflict without the measure. For instance, the AB necessarily believed that despite the public benefits created by the U.S. turtle protection measures, the disruption to established GATT/WTO treaty-based expectations and the intrusion on sovereign rights caused by the rigid standards imposed by the U.S. created unacceptably high demoralization costs. In addition, the AB found the settlement costs to the U.S. not particularly substantial, commenting on the ability of the United States to successfully negotiate the Inter-American Convention for the Protection and Conservation of Sea Turtles (Inter-American Convention). Thus, if the U.S. was capable of settling its dispute with some members by negotiating a region-

See WTO, page 10

WTO, from page 9

Balancing Approach for WTO Disputes

Factors to Assess Public Benefit to the International Community

What are the characteristics of the natural resource being protected?

- Is the resource threatened or endangered, highly migratory or a straddling or shared resource?
- Is it especially susceptible or sensitive to the harm that is being prevented?
- Is it an important component of a global ecosystem?
- Is there broad consensus for its conservation?
- Does it hold a unique place in the economic or cultural values of nation or the international community?

What are the characteristics of the conservation techniques being imposed?

- Is the conservation technique effective and efficient?
- Will implementation be a financial burden to the targeted nation?
- Will "reciprocity of advantage" exist as a result of benefits conferred by the conservation technique?
- Do some nations have a greater burden than others?
- Is there international consensus approving the technique?

Factors to Assess Demoralization Costs

What is the extent to which the trade restriction interferes with sovereignty-based or treaty-based expectations?

- Is the action unilateral toward a small number of nations?
- What type of trade restriction is being imposed, i.e. is it narrowly tailored to the alleged harm?
- Must the techniques be applied within the territorial boundaries of the targeted nation?
- Is the trade measure imposed to immediately protect a particular resource or to coerce changes in domestic policies to protect the resource in the future?
- Has the restricting nation contributed to the harm that is prevented by the trade restriction?
- Has the restricting nation engaged in good faith negotiations with the targeted nation?
- Does the technique imposed prohibit the economic activity or merely require a moderate change in behavior?
- Are all nations subject to the measures treated equally and accorded due process safeguards?
- Does the resource hold an especially valuable place in the economic or cultural values of the targeted nation?

Factors to Assess Settlement Costs

What is the extent to which trade restricting nation can avoid demoralization costs by compensation?

- Is there a high or low probability for a negotiated settlement?
- What level of compensation is necessary to achieve the intended environmental goal?
- Would negotiations or settlement costs apply to a few nations or a large and diverse group?
- Could the trade restricting nation compensate the targeted nation for the losses as a result of the imposition of conservation techniques? Are there non-economic factors (historical, cultural, religious) to prevent a solution?
- Is there an international forum independent of GATT/WTO to assist in finding a solution?

al agreement, it is reasonable to assume that a course of action short of import prohibitions was available at a non-prohibitive cost.

In the end, the AB incorporated (albeit unknowingly) all three of Professor Michelman's criteria into its substantive analysis of whether the U.S. trade measures created "arbitrary or unjustifiable discrimination" - it found public benefit levels high; demoralization levels of equal or greater intensity; and, settlement costs relatively low. Consequently, it decided that the United States should bring its trade measures into conformance with the treaty or pay compensation as set out in the applicable provisions of the WTO Dispute Settlement Understanding.

Conclusion

The WTO is at a crossroads. A comprehensive and consensual set of principles or guidelines would improve the ability of nations to predict how their actions aimed at environmental protection may be treated by future panels if challenged and would add legitimacy to the dispute settlement process.

ENDNOTES

1. Appellate Body Report, United States - Import Prohibition of Certain Shrimp and Shrimp Products, GATT Doc. WT/DS58/AB/R (Oct. 12, 1998).
2. World Trade Organization Report of the Panel on United States Import Prohibition of Certain Shrimp and Shrimp Products, 37 I.L.M. 832 (1998).
3. See Frank I. Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1214-24 (1967).

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tional agreements and treaties dealing with oil tanker transport and maritime commerce. The Ports and Waterways Safety Act of 1972 (PWSA) regulates vessel traffic "in any port or place under jurisdiction of the United States."[1] The Port and Tanker Safety Act of 1978 mandates that the Coast Guard promulgate regulations dealing with design, construction, maintenance and operation of vessels and certain other requirements for personnel, training and safety on board these vessels.[2] The Oil Pollution Act of 1990, passed in response to the Valdez spill, imposes liability on parties responsible for an oil spill and authorizes the states to impose additional liability requirements for oil spills in state waters.[3]

In 1991, Washington adopted a Vessel Oil Spill Prevention and Response Act.[4] The Act established the Office of Marine Safety to promulgate standards for oil tankers moving in and through state waters. The regulations require a training regiment for the crew, English language proficiency for members of the crew, navigation watch procedures, and casualty reporting measures for any vessel that ultimately reaches Washington's seacoast.

Following the enactment of Washington's standards, the International Association of Independent Tanker Owners (Intertanko), a trade association of more than 300 members, brought this suit seeking relief against the state officials charged with enforcing the new standards. Intertanko contends the BAP standards invade an area long pre-empted by the federal government and are inconsistent with several international treaties. Washington argues that these measures are necessary to protect the coastal waters from the serious dangers of an oil spill and that they do not conflict with federal regulations. The state contends that provisions in the Oil Pollution Act of 1990 (OPA), in which Congress specifically expressed that nothing in the statute shall be construed to prevent state and local governments from imposing additional requirements, allow state regulation of tanker operations.

This is not the first challenge to Washington's maritime rules. The Supreme Court reviewed the PWSA as a result of a 1978 challenge to state regulations regarding tanker operation, size, design and construction.[5] The Court found that Title I which pertains to protection of navigation and marine environment does not "cover the field" and preserves to states authority to regulate based on peculiarities of local waters and seacoasts. However, Title II mandates uniform federal rules on the design, construction, repair, maintenance, operation and personal qualifications, and that only the federal government may regulate on these specified matters.[6] Thus, since 1978 under the PWSA, states have had authority to regulate a vessel's conduct within its own waters but not to regulate the design or construction of the vessel.

In the present case, Intertanko argues that Washington's regulations have a far-reaching extraterritorial effect on tanker personnel and operation and do not address peculiarities of the state's waters. Washington counters that its rules do not seek to regulate design or construction of the tanker, pertain to safety and spill-prevention measures within the its local waters. The District Court agreed with Washington and held the regulations enforceable, rejecting Intertanko's argument that the standards invade a comprehensive federal regulatory scheme. The United states intervened on Intertanko's behalf, prompted by international concern that upholding these state maritime laws would defeat an historic effort to create uniformity of shipping standards.[7]

Analysis

On appeal, Washington contends that a discussion of preemption should include three types of preemption: express preemption in which the federal statute clearly provides that states may not regulate the same matters that are the subject of the federal laws; implied preemption in which the federal regulatory scheme "covers the field" and leaves no room for individual state laws; and conflict preemption in which the specific state law is in direct conflict with the federal law, such that the state law acts as an obstacle to achieving the purpose of the federal law. The state argues that its regulations are not expressly preempted by federal statutes, nor do they pertain to design or physical construction of the vessel, an area specifically covered by federal laws. Washington further maintains that Congress' purpose in the PWSA and OPA was spill-prevention and environmental protection and that its regulations do not pose an obstacle to achieving that purpose, but instead aid in that purpose.

Intertanko and the United States disagree that Congress intended the PWSA to address only physical construction and design of tankers, and point out that the statute includes express references to the "personnel quali-

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fications, operation and manning of the vessel." They argue that PWSA preserves only the authority to regulate as to peculiarities of local waters and seacoasts and that OPA's saving clause applies only to imposition of liability for oil spills. While Intertanko argues that the PWSA as amended preempts states laws in regulation of maritime commerce, much of Washington's argument focuses on the enactment of OPA. Provisions in that statute provide that states may impose additional requirements and liability for oil spills in local waters. The Court responds that OPA is specifically a pollution liability statute and by its language and structure cannot be read to preserve to the states authority to regulate outside its limited scope. Since the state laws in question speak directly to tanker specifications and not liability, the saving clause in OPA does not spare Washington's regulations from preemption.

The Supreme Court concludes that the federal regulatory scheme preempts Washington's regulations based on an analysis of four of those regulations.

Training Requirements:

Washington's regulations impose a series of training requirements on a tanker's crew.[8] A vessel is required to certify that its crew has completed a comprehensive training program approved by the state. Intertanko argues that this requirement does not address matters unique to the state's local waters and instead impose "procedural and operational" requirements that are effective outside of Washington's waters. The Court agrees, holding that requirements specific to the crew would be in effect even when the vessel was not in local waters. The Court held the crew regulations are neither specific to liability for spills, as allowed by OPA nor limited territorially to local waters, as allowed by PWSA.

English Language Proficiency:

Washington's English-proficiency regulation requires all licensed deck officers and vessel masters to be proficient in English and at least one of those officers to be on the navigation bridge while the vessel is under way. Intertanko points out that federal regulations provide that only certain crew members be able to understand and use English and that the effect of Washington's rule is not limited to governing local peculiarities. The Court agreed, referring to this regulation as a "personnel qualification" and holding that it is pre-empted by those federal statutes that specifically provide for personnel requirements.

Navigation Watch Rules:

The regulations require specific watch and lookout procedures and a standard operating practice for the ship's bridge. Washington requires that at least two licensed deck officers, a helmsman and a lookout be on navigation watch throughout the state's waters. The Court calls this rule a general operating requirement and an attempt to regulate a tanker's "operation" and "manning" and holds the state regulation unenforceable.

Reporting Requirements:

Washington's regulation specifies that casualties occurring anywhere in the world must be reported when the vessel ultimately reaches the state's waters. A vessel operator is required to make a detailed report to the state on specific casualty incidents. The Court holds that Congress intended that the Coast Guard's reporting procedures be the sole source of a vessel's reporting obligations on such matters. The Court found that Congress did not intend that federal reporting requirements be cumulative to those of each and every jurisdiction into which a vessel enters.

Conclusion

In the area of maritime commerce and shipping, the comprehensive federal regulatory scheme and the national and international effort to maintain uniformity in shipping standards leaves the individual states with few alternatives in fashioning laws to protect important and vulnerable coastal waters. The Court determined that it is for Congress and the Coast Guard to determine the sufficiency of federal regulations to deal with prevention of environmental harm. While states may regulate in matters peculiar to state waters, a state may not attempt to supplement existing federal statutes without compromising the uniformity of the federal scheme. In spite of the individual states' significant interest in preventing oil spills, in matters of federal preemption, it is not the sufficiency of the regulations that is at issue but the question of political responsibility between federal and state governments.

ENDNOTES:

1. 33 U.S.C. § 1223 (1997 ed. Supp. III).
2. 46 U.S.C. § 3703.
3. 33 U.S.C. § 2718(a).
4. Chapter WAC 317-321.
5. *Ray v. Atlantic Richfield Co.*, 98 S.Ct. 988 (1978).
6. *Id.* at 999.
7. The Ninth Circuit held the majority of the states' laws enforceable, ruling against the state on only one issue.
8. WAC § 317-21-230.

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acts to deter future violations and that those civil penalties, even though payable to the government and not the plaintiff , do redress injury suffered by the plaintiff.

Background

In 1972, Congress enacted the Clean Water Act (CWA) which provides for the issuance of National Pollutant Discharge Elimination System (NPDES) permits by the EPA or authorized state agencies. NPDES permits impose limitations on the discharge of pollutants into the Nation's waters and provide for monitoring and enforcement procedures. A suit, known as a citizen suit, to enforce compliance with a permit may be brought by any "person or persons having an interest which is or may adversely be affected", who then must give the alleged violator and the relevant state agency 60 days notice prior to filing suit.[1] This notice allows the alleged violator an opportunity to come into compliance with its permit and the state agency time to pursue enforcement measures. Courts have held that citizens lack statutory standing to sue for violations that have ceased by the time the complaint is filed and a citizen may be barred from filing a suit if the EPA or the State has commenced and is "diligently prosecuting" its own enforcement action. Courts are authorized in citizen suit proceedings to enter injunctions and to assess civil penalties, payable to the United States Treasury.

In 1986, Laidlaw Environmental Services, Inc. began operating a hazardous waste incinerator and wastewater treatment plant in Roebuck, South Carolina. Pursuant to the CWA, the South Carolina Department of Health and Environmental Control (DHEC) granted Laidlaw an NPDES permit. The permit authorized the discharge of treated water into the North Tyger River but placed limits on the discharge of several pollutants, including mercury. Between the years of 1987 and 1995, Laidlaw failed to meet the permit's limit on mercury discharge, on 489 occasions.

In 1992, Friends of the Earth (FOE) instituted litigation in an attempt to force Laidlaw to come into compliance with its permit.[2] The group notified Laidlaw of its intention to file a citizen suit upon the expiration of the 60 day notice period. In an effort to bar this lawsuit, Laidlaw contacted DHEC and requested that the agency file its own enforcement action against the company. The agency did file suit and subsequently reached a settlement with Laidlaw for $100,000 in civil penalties. At the end of the 60-day notice period, FOE filed this citizen suit alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and civil penalties. Laidlaw moved for summary judgment on the ground that FOE lacked standing to bring the suit for its failure to demonstrate injury. Laidlaw also moved to dismiss the action arguing that the citizen suit was barred by DHEC's prior action.

The District Court held that DHEC's action had not been "diligently prosecuted" and allowed the citizen suit to proceed.[3] In January of 1997, the court held that Laidlaw had gained an economic benefit of $1,092,581 as a result of its extended period of noncompliance. However, the court assessed a civil penalty of only $405,800, stating that an injunction was inappropriate because Laidlaw had been in substantial compliance with its NPDES permit since August of 1992 and that its entire facility had been closed in 1996. FOE appealed the penalty judgment, arguing that it was inadequate, but did not appeal the denial of the injunctive relief. Laidlaw cross-appealed, arguing that FOE lacked standing and that DHEC's action qualified as a diligent prosecution.

The Court of Appeals assumed that FOE initially had standing to bring the suit, but decided that the case had become moot. Focusing on the element of redressability, the Court of Appeals declared that the case was moot because the only remedy available to FOE (civil penalties payable to the government) would not rectify injury suffered by the plaintiffs. The Supreme Court granted certiorari to determine whether a defendant's subsequent compliance renders a citizen suit moot.

Analysis

Laidlaw uses the procedural doctrine of "standing" to argue that FOE is not in the position to bring a citizen suit. Article III of the U.S. Constitution limits who may seek relief in a federal court with the doctrine of "standing," which refers to whether a plaintiff has a legally sufficient interest in the case such that he or she is the appropriate party to participate in the lawsuit. This limitation preserves the court's resources for cases in which the parties have a tangible interest in the outcome. Standing requires the plaintiff to demonstrate "injury in fact," that the injury be traceable to the defendant's actions and that the injury is likely to be redressed by a favorable judgment.[4] Environmental organizations such as FOE often face issues of standing because opposing parties typically argue that the organization itself has not been harmed by any action or inaction and therefore has no

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standing to sue. This argument may be overcome by a showing that one of the members of the plaintiff-group has suffered actual damage or loss.

The doctrine of mootness applies when issues of a case are no longer viable. Citizen suits face the challenge of mootness when the violations that trigger the litigation cease before the case is decided. In this case Laidlaw had come into compliance with its permit following the settlement with DHEC and had closed its facility prior to this appeal.

Standing. Laidlaw argues that there were no adverse environmental effects resulting from the elevated levels of mercury in the discharge from its incinerator and that FOE failed to prove "injury in fact." The Supreme Court rejected these arguments stating that only injury to the plaintiff (not the environment) must be established to meet the standing requirements and that FOE met its burden of proof by submitting several affidavits from members of FOE describing the adverse effect of Laidlaw's activities on the members' use of the polluted waterway, including canoeing and picnicking.

Next, Laidlaw argued that FOE specifically lacked standing to seek civil penalties because such penalties, payable to the government, offer no redress for FOE's alleged injury. The defendant contends that in failing to appeal the denial of injunctive relief, FOE lost its standing to continue to seek civil penalties. The Court disagreed, citing the CWA's legislative history in which civil penalties are considered to promote immediate compliance by the defendant and to deter future violations. The Court held that a court, acting within its discretion, may award either injunctive and declaratory relief or civil penalties and that such civil penalties are appropriate relief in this case.

Mootness. While Laidlaw's arguments in the lower court focused on FOE's standing, the Court of Appeals for the Fourth Circuit brought the doctrine of mootness into the analysis in its holding that by Laidlaw's compliance and recent shutdown, the viability of the issues ceased. However, the Supreme Court declares that it is well settled that a defendant's voluntary cessation of a challenged activity does not deprive a federal court of its power to determine that activity's legality. The standard for determining whether a case is moot, when the defendant has ceased its conduct, is "if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur."[5] The burden of proof on this standard is with the one claiming mootness , hence, Laidlaw must show that events make it absolutely clear that its permit violations could not reasonably be expected to recur. FOE points out that Laidlaw has failed to make such a showing and that, in fact, Laidlaw retains its NPDES permit. The Supreme Court decided that the effect of Laidlaw's compliance and the facility closure on future violations is a disputed factual matter and should be considered on remand.

Conclusion

The Supreme Court's decision in this case resolves inconsistency in the lower courts as to whether the voluntary cessation of a challenged activity renders a citizen suit moot. The Court points out that in such a situation, the defendant has the burden of proving that the violations could not reasonably be expected to recur. Such definitive proof is required before the issues of a citizen suit will be deemed moot. Further, the Supreme Court determined that civil penalties, which are payable to the government, are an appropriate award to redress the plaintiffs' injury. An award of civil penalties without an injunction is an expression of the need for deterrence of the challenged conduct and as such is an appropriate award in a citizen suit. The Supreme Court reversed and remanded the case to the district court for consideration in keeping with this decision.

ENDNOTES

1. 33 U.S.C. § 1365(a).
2. Friends of the Earth (FOE) and Citizens Local Environmental Action Network, Inc. (CLEAN) initiated the suit and were later joined in the litigation by Sierra Club.
3. The court found that in imposing the civil penalty of $100,000 against Laidlaw, DHEC had failed to recover, or even to calculate, the economic benefit that Laidlaw received by its noncompliance. More persuasive still, was the fact that Laidlaw's own lawyer had drafted the complaint and paid the filling fees on behalf of the agency.
4. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). Lujan describes the standard as "injury in fact", being an injury that is both concrete and either actual or imminent (not hypothetical).
5. *See* United States v. Concentrated Phosphate Export Assn., Inc., 339 U.S. 199 (1968).

Lagniappe *(a little something extra)*

Around the Gulf...

On February 1, the National Agriculture Statistics Service released the results of the 1998 Census of Aquaculture which provided the first detailed picture of the aquaculture industry revealing Mississippi at the top of the sales chart for domestic aquaculture produced in 1998. The state captured nearly 30 percent of the $978 million dollars in sales for the year, with Arkansas, Florida, Maine and Alabama ranked second through fifth.

In June, a new system will be implemented for collecting royalties on crude oil pumped from the Gulf of Mexico and federal lands. After a four-year battle with the oil industry, the Clinton Administration disclosed the new system which will tie crude oil values to a market indicator, instead of letting oil companies set arbitrary values at the wellhead.

Around the Nation and the World...

Los Angeles law enforcement suspected foul play when Big Mama, a 50 pound 25-year-old Halibut beloved by visitors to the California Halibut Hatchery, was missing from its 5,000 gallon fish tank. The thief was identified by the evidence trail of algae found in his apartment after catching Big Mama and serving her at a Manhattan Beach birthday barbecue. He faces six months in jail, another six in a state facility for alcoholic treatment, and a fine of $50,000.

In March, the U.S. Coral Reef Task Force announced a plan to set aside at least 20 percent of America's coral reefs as "ecological reserves." The plan provides for designation of the coral reefs as no-take reserves, mapping of all U.S. coral reefs and an integrated national monitoring system and includes a ban on fishing and other disruptive activities by the year 2010.

A Kansas pipeline company, Koch Industries, will pay the largest civil environmental penalty ever levied against a single business, $30 million dollars, to settle claims of more than 300 violations of the Clean Water Act. The spills occurred between 1990 and 1997, resulting from leaks and cracks in a pipeline and poor management practices. In addition to the $30 million dollar fine, the company will pay $5 million dollars for implementation of environmental projects and safety studies.

Recently, the British Columbia government announced that the province has withdrawn its legal appeal against the Pacific Salmon Treaty saying that despite continued concerns about the salmon treaty, the province will seek to work more closely with the U.S. and Canada to promote a conservation-based sustainable fishery. In 1998, British Columbia filed the appeal following the dismissal of a lawsuit alleging that the U.S. was violating conservation and equity provisions of the treaty.

Mexico's president halted plans to allow expansion of a salt plant near the San Ignacio lagoon. The expansion would have positioned the huge salt plant on the edge of the Vizcaino Biosphere Reserve which is home to many unique and threatened species and is a winter breeding ground for the gray whale. Environmental groups claimed the victory as one of the most important environmental decisions today.

Happy Anniversary

WATER LOG - 20 year • Earth Day Celebration - 30 Years

Environmental Protection Agency - 30 Years

WATER LOG (ISSN 1097-0649) is a result of research sponsored in part by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, under Grant Number NA86RG0039, the Mississippi-Alabama Sea Grant Consortium, State of Mississippi, Mississippi Law Research Institute, and University of Mississippi Law Center. The U.S. Government and the Mississippi-Alabama Sea Grant Consortium are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon. The views expressed herein are those of the authors and do not necessarily reflect the views of NOAA or any of its sub-agencies. Graphics ©Nova Development Corp., ©Corel Gallery, NOAA and the Alabama Geologic Survey.

MASGP-00-004-01
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WATER LOG

Call for Public Comment: Aquaculture in Mississippi

On April 18, the Mississippi Commission on Marine Resources approved proposed state Aquaculture Guidelines for public review and comment. Requests for copies and comments should be directed to the:

Commission on Marine Resources
1141 Bayview Avenue, Ste. 101
Biloxi, MS 39530

Or, you may deliver your comments at the next Commission meeting on May 18.

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