



Clinton, Gore Call for Ocean Protection

Ask Congress to Fund Initiatives, Create Oceans Commission and Ratify Law of the Sea Convention

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

Citing a host of current and potential threats to the world's oceans, and the need for a global approach to address them, President Clinton and Vice President Gore called on members of Congress, cabinet officials, and an assembled contingent of scientists, academics, environmental and industry leaders to "make the 21st century a great century of stewardship of our seas."

The President, with a sun-brightened Monterey Bay as his backdrop, addressed a coalition of over five hundred participants at the National Oceans Conference on June 12, in Monterey, California. The conference was a rare gathering of top-ranking White House officials, military leaders, and ocean advocates.

The two day conference hosted by Navy Secretary John Dalton and Commerce Secretary William

Daley included information-gathering sessions on Commerce; Global Security; Environment and Health; and, Exploration, Education and Research.

The sessions were designed to initiate a dialogue between government officials and representatives from industry, academia, and conservation representatives. Panelists and attendees were subsequently called together in an afternoon session moderated by the

see Ocean Stewardship pg. 2

Fisheries Enforcement Heats Up in Gulf

Kristen M. Fletcher, J.D., LL.M., and Elizabeth B. Speaker, 3L

In carrying out their mandate to enforce fisheries laws and regulations in the Gulf of Mexico, the United States Coast Guard (USCG) and the National Marine Fisheries Service (NMFS) have cited numerous fisheries violations in recent years, resulting in both fines and imprisonment for fishers and seafood dealers. The violations cover a broad scope of activities from falsifying permitting documents to fishing in a prohibited area. With millions of fishers in the

Gulf each year, investigating and executing the various laws can be a daunting task. But, NMFS Special Agent Gene Proulx explains that the laws are "no more or less difficult to enforce [than other laws] . . . if you have the hours to devote to prosecution."¹ The agencies have stepped up enforcement activities to meet the challenge inherent in rebuilding fish stocks and other marine species in the Gulf.

Gear Restrictions

This year, enforcement activities have targeted gear violations in shrimp trawls because 1998 is the

first year that NMFS has required shrimp trawls to use both turtle excluder devices (TEDs) and bycatch reduction devices (BRDs). Designed to allow sea turtles and finfish out of the shrimp trawl nets, improper installation or sabotaging the gear renders them useless in protecting these non-target species.

After numerous sea turtle deaths and strandings in March, the USCG and NMFS increased enforcement activities including surprise night boardings of shrimp boats. Generally, the officers found high compliance. But, in an investigation off the Texas coast, USCG

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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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Ocean Stewardship (cont. from p. 1)

Vice President who began by outlining some of the fundamental stewardship concerns regarding the oceans and their functions. "There is no other resource upon which we depend so much . . . but know so little," noted Gore. This conference, explained Gore, was the first step in an effort "to chart a comprehensive ocean policy" that would increase our understanding of the oceans, how they work, and the manner in which the U.S. should manage its myriad marine resources. The Vice President recounted the economic as well as environmental importance of ocean resources, characterizing the oceans as commercial highways, harvestable food sources, and recreational and aesthetic attractions. He also cited the need for increased study of the oceans in light of the recent scientific recognition that they serve as "a crucial barometer of our weather and climate" systems.

The Exploration, Education and Research panel members reported to Gore that a sense of understanding of the oceans was needed not only for the future scientists but for an informed citizenry as well. Panel Chair Katie McGinty explained that "education plays a vital role in ocean issues," adding that there is a recognized need to "break down the barriers of communication between disciplines" and further develop "partnerships between government, academia, and industry."

Speaking on behalf of the Commerce panel, Dr. D. James Baker, Under Secretary of Commerce for Oceans and Atmosphere, told the Vice President that the U.S. economy is substantially dependent upon international trade which is in turn dependent upon economically and environmentally sound port management. Baker included the concerns of overcapitalized fishing industries which threaten many stocks with overfishing. Gore asked William Amaru, a commercial fisherman and member of the New England Fisheries Management Council, how to address overfishing while minimizing impacts to fishing communities. Amaru responded that many members of the

Editor's Note: The opinion of the Supreme Court of Mississippi in *Watts v. Lawrence* (a case concerning littoral rights and boathouse construction covered in WATER LOG 17:2) is reported at 703 So. 2d 236-239 (Miss. 1997).

fishing community supported the federally sponsored buyouts to reduce overcapitalized fishing fleets. Amaru noted "it was a difficult pill to swallow, but it was a graceful way for some people to leave the industry."

Navy Secretary John Dalton reported on behalf of the Security panel and stressed the need for U.S. membership in the Law of the Sea Convention, the international treaty often characterized as the constitution for the world's oceans. Dalton cited the panel's unanimous support of U.S. ratification of the treaty, particularly in light of the fact that most countries in the world have signed on to the Convention. "We must have a seat at the international table," said Dalton, noting the importance of a U.S. influence as the Treaty comes into implementation. United States Coast Guard Commandant, Admiral James Loy, echoed Dalton's support for Treaty ratification and cited the Coast Guard's particular concerns. "We need a rule of law context," said Loy, referring to the express provisions in the Law of the Sea Treaty regarding navigation, law enforcement, and living marine resource management. "The rest of the world has endorsed [the treaty]," noted Loy, "it's time to join the rest of the world." Loy added that a clear set of internationally recognized laws would enhance the Coast Guard's ability in enforcement activities that often depend upon international cooperation and negotiation.

In his address on July 12, President Clinton cited some of the concerns discussed in the previous day's meetings and pledged a concerted effort by his administration to address them. In addressing the role of the United States as a leader on global ocean issues, the President made a public plea likely directed to the Senate Foreign Relations Committee as he declared, "we must join the rest of the world in ratifying, at long last, the Convention on the Law of the Sea." The President signed the Treaty in July of 1994 and forwarded it to the Senate for ratification in October of that year. However, to date, the Senate Committee has



President Clinton and Vice President Gore at the National Oceans Conference, June 12, 1998.

Photo by John A. Duff

made little effort toward ratification.

Citing specific and real concerns, including overfishing, habitat degradation, and the pollution-induced "dead zone" in the Gulf of Mexico, the President called for Congress to fund a \$224 million initiative to enhance the nation's oceans. He also extended a moratorium on offshore drilling along the California coast and much of the rest of the

nation and highlighted other efforts to take better care of the nation's ocean resources including:

- a permanent ban on drilling in the nation's marine sanctuaries;
- an Executive Order establishing a U.S. Coral Reef Task Force;
- a pledge to protect essential fish habitat and rebuild fish stocks;
- a move to invest \$2.3 billion in a Clean Water Action Plan to restore the nation's water quality; and,
- continued efforts to complete an advanced ocean monitoring system.

Mr. Clinton called on participants to "continue the critical dialogue that has begun at this conference." Indicating his own dedication, the President noted, "I am directing my Cabinet to report back to me one year from today with recommendations for a coordinated, disciplined, long-term federal oceans policy." He also promised to "work with Congress to create an oceans commission . . . to preserve the incomparable natural resources of our oceans and seas."

Mr. Clinton emphasized the importance of the task ahead and noted that "hope, creativity, and imagination will be required to meet the challenges that we face with our oceans," recounting that those same characteristics are "the traits that first enabled and inspired explorers to take to the sea." In concluding, the President noted that "In the 21ST century, [those traits] must lead us to preserve our living oceans as a sacred legacy for all time to come." ▼

For an analysis of the Oil Moratorium Extension, see page 4.

PRESIDENT CLINTON EXTENDS BAN ON OFFSHORE LEASING



President Clinton signs the directive extending the leasing moratorium.

Photo by John A. Duff

Tammy L. Shaw, 2L

At the National Oceans Conference in June, President Clinton announced a ten year extension on a moratorium on oil and gas leasing on federal submerged lands off much of the U.S. coastline. The original ban, imposed in 1990 by President Bush, prohibited new federal leases for oil and gas drilling activity. President Clinton's extension prohibits new leases until the year 2012.

Under the Outer Continental Shelf Lands Act (OCSLA),¹ the Department of the Interior has the power to regulate the resources of the outer continental shelf, including oil and gas deposits. In 1990, President Bush directed the Secretary of the Interior to delay leasing and development in these waters until the year 2002. The moratorium affected virtually all of the coasts of the North Atlantic, California, Washington, Oregon, New England, Mid-Atlantic and the Northern Aleutian Basin. It also included the Eastern Gulf of Mexico off the coast of Southwest Florida, an area extending 700 miles from Baldwin County, Alabama, southward to the Florida Keys.

In his announcement of the moratorium, President Bush explained his desire "to achieve a balance between the need to provide energy for the American people and the need to protect unique and sensitive coastal and marine environments." In June, President Clinton acknowledged this balance as well, noting that despite the fact there have been few oil spills in American waters, we must always recognize the risk of such occurrences.² Recognizing that offshore oil activity threatens fragile coastal ecosystems, President Clinton's directive extends the ban on new leasing and development in the areas covered by the original moratorium and places a permanent ban on

all leasing in areas designated Marine Sanctuaries under the Marine Protection, Research, and Sanctuaries Act of 1972.³

Effect on Gulf Leasing

The extension of the moratorium leaves the status quo in the Gulf of Mexico. The Western Gulf, which was not included in the original moratorium, remains open to new lease sales, while the Eastern region remains closed to any new leases. According to Gary Goeke at the Minerals Management Service's Eastern Gulf Information office, because their leasing strategy is of a long-term nature, their plans are not usually affected by short-term events.⁴ Thus, the approaching termination of the 1990 moratorium in 2002 had not become a part of any long-term planning for the Eastern Gulf.

While the moratorium extension maintains closure of all unleased areas in the Eastern Gulf, one strip south of Gulf Shores, Alabama, will be offered in a lease sale in the near future. According to Mr. Goeke, this strip had been a part of a strategic plan for many years and as such, is an exception to the ban on new leases in this area of the Gulf. The Minerals Management Service will continue to offer leases in the Western Gulf in biannual sales. ♡

NOTES

1. 43 U.S.C. §§ 1301 - 1356 (1998).
2. Remarks to the National Oceans Conference in Monterey, California, 34 WEEKLY COMP. PRES. DOC. 1107-1111 (June 12, 1998).
3. Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 34 WEEKLY COMP. PRES. DOC. 1111 (June 12, 1998).
4. Telephone Interview with Gary Goeke, Minerals Management Service, U.S. Department of the Interior, Eastern Gulf Information Office, Pensacola, Florida (July 12, 1998).



GULF RECEIVES AID FOR BROWN SHRIMP FISHERIES

On August 28, Commerce Secretary William Daley announced that \$3.5 million in federal funds will be provided to the Gulf states to help restore the Louisiana and Mississippi brown shrimp fisheries damaged by the 1997 Mississippi River floods and for research to study and predict damaging red tides in the region. Daley explained that part of the funds will help "restore the fisheries and prevent future failures while the remainder of the funds will be allocated among the five Gulf states for the research program to study red tides."

The National Marine Fisheries Service determined the brown shrimp commercial fishery failure was due to a resource disaster caused by Mississippi River flooding that forced the prolonged flow of large volumes of fresh water into Lake Pontchartrain, Louisiana, and the fresh water flooding into Mississippi coastal waters from the opening of Bonnet Carre Spillway to control flooding. Both events caused the death and displacement of brown shrimp as well as non-commercial marine species. The agency determined the extremely steep decline in brown shrimp caused losses of more than \$1 million to fishermen of each state.

As a result, the Gulf States Marine Fisheries Commission formally requested emergency relief on behalf of the states in October 1997, under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act. The Fisheries

Service proposes to provide up to a total of \$2.05 million to Louisiana and Mississippi to address the brown shrimp fishery failure under the Act. The Commerce Department proposes to allocate the remaining funds among the Gulf states for red tide research, including remote monitoring of coastal areas, field testing, and consumer education, contingent upon a 25% funding match from the states.

The Commerce Secretary announced the federal aid proposal as he led commissioning activities for the second largest fisheries research ship in the United States, the *Gordon Gunter*. Named in honor of one of the Gulf region's most eminent marine scientists, the *Gordon Gunter* will serve the Southeast Fisheries Science Center of NOAA's National Marine Fisheries Service by conducting scientific surveys and collecting data on the health and abundance of fishery resources in the Gulf of Mexico, Atlantic Ocean and Caribbean Sea. After commissioning, the *Gordon Gunter* will conduct a SEAMAP (Southeast Area Monitoring and Assessment Program) ichthyoplankton and marine mammal survey. The ship will collect fish eggs and larvae and observe and monitor marine mammals in the Gulf of Mexico. In his address, Daley noted that the ship will help "ensure that we have a consistent and reliable source of solid data." The ship's home port will be at the Fisheries Service's Mississippi Laboratories in Pascagoula. ✓

Adapted from a Press Release of NOAA Constituent Affairs.

RED SNAPPER MANAGEMENT UPDATE

In the last two issues of WATER LOG, we reported that the Gulf of Mexico Fishery Management Council adopted a 9.12 million pound total allowable catch for the red snapper fishery in the Gulf for this year. The quota was divided so that 6 million pounds were released for the period of January-August and the remaining 3.12 million pounds were held for the period of September-December, if the bycatch reduction devices on shrimp trawlers adequately reduced bycatch of juvenile red snapper.

In September, NMFS preliminarily reported that bycatch reduction devices in shrimp trawls released between 30% and 70% of the incidental finfish bycatch while releasing about 4% of shrimp caught. NMFS also authorized release of the remaining 3.12 million pounds for harvest.

Also in September, the Gulf Council voted 7-6 not to request NMFS to extend the recreational fishing season for red snapper beyond September 30. Even though recreational harvest is prohibited in federal offshore waters after this date, the Florida Marine Fisheries Commission decided to keep Florida inshore waters open until October 31. WATER LOG will continue to report on red snapper and reef fish management in future issues. ✓



Red Snapper Fishery Tests License Limitation System

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

In 1995, Congress handed a blow to fishery management in the Gulf of Mexico when it amended the Magnuson Act to include a moratorium to the proposed Individual Transferable Quota (ITQ) system for the red snapper fishery in the gulf.¹ The Gulf of Mexico Fishery Management Council scrambled to adopt an emergency endorsement system in order to keep open the commercial red snapper fishery. Recognizing that the endorsement system was a temporary solution and the ITQ option denied, the Council considered a license limitation system. Under Amendment 15 to the Reef Fish Fishery Management Plan, the council adopted this system last January. As the system completes its first year in action, it offers a unique perspective of the continuing transition from open access fishing to limited access.

Restricted Access to the Red Snapper Fishery

Since the inception of limited entry methods under the Reef Fish Fishery Management Plan, the Gulf Council has been reducing participation to the commercial red snapper fishery.² Originally, it included restrictive harvest levels and a vessel permitting system designed to limit access to commercial fishers historically dependent on the resource. By 1992, however, a race to catch fish — called a “derby” — resulted from quotas and closed seasons as red snapper fishers raced to harvest fish as quickly as possible to maximize their share of the quota before it was filled and the season closed. Since then, the Council has sought to combat the negative effects of the derby on the fishery.

In 1992, the Council established a moratorium on the issuance of additional vessel permits for three years. The permits were transferrable only by transfer of the vessel, prohibiting access by additional commercial participants during the moratorium while the Council evaluated a more comprehensive controlled access system. Also during this time, the Council adopted the red snapper endorsement system limiting

permitted vessels, whose owners could demonstrate landings of at least 5,000 pounds in two of the years 1990-1992, to vessel trip limits of 2,000 pounds and all other permitted reef fish vessels to trip limits of 200 pounds. Again, the Council’s intent was to restrict access to those persons with a demonstrated dependence on the fishery.

With the vessel permit and endorsement system in place, the Council began development of a limited access system for the commercial red snapper fishery. The new system needed to provide for the rebuilding of the red snapper stock but also put an end to derby fishing and provide for transferable fishing permits. Relying on information gathered from workshops with commercial fishers and public testimony, the Council selected the ITQ system in May, 1995, as the preferred system for the red snapper fishery. The ITQ system provided for the commercial red snapper quota to be divided into individual shares and distributed to fishers based upon their historical participation in the fishery. Once holding shares, ITQ participants could have entered and left the fishery, or adjusted their individual harvest, by buying and selling individual shares. Advocates of the ITQ system claimed that this system would end derby fishing because fishers could harvest their shares at any time of the year without fear that someone else would catch their fish and the season would close.

When Congress included language in the Sustainable Fisheries Act of 1996 to preclude operation of the ITQ system, the Gulf Council extended the red snapper endorsement system while the Council developed an alternative limited access system for the fishery.

From Endorsement to Licensing

The Council described the red snapper endorsement system as a “closed access system” because it precludes transfer of the endorsements.³ Transfer was allowed only on death or disability of the endorsement holder or to another vessel owned by the endorsement holder. Understanding that such a closed system can

exist for only a limited period without providing for transfer, the Council moved to adopt a license limitation system to allow for less restrictive transfer of endorsements or licenses and the opportunity for new participants to enter the fishery. The alternative to the limited licensing system was to return to open access fishing, an option many considered unreasonable in light of the overfished status of the red snapper stock.

License limitation is a form of limited entry that, ideally, determines the number of fishers that a fishery can sustain and the number of licenses that should be allowed. In establishing such a system, fisheries managers must decide which fishers get licenses, whether new fishers can enter the fishery or whether licenses should be transferable. The red snapper license limitation system provides for two classes of licenses. Class 1 licenses with an initial 2,000 pound trip limit are issued to red snapper endorsement holders as of March 1, 1997. Class 2 licenses with an initial 200 pound trip limit are issued to other holders of reef fish permits as of March 1, 1997, who had any landings of red snapper between January 1, 1990 and March 1, 1997. Vessels that do not have a Class 1 or Class 2 red snapper license are prohibited from commercial harvest of red snapper.

This two-tiered system is markedly similar to the endorsement system in place previously. It does, however, offer easier transferability. Prior to the adoption of the licensing system, in order to transfer a permit under the endorsement system, a fisher had to transfer or lease the vessel. By allowing transferability of licenses, it reduces confusion and additional operation costs, and yields a market benefit.

Since implementing the licensing system in January, it has received mixed reviews. Advocates explain that it provides greater security to fishers rather than having a temporary endorsement system extended indefinitely and provides transferability allowing new fishers into the system. Critics see the licensing system as a continuation of the status quo. They claim it does not differ from the endorsement system and, therefore, leaving things the same with adverse conditions in the red snapper fishery such as excess fishing capacity, fishery closures, and ecological harm.

In reality, the Gulf Council has not received many complaints from fishers because the two-tier system is

similar to the endorsement system. But, market changes and stormy fall weather have made it difficult to judge the effectiveness of the system in terms of red snapper prices.

The Future of Red Snapper Management

Called for by Congress, the Ocean Studies Board of the National Research Council is completing a peer reviewed study of ITQ systems on a national level. The study, conducted by the Committee to Review Individual Fishing Quotas, is the result of public hearings and information gathering on a national level and is due to Congress in October for its consideration. The Gulf Council cannot consider the ITQ system as a viable alternative until Congress authorizes the Fishery Management Councils to develop new systems.

By adopting the license limitation system in Amendment 15, the Gulf Council hopes that it has found a viable alternative to the ITQ and endorsement systems by increasing the stability of the red snapper fishery, avoiding the derby type fishing season and promoting flexibility for fishers. The council also seeks to provide for cost-effective and enforceable management and reduce the harvesting capacity of the red snapper fleet using historical dependence on the red snapper. The Council recognized that the licensing system would not be as effective or efficient in reaching these stated goals as the planned ITQ system of 1995 but found the licensing scheme to be a management measure able to improve net benefits within the fishery. ✓

NOTES

1. See 16 U.S.C. § 1883 (1998).
2. Limited entry is a general term used for a fishery management program that restricts a fisher's access to open fisheries such as licensing schemes, fishery quotas, season closures, individual transferable quotas, and gear restrictions.
3. See Amendment 15 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico, p. 8 (1997) (available from Gulf of Mexico Fishery Management Council at (813) 228-2815 or visit the Council homepage at www.gulfcouncil.org).

District Court Ruling Favors Beach Mouse Habitat

Sierra Club v. Babbitt, 1998 Westlaw 481452 (S.D. Ala. 1998).

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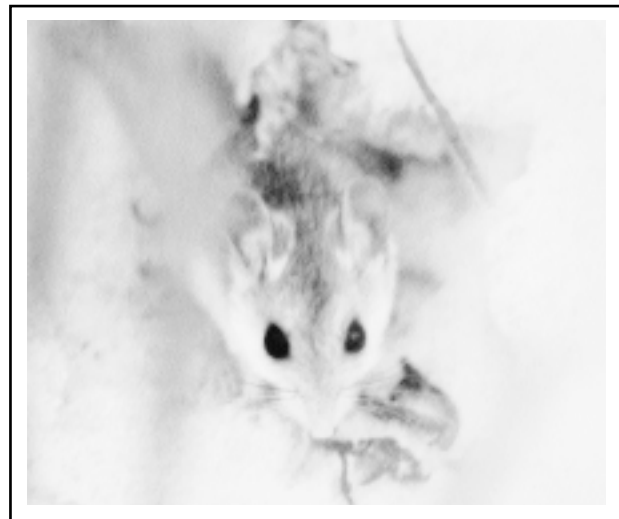
Introduction

In August, the U.S. District Court for the Southern District of Alabama ruled that a federal agency must reconsider its decision to allow high-density development on the Alabama coastline that may harm the endangered Alabama Beach Mouse. The court found that the Fish and Wildlife Service (FWS), the agency responsible for protection of the beach mouse, violated both the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) by permitting construction on the dwindling beach mouse habitat. The court is requiring the FWS to reexamine whether allowing construction in the Beach Mouse's habitat would have a significant impact on the environment along a portion of the Alabama coast known as the Fort Morgan Peninsula.

The Alabama Beach Mouse, a sand-colored mouse indigenous to the beaches and sandy fields of southern Alabama, was listed as endangered in 1985 when the FWS concluded that the species' habitat was being drastically destroyed "by residential and commercial development, recreational activity, and tropical storms."¹ At the time of listing, 671 acres of beach mouse habitat remained on the Fort Morgan Peninsula on the Alabama coast. The FWS speculated that the remaining habitat may not be an adequate area to allow the beach mouse population to recover. Since then, the habitat has been reduced by commercial and residential development, a golf course, and a series of hurricanes. Nevertheless, the FWS permitted two high density housing complexes within the beach mouse habitat. The Sierra Club challenged the issuance of these permits under the ESA and the NEPA, asking the District Court to suspend the permits until the FWS revises its environmental analysis and permit conditions.

The Beach Mouse and the ESA

The Sierra Club first challenged the permits under the Endangered Species Act which forbids harming a beach mouse or severely depleting or modifying its habitat. The ESA, however, offers a limited exception



Alabama Beach Mouse

Photo by Nick Holle

for landowners who wish to develop a piece of land but find an endangered species located on it. The landowners can prepare a Habitat Conservation Plan (plan, often called an HCP) showing the impact of the development on the species, methods to preserve habitat within the development, and ways to mitigate harmful impacts. The applicant must specify the proposed mitigation activities and secure adequate funding. Once the plan is approved, the FWS can issue an "incidental take permit" authorizing otherwise lawful activities that may harm a listed species. The FWS approved the plans and issued permits for two Fort Morgan developments stating that issuing the permits "will not jeopardize the beach mouse" or adversely modify its critical habitat. The FWS did "remain concerned" over whether the mitigation in the permit plans was to the maximum extent practicable, as required by the ESA.

The Sierra Club argued that the sections of the plan and permits addressing mitigation efforts were inadequate under the ESA. First, it asserted that the funding for the proposed mitigation activities was inadequate. The Sierra Club offered evidence that, prior to permit issuance, the FWS noted concern because "the project provides the least mitigation for the effects of high density development of any previous" beach mouse permit or plan.³ The FWS claimed its concerns were met when the applicant added mitigation measures. In addition, the FWS asserted its discretion as a federal agency in

making this determination.

The court agreed with the Sierra Club and found that the FWS ignored its initial concerns, failing to determine if the proposed amount could provide adequate mitigation. The court noted the complete lack of consideration or explanation of the amount of mitigation funding in the plan or permits. Without analysis or consideration, the court concluded that the FWS cannot support its decision that the amount of mitigation funding was adequate and found the issuance of permits arbitrary and capricious.

Next, the Sierra Club challenged the plan because it relied on unnamed sources to contribute funds for off-site mitigation. According to the plaintiff, this failed to meet the ESA requirement that mitigation activities minimize and mitigate project impacts to the maximum extent practicable. The court agreed, citing the FWS's own analysis stating that the "Applicant's offsite mitigation funding would have to be combined with additional funds from a non-profit organization in order to purchase a large tract or several tracts for mitigation purposes."⁴ The plan and permits, however, do not specify the source or the amount. Without this information, the court could find no rational basis for issuance of the permits.

Third, the Sierra Club asserted that the FWS failed to develop standards to determine the appropriate levels of mitigation necessary for the continued existence of the beach mouse. Under its own Habitat Conservation Planning Handbook, the FWS stresses the need for consistency of mitigation measures for a species and for specific standards. The Handbook states that "the Service should not apply inconsistent mitigation policies for the same species, unless differences are based on biological or other good reasons and are clearly explained."⁵ Nevertheless, the court could find "no evidence that the FWS paid any attention to its own guidelines."⁶ It found the FWS could not justify its issuance of the permits and must establish standards to protect the Alabama Beach Mouse and its habitat.

Analysis under the NEPA

Finally, the Sierra Club contended that the FWS failed to prepare an Environmental Impact Statement (EIS) as required by the NEPA.⁷ The NEPA requires that federal agencies like the FWS consider the environmental consequences of proposed actions to ensure fully informed and well considered decisions. A project that

may adversely affect an endangered species or its critical habitat is considered to significantly affect the environment, requiring an EIS. Rather than prepare an Environmental Impact Statement, the FWS issued a "finding of no significant impact" for the Fort Morgan developments, concluding its analysis of possible impacts on the Alabama Beach Mouse.

In reviewing the FWS decision not to prepare an EIS, the court had to ensure that the FWS took a hard look at the environmental consequences of its actions. The FWS claimed that its decision was sound and in its discretion. The court, however, found that "many of the important 'facts' on which the FWS based its decision appear to be assumptions, presumptions, or conclusions themselves — not facts based on any evidence, documents, or data. . . ." ⁷ Specifically, the court noted that the FWS lacked an estimate of beach mouse population, its remaining habitat, and the occurrence of beach mice on the habitat in question. It stated, "[b]ecause the agency failed to consider important aspects of the problem and relied on insufficient, inadequate, and out-of-date data, it was arbitrary and capricious for the FWS to issues findings of no significant impact, and thus, in their action, violated NEPA."⁹

Conclusion

The District Court remanded the decision to issue the permits to the FWS. It directed the FWS to gather the necessary data and conduct the required scientific analysis in order to determine whether the permits issued meet requirements under the ESA and the NEPA. The court stressed that the FWS must do more than merely go through the motions in performing its duties to protect the Alabama Beach Mouse from extinction. ✓

NOTES

1. *Sierra Club v. Babbitt*, 1998 Westlaw 481452 at 19 (S.D. Ala. 1998), citing 50 Fed. Reg. 23872 (June 6, 1985).
2. Endangered Species Act, 16 U.S.C. §§ 1531 - 1544 (1998). The ESA also requires the designation of a species critical habitat, that habitat necessary for the continuation of the species.
3. *Sierra Club* at 28.
4. *Id.* at 25.
5. U.S. Fish and Wildlife Service and National Marine Fisheries Service, ENDANGERED SPECIES HABITAT CONSERVATION PLANNING HANDBOOK, at 3-20 (1996).
6. *Sierra Club* at 33.
7. National Environmental Policy Act, 42 U.S.C. §§ 4321 - 4370d (1998).
8. *Sierra Club* at 37.
9. *Id.* at 39.

Enforcement (cont. from p. 1)

officers found a trawler with several TEDs that were sewn shut, purposefully blocking the escape hatches that allow sea turtles to go free. The NMFS assessed a \$10,000 penalty and forfeiture of the shrimp and other fish seized during the investigation. Shortly thereafter, while conducting routine boardings, the USCG caught a Louisiana man trawling Lake Pontchartrain with the TED wired shut. The officials' clue was the sea turtle struggling in the trawl while the net was tied up to the boat. NMFS spokesperson Chris Smith admitted, "It's pretty rare. But, this guy had the whole nine yards: a TED sewn shut with a turtle in it, and it was a Kemp's ridley, the rarest of the rare sea turtles."² The investigation resulted in a \$6,000 fine.

Actually finding a sea turtle stuck in a trawl certainly makes investigations less difficult. Often, sea turtles are found washed up on shore, dead or maimed. In some instances, the heads and limbs of the turtles have been cut off, presumably cut from fish and shrimp nets. In March, the NMFS and the Texas Department of Parks and Wildlife increased rewards offered for information about parties responsible for these mutilations.³ But, they are quick to note that such occurrences are not indictments of the shrimping industry as a whole. Generally, compliance with gear regulations has been high: USCG officers have boarded over 2,000 shrimp boats this year along the Gulf shore from Florida to Texas and found less than 30 TED violations.

However, investigators admit that this may not be an accurate accounting of violations. According to officials, investigating gear violations is difficult because of a "network" of fishers or shrimpers that communicate by radio that the Coast Guard is in the area to board and investigate vessels. Comparing it to motorists that flash their lights at other motorists after passing a speed trap, USCG enforcement officer John Sherlock explained that "[o]nce you do one boarding, the word is out."⁴

Illegal Smuggling & Trafficking

While a communication network may work against agencies in gear investigations, it can help when a network of seafood dealers tips the agency that illegal trafficking is occurring. As a result of such a complaint, the NMFS levied its highest fine yet in the Gulf region last July. It fined a Pensacola, Florida, seafood dealer \$1.26 million for a red snapper trafficking scheme and

banned him from dealing in federally managed fish for three years. Investigators charged that the red snapper were illegally bought from recreational fishers, then shipped to Manhattan to be sold on the country's largest seafood market.⁵ Investigators found that the dealer dumped more than 30,000 pounds of red snapper onto the black market in a two-year period, surprising and disappointing investigators at this level of organized criminal activity which required purchase from possibly hundreds of recreational fishers. The scheme violated both the Magnuson Act, that protects red snapper as a federally managed fish, and the Lacey Act, that prohibits the interstate sale of illegally obtained wildlife.

Under the Magnuson Act and the Reef Fish Fishery Management Plan that manages the red snapper stock, red snapper caught by commercial fishers may be sold but those caught by recreational fishers may not. While the commercial season was closed, the dealer illegally bought red snapper caught by recreational fishers for about \$2 a pound. He purchased these fish without a federal dealer's permit and then falsified records to cover his scheme. After the purchase, the dealer shipped the illegally obtained fish across state lines for a price of \$3 to \$4 a pound. This illegal shipment, coupled with false labeling of the shipments, constituted a violation of the nation's oldest wildlife protection statute, the Lacey Act.⁶ Officials continue to investigate the seafood market, transporters, and recreational fishers who supplied the red snapper.

This investigation is unique because it is the first time enforcement officials have encountered a scheme involving the legal catches of recreational fishers for out-of-season sale. But, the use of the Lacey Act in enforcing fisheries violations is not new. Investigators recognize that with the high prices and limited commercial seasons for red snapper, bootlegging illegally taken snapper has become a fairly common problem for law enforcement. In 1996, NMFS investigators followed a trailer leaking water from Louisiana to Mississippi, noticing a "fishy" smell as the trailer sat in traffic. Once reaching its destination at a Mississippi seafood dealer's business, the NMFS officials found that the red snapper inside the trailer had been obtained during the closed commercial season and illegally offered for sale. The result was three convictions by a federal

court in Louisiana, with a seafood dealer assessed \$17,000 and sentenced 21 months imprisonment.⁷

This year, a Louisiana seafood dealer was sentenced to 18 months in prison for conspiring to violate the Lacey Act by transporting 9,000 pounds of illegally obtained red snapper across state lines. The fish were hauled in a tractor-trailer from Grand Isle, Louisiana to Houston where game wardens from the Texas Parks and Wildlife Department found the snapper on a routine check of a seafood dealer establishment. Interestingly, the Louisiana dealer was also ordered to pay over \$27,000 in restitution to the state of Louisiana for the illegal taking of the fish.

Location, Location, Location

With managed species, the Gulf is not necessarily open access. Rather, certain areas of the Gulf remain closed to some or all fishing to protect crucial breeding habitat, fish or shellfish species, or coral reefs. In January, after an investigation by the USCG and NMFS, the owners and operators of two Florida commercial fishing vessels were charged with illegal longline fishing in closed waters and illegal taking of reef fish and protected coral species. The waters at issue, 10 miles west of Fort Myers, Florida, had been closed since 1990 to longlining to protect the spawning habitat of red grouper and other reef fish. Fines for the illegal fishing included \$36,500 and a 30-day prohibition on fishing. NMFS Special Agent Gene Proulx explained that investigations for fishing in closed waters focus on "determining how frequently these [fishers] enter the restricted area and fish illegally and how extensively vessels share information in order to remain undetected while poaching."⁸

In March, NMFS officers fined the operator of a vessel for improper use of fish traps in a protected area off the Florida coast and for disposal of the fish traps after the approach of an enforcement vessel. Investigators also remain concerned about the increasing number of cases of illegal fishing in the Tortugas Shrimp Sanctuary in Florida. State and federal enforcement officers gathered to discuss possible solutions. The agencies are considering increasing penalties or requiring a master license for shrimp vessel operators that could be revoked for multiple violations.

Permits & Catch Limits

Enforcement officials must also execute laws requiring permits and limiting catches in the Gulf. In order to fish a federally regulated stock in the Gulf of Mexico, permits are required and may be issued based on the applicant's catch from previous years. For instance, to obtain a red snapper commercial permit for the 1993 season, a fisher had to show that the vessel he or she owned or operated had landed 5,000 pounds or more of red snapper in at least two of the three years of 1990, 1991, and 1992. One owner submitted improper information, knowing that the vessel had not met this threshold in two of those years, and was convicted under the federal criminal false statement provision.⁹

Even with a permit, fishers must still observe catch limits. Last February, NMFS and USCG agents seized thousands of pounds of fish and shellfish from fishers with catches in excess of set limits. One vessel operator was cited for possessing 32 king mackerel in excess of the allowable bag limits and others for reef fish.

Conclusion

Recognizing that enforcement of fisheries laws will continue to be challenging, the USCG and NMFS officials hope that their efforts in the Gulf will enhance fisheries management and stock recovery. When asked about red snapper violations, Andy Kemmerer, NMFS Regional Administrator for the Southeast Region, admits there is good news and bad news. "The good news is the recovery is just beginning; the bad news is a lot of people feel that because the snapper population is recovering, that they should be allowed to fish it harder. And, red snapper is a very valuable fish, so they are going to attract people that violate the law."¹⁰ ✓

NOTES

1. Telephone Interview with Gene Proulx, Special Agent, Southeast Region, National Marine Fisheries Service (September 30, 1998).
2. Brian Thevenot, *Caught Red-Handed, Turtle Catcher Pays*, THE TIMES-PICAYUNE, July 17, 1998, B4.
3. *Reward Increased for Leads in Killing of Turtles in Gulf*, AUSTIN AMERICAN-STATESMAN, April 11, 1998, B7.
4. *Caught Red-Handed, Turtle Catcher Pays*, at B4.
5. Brian Thevenot, *Seafood Dealer Fined for Red Snapper Scheme*, THE TIMES-PICAYUNE, July 15, 1998, A13 (quoting Gene Proulx of the Southeast Enforcement Office, National Marine Fisheries Service).
6. Lacey Act, 16 U.S.C. §§ 3371 - 3378 (1998).
7. See *United States v. Collins*, 1997 Westlaw 738615 (E.D. La. 1997).
8. NOAA Press Release, *NOAA's NMFS Cites Commercial Fishermen in Florida West Coast Closed Area* (Jan. 16, 1998).
9. See *United States v. Tomeny*, 144 F.3d 749 (11th Cir. 1998).
10. *Seafood Dealer Fined for Red Snapper Scheme*, at A13.

Trading Restraint: Canada and Washington State Cooperate on Salmon Conservation

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

In a year punctuated with acrimony over the Pacific salmon negotiations between the United States and Canada, the State of Washington and Canada were able to come to an agreement aimed at conserving the most threatened salmon stocks in the region ranging from Puget Sound to the waters of the Fraser River and lower Vancouver Island. The agreement, forged by Canada's Fisheries Minister David Anderson and Washington state Governor Gary Locke, effectively trades a series of restrictive fishing systems so that Washington state fishers do not jeopardize Canadian efforts to conserve coho salmon originating in the Fraser River, while Canada implements measures that will augment Washington state's efforts to conserve Puget Sound Chinook salmon. The pact constitutes one of the few success stories in the ongoing "salmon war" between the United States and Canada.

The age old problem of managing a transboundary resource such as salmon was concisely summed up years ago by Canadian Prime Minister Brian Mulroney who noted, "the problem with fish, is that they swim." As a result, the resource cannot be effectively managed by one nation when the fish ignore the boundaries and subject themselves to fishers who are not governed by uniform management measures.

Fisheries policymakers on both sides of the border faced the inevitability of salmon fishing restrictions in light of scientific evidence indicating significant declines in particular stocks. Canada's Anderson implemented significant reductions in Canadian coho fisheries while Washington state was considering measures to maintain and restore dwindling Puget Sound chinook stocks. The prospect of Endangered Species Act (ESA) listings of Puget Sound chinook raised the specter of federally imposed fishing and land use restrictions.

The State of Washington's efforts to conserve those

stocks could be undermined by Canadian fishers who "intercept" those fish entering Canadian waters. Each country's interceptions of the other's fish are governed by the Pacific Salmon Treaty. However, the treaty process for allocating salmon has been hampered by significant political and scientific disagreements over the past four years. As a result, each side realizes that even the most stringent conservation measures can be sabotaged by an unfriendly or unwilling neighbor.

In assessing the prospects of the Canadian coho restrictions, Anderson searched for some measure of cooperation from the U.S. to show Canadian fishers that the restrictions would not be meaningless. Aware of the incidental benefit that the coho closures would have on Puget Sound chinook and the importance of those stocks to a state facing ESA listings, Anderson initiated talks with Washington state seeking assurances that Washington would curtail coho interceptions.

On May 30, Anderson addressed legislators from Oregon and Washington state, outlined his concerns, and highlighted the need for cooperation between the U.S. and Canada. "Conservation" was his watchword and his plea, as he noted at the outset of his address:

"The overriding principle that guides every decision I make as the Minister of Fisheries and Oceans is conservation."

-Canada DFO Minister David Anderson

"I have made it clear that the overriding principle that guides every decision I make as the Minister of Fisheries and Oceans is conservation. Conservation of fish stocks. Conservation of habitat."

Anderson recalled the historic devastation of the collapse of the cod fishery as an historical warning. "We witnessed the collapse of the cod fishery in Atlantic Canada and we know what happens to a struggling fishery when the affected parties don't take the long view. We know what happens when stewardship comes second. Cod were once so bountiful off the shores of Newfoundland that early explorers wrote in their journals how it seemed as though you could walk across the water on their backs." He indicated that the demise of the fishery was

a fact that lingered on in Canada's national psyche, noting that, "it is important for Americans to understand that Canadians approach the conservation of endangered Pacific salmon stocks with this experience still fresh in our minds."

Anderson also characterized Canada's actions as a benefit to the United States that ought to be reciprocated in some way: "Canada invests ninety million dollars every year on programs related to the conservation and management of Pacific salmon. We reduced overall harvest rates in 1997 so that some 150,000 to 200,000 chinook and 400,000 coho were allowed to pass through B.C. interception fisheries. This provides a direct benefit to Washington, Oregon and Idaho chinook and coho stocks, which are under environmental threat in both fresh and salt water."

Anderson explained the new and increasingly stringent restrictions on coho fishing in Canadian waters including a zero fishing mortality level for coho stocks of the upper Skeena and Thompson Rivers, and selective fisheries in areas where other coho stocks would not be seriously affected as bycatch. He alluded to meetings with Washington State Governor Gary Locke, his frustration with Alaska's fishery representatives and the need for prompt action. "I have met with Governor Locke of Washington on a number of occasions and we agree on the need for cooperation in the conservation and management of Pacific salmon."

Echoing Anderson's concerns, Locke stated, "we're emphasizing conservation." Locke recognized the mutual interest of his state and Canada, along with the mutual threat that faced each side if agreements to help each other could not be reached. "The Canadians face the prospect of extinction of coho salmon. We in the United States and the State of Washington are looking at chinook salmon in Puget Sound as an endangered species. What we're trying to do is help each other."

On June 26, Washington state governor Gary Locke and DFO Minister Anderson announced an agreement effectively amounting to an exchange of promises to reduce catches of each other's threatened salmon stocks. Governor Locke lauded Anderson's efforts stating, "Minister Anderson has shown great courage and leadership in addressing our mutual conservation problems." The terms of the agreement included a reduction

by Canadian fishers of fifty percent of U.S.-bound chinook (resulting from Canada's salmon fishing restrictions). In return, Washington state agreed to implement measures that would reduce catches of the Canadian-bound coho by twenty-two percent. Locke explained the need for the agreement and a new way of looking at conservation of transboundary fish stocks. "Business as usual has not worked," noted the governor, adding, "Puget Sound chinook, as well as other Washington salmon stocks, face federal Endangered Species Act listings. This agreement will mean Canadians will restrict their fisheries to allow more wild salmon to return to Washington rivers to spawn. At the same time, we will ask Washington sport and commercial fishers, as well as business people, for additional sacrifices in northern Puget Sound . . . to allow more wild Canadian salmon to return to spawn in their native rivers."

While the reduction trade-offs were highlighted by Locke and Anderson, they met some criticism on both sides of the border. British Columbia's premier Glen Clark, an ardent foe of Canada's federal fisheries policies, labeled the agreement "inequitable" and a "sellout," likening Anderson's action to "treason." In the United States, native tribes decried their lack of input into the agreement between the northwest region and Canada and called for negotiations that would bring together all stakeholders in Pacific salmon management.

However, in light of the other less-than-successful efforts to forge mutually agreed upon fishery conservation measures, the DFO-Washington state agreement may stand as a model for future negotiations. ✓

***“What we're trying to do
is help each other.”***

-Washington Governor Gary Locke

NOTES

1. *Anderson Speaks to Pacific Fisheries Legislative Task Force*, CANADIAN CORPORATE NEWSWIRE (May 30, 1998) (transcript of Anderson's comments).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Locke, Anderson Reach Short-term Plan to Protect Salmon*, CFRA News talk radio web site (visited Oct. 8, 1998) <<http://www.vfra.com/1998/06/26/43674.html>>.
7. *Agreement Reached on Southern Coho and Chinook*, CANADIAN CORPORATE NEWSWIRE (June 26, 1998).
8. Bob Mottram, *Agreement on Salmon is Reached*, THE NEWS TRIBUNE, B1 (June 27, 1998).
9. *Try a Salmon Policy With All the Players*, SEATTLE POST-INTELLIGENCER, E2 (September 20, 1998).



Alabama Legislative Update 1998



Tammy L. Shaw, 2L

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

1998 Alabama Laws 383. (SB 14) *Approved: April 27, 1998. Effective: July 1, 1998.*

Amends Alabama Code § 9-2-14 to require that each congressional district be represented by members on the Advisory Board of Conservation and Natural Resources. Each congressional district shall be limited to not more than two members and those districts currently not represented shall have transitional members appointed until permanent members may be appointed.

1998 Alabama Laws 518. (HB 242) *Approved: May 5, 1998. Effective: October 1, 1998.*

Authorizes an appropriation of \$62,761 from the State General Fund to provide for development, utilization, and maintenance of the Apalachicola-Chattahoochee-Flint inland waterway and river system.

1998 Alabama Laws 615. (HB 629) *Approved: May 6, 1998. Effective: August 1, 1998.*

Amends Alabama Code § 9-11-433 to allow License Agents authorized by the Department of Conservation and Natural Resources to issue migratory waterfowl stamps, where only the judge of probate and issuing officers could issue these stamps previously. The stamp allows licensed hunters to take migratory waterfowl in the State of Alabama. Each stamp is provided to a hunting license applicant for a fee of five dollars.

1998 Alabama Laws 663. (HB 148) *Approved: May 6, 1998. Effective: August 1, 1998.*

Authorizes state governmental units to enter into contracts that will provide guaranteed energy cost savings. The government shall provide public notice of the award of such contracts, and the contracts must provide energy cost saving results that exceed the cost of those measures within a ten year period.

1998 Alabama Laws 668. (HB 465) *Approved: May 6, 1998. Effective: May 6, 1998.*

Enacts the Kyoto Protocol Response Act to prohibit the Director of the Alabama Department of Environmental Management from proposing or promulgating any new regulations pertaining to the reduction in greenhouse gas emissions prior to the ratification of the Kyoto Climate Change Protocol by the United States Senate and enactment of implementing legislation by the United States Congress. The Kyoto Protocol is an agreement under the United Nations Framework Convention on Global Climate Change that would require the United States to reduce emission of greenhouse gases without requiring relative compliance in developing countries. ✓

FEMA ASSISTS ALABAMA AND MISSISSIPPI AFTER GEORGES BATTERS COASTS

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

In the early morning hours of Monday, September 28, Hurricane Georges made landfall at Ocean Springs, Mississippi, with wind gusts up to 125 miles per hour, dumping heavy rains along the Gulf Coast. President Clinton responded by declaring an emergency in both Alabama and Mississippi, ordering Federal aid to supplement state and local recovery efforts along the coast.

The declaration of emergency authorizes action by the Federal Emergency Management Agency (FEMA) to coordinate disaster relief efforts, alleviating the hardship and suffering caused by the disaster on the local population. Authorized under the Stafford Act in 1974, FEMA provides assistance for emergency measures necessary to save lives, protect public property and public health and safety, and to lessen or avert the threat of a catastrophe in coastal and nearby counties.¹ Specifically, FEMA is authorized to identify, mobilize, and provide, at its discretion, equipment and resources necessary to alleviate the impacts of the disaster. Federal assistance and emergency protective measures supplement state and local efforts and are provided for the first 72 hours at 100% Federal funding and debris removal at 75% Federal funding.

Damage reports from both states highlighted the need for assistance. In Pascagoula, Mississippi, the area hardest hit by the storm, commercial buildings looked like they had been "shattered by a bomb," as reported by CNN.² The winds and rain of Georges pounded Pascagoula for over 12 hours, causing power outages and tornadoes. The eye of the hurricane traveled over the city of Biloxi which received winds up to 105 miles per hour during the height of the storm. The majority of Biloxi residents evacuated, leaving the casino barges and hotels that line the shore boarded up to survive the storm waters. The barrier islands took a beating as well. Tidal surges from Hurricane Georges created another 3/4-mile wide cut in Ship Island, a smaller cut in Horn Island, and washed away nearly a mile of Petit Bois Island.

To the east, the city of Mobile received over 30 inches of rain, raising water in the heart of the business district to over four feet. Even after Georges was downgraded to a tropical storm, the threat of flash flooding continued because many of the rivers and creeks in southern Alabama drain into the Mobile Bay. Inland areas required assistance as well: Interstate 10, the major east-west highway that runs well inland along the Mississippi and Alabama coasts, was washed out near the Alabama line.

In preparation for Georges, FEMA deployed emergency workers, flying in search-and-rescue and medical teams and positioning emergency equipment such as generators, water pumps, sandbags, tents, cots, and plastic sheeting used to cover houses whose roofs are ripped off. In recovery efforts, James Lee Witt, Director of FEMA, stated that "What's important now as we rebuild in high-risk areas is that you look at those high-risk areas, and you look at how to rebuild or not rebuild in those areas."³

Hurricane Georges will have a lasting impact on Pascagoula even after repairs are complete. In October, 1997, FEMA chose Pascagoula as one of seven cities to be part of a pilot program named Project Impact. Project Impact is a FEMA initiative designed to help build "disaster resistant communities." Community officials are trained in order to plan for better and more efficient recoveries after storms. As part of the program, Pascagoula was initially given a million dollars in Federal money to go toward hurricane preparedness. The city's first task was to commission a risk assessment survey to find what parts of the city would be greatest at risk in a hurricane. Surveyors delivered the report to city leaders ten days before Hurricane Georges came ashore. ✓

NOTES

1. Stafford Act, 42 U.S.C. § 5121 (1998).
2. CNN WORLDVIEW *Transcript*, September 30, 1998.
3. CNN WORLDVIEW *Transcript*, September 29, 1998.



Book Review

Song For The Blue Ocean Encounters Along The World's Coast and Beneath The Seas

By: Dr. Carl Safina

Henry Holt and Company, Inc.
New York, New York \$30.00 458 pp.

Tammy L. Shaw, 2L

Dr. Carl Safina's *Song For The Blue Ocean*, is a moving and passionate account of the plight of the world's oceans. From his boyhood days spent fishing in Long Island Sound to a successful career as a research ecologist, Safina has spent his life in or near the ocean. Through this time, he came to realize that something was happening to the creatures of the sea - they were disappearing. "The oceans were being depopulated; the creatures were not just being used - they were being used up." Safina likened this occurrence to the disappearance of the buffalo [bison] of North America; to him it seemed that "a last buffalo hunt was occurring on the rolling blue prairies of the ocean."

Song For The Blue Ocean is a journey in search of the oceans' message, a "chorus" for voices to tell their stories of the oceans. As scientist, fisherman, tourist, and guide, Safina explores beyond the ocean horizon to the scientists, the fisherpersons, the charter boat captains, and the exporters who make their living from the sea.

Safina's research has taken him from the eastern seaboard of North America, to the Pacific Northwest, to the Palau Islands. In each region, he interviews many men and women by becoming a member of their crew, a contributor to their research, or a visitor in their community. Seeking to understand what these individuals know about the ocean, the marine environment, and the sea creatures, Safina explores each viewpoint, attempting to reconcile them with his own observations. He seeks the truth in the many differing predictions and observations of the oceans' health by

asking the same question of everyone: "Are there fewer fish today than in the past?"

The Northeast

Safina begins his dialogue off the eastern seaboard of the United States in the Gulf of Maine. He first observes not from the water but from the air with pilot-fisherman Charlie Horton. Horton is a different kind of fisherman, a professional fish spotter circling the waters in a plane in search of bluefin tuna and swordfish, guiding commercial fishing boats to them. Horton has agreed to take Safina "fishing" (as he refers to his flying) to give Safina a bird's eye view of fish populations that Horton believes are abundant and increasing. With an experienced eye, Horton skims miles of ocean for a glimpse of the tell-tale signs of giant bluefin tuna. Maneuvering his plane in tight circles, he points out a school of 100 or more bluefin traveling just below the surface. By Horton's approximation some of the tuna weigh more than 500 pounds, a sight that Safina admits strains the concept of fish.

The author describes these giants as peaceful warriors, with sickle-shaped tails propelling them through the water at astonishing speeds. A product of evolution that is almost perfected, the bluefin is among the most migratory of animals. Spawning in the Gulf of Mexico, bluefins range from Nova Scotia to the tropics and inhabit the Atlantic and Pacific. They are skillful predators with bodies built for efficiency and speed and, unlike most fish, are able to regulate their body temperature, giving them a predatory advantage in deeper, colder waters. Safina notes that the bluefin is a highly revered animal, not only by

***The oceans were
being depopulated;
the creatures were
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- they were being
used up.***



the scientists and conservationists but also by the men and women who make their living hunting them. Horton is no exception, even as he notes the location of these schools, he admits that he supports anybody who will save these resources. He explains that “[i]t’s possible we could wipe the fish out, just like it’s possible to wipe out any species.”

Safina listens to many sides of the bluefin debate. In what must sometimes seem like throwing himself to the wolves, this research ecologist and scientist spends days aboard the boats of commercial fishermen and ambitious fish dealers. He is regaled with tales of the abundance of the bluefin and other fish, but finds that when their guard is down, they admit that fishing today is but a shadow of what it was in the past. As one captain put it, “When one fish declines, tremendous pressure gets shifted onto some other.” According to Safina, scientists calculate that the bluefin population off the eastern seaboard has declined nearly 90 percent since the 1970’s.

Even as these east coast fishermen steadfastly refuse to admit that there is a problem for the bluefin populations, they all agree that conditions in the Gulf of Mexico are important for spawning. Experts believe that they gather in large numbers in the gulf waters, commingling eggs and sperm to ensure fertilization of more eggs. The large number of these animals in a group is important to spawning, making practices that deplete the population dangerous, such as longlining and policies that encourage high catches, dangerous. Longlining is a fishing practice that runs hook-laden lines out for miles and miles, taking many fish at one time. This reduces the number of mature fish and the chances for spawning. According to Roger Hillhouse, another pilot-fisherman who has logged more hours looking at tuna from an airplane than anyone else in the world, it is the longliners who are interfering with the tuna. “My contention,” Roger says, “is that longliners picking them in the Gulf are disrupting spawning, keeping them from getting together in large schools. We’re not seeing the babies—we are not seeing the spawning.”

While longlining in the Gulf of Mexico increases yearly, Safina notes that our national policies can have an equally detrimental impact. Safina points to the Fisheries Service requirement that vessels bringing in bluefin must also bring in twenty-five hundred

pounds of other fish. Attempting to make bluefin a by-catch of other fisheries, the policy has resulted in open fishing with longliners bringing in sharks, yellowfin tuna, sunfish, and even billfish just to meet the requirement. Since it is the bluefin that is the desired catch, these other fish are usually dumped overboard at days end.

The Northwest

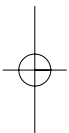
In the second section of *Song For The Blue Ocean*, Safina reports that the Northwest United States and Pacific Canada have become the world’s extinction epicenter for ocean fishes. In this region, pacific salmon have disappeared from about 40 percent of their breeding range in Washington, Oregon, Idaho, and California. Salmon are one of the world’s most complicated fishes, spending their young lives in freshwater, their middle years in the oceans, and

***Come here seeking the sea,
and you will soon find
yourself inland seeking to
understand the forces
transforming it.***

returning far upriver to spawn in freshwater before dying. They require enormous physical changes and navigational skills that are far more advanced than any living thing. Seeking the cause of salmon depletion, Safina begins at the edge of the Pacific but soon realizes, “come here seeking the sea, and you will soon find yourself inland seeking to understand the forces transforming it.” While overfishing has been a major threat to salmon for over 100 years, many new dangers lurk inland: dams, deforestation, and irrigation and grazing practices.

In the Northwest, control of major rivers and their tributaries is accomplished through a system of dams, pumps, and reservoirs. Six thousand miles of salmon spawning habitat has been reduced to three hundred. Before dams, a trip from Idaho to the mouth of the Columbia River took three weeks for a migrating salmon. The dams have increased the length of that trip to seven weeks. Even if the salmon successfully

see Book Review pg. 18





Book Review (cont. from p. 17)

run the gauntlet of dams, stream quality upstream may still endanger survival.

The author again takes to the sky to get an aerial view of one of the salmon's major threats. Massive timber clear-cutting in Oregon has wiped out hundreds of thousands of acres of old-growth forests leaving a scarred landscape that fills streams and rivers with silt and exposes the rivers to sunlight raising the temperature in the rivers, making salmon spawning impossible. From the air, Safina sees miles and miles of waterfront piled high with logs awaiting export to Asia. Finally, Safina notes that irrigation practices lower the water levels in the rivers and streams, draining crucial spawning grounds, and grazing often results in pollution and contributes to the silting in of these same rivers and streams.

Safina sees firsthand the impact of these practices on a small fishing town that is showing signs of economic collapse. Community members recount to the author experiences such as losing their boats, life savings, and homes. Willow Burch, a part Cherokee grandmother, speaks in the town auditorium, explaining "I've lost everything. I have nothing left." Fishermen still hope for better times, lamenting "[m]aybe tomorrow will be a better day. Better days are coming. . . ."

The Far Pacific

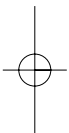
In the final section of *Song for the Blue Ocean*, Safina travels to the Indo-Pacific to the islands of Palau, a "Fertile Triangle" with more species of fish, coral, algae, and sponges than anywhere else in the world. Describing the underwater scene as a "blackened-blue aquatic madhouse," Safina dives in to witness the schools of parrotfish, rainbow runners, and damselfish that depend on the reef's survival for their own and is confronted with the realities of the destruction of the vast coral reefs. Beside the areas brimming with reef fishes, other areas are beginning to deteriorate because of cyanide fishing. In an effort to capture live fish for export to Hong Kong markets, native fishermen expel cyanide into the reef habitat. The poison temporarily stuns the fish, allowing them to be captured with little effort and minimal damage to their appearance. Where it is used, the cyanide kills the coral reefs that can take many centuries to replace.

To understand Hong Kong's increasing demand for live fish, Safina visits Hong Kong's live fish markets finding an endless variety of coral reef fish confined in tanks and tubs waiting for sale to nearby restaurants. As the guest of a successful fish broker, Safina sees the insatiability of Hong Kong's demand for live fish. In a lavish show for affluent businessmen, huge platters of Napoleon wrasse, coral trout, red grouper, stonefish, and other delicacies are brought to the table and later taken away, mostly uneaten. This demand for live fish perpetuates destructive cyanide fishing practices as marketeers deliver the poison to island fishermen.

Fortunately, Safina notes that some communities recognize that these destructive fishing practices inhibit a sustainable fishing economy. Visiting the island of Mindanao, in the Philippines, Safina learns that young fishermen do not know alternatives to cyanide fishing. To change this, the community sought out an international team to teach them how to coax the fish out of the reef crevices into nets and to use abandoned methods such as hook and line fishing. An islander explained to Safina how the new sustainable practices are changing his community for the better. He explains, "[b]efore, when they were blast fishing with explosives made of fertilizer, our people could hardly afford paddle boats. Now with hook and line fishing, we can afford to send our children to school."

Conclusion

Safina concludes that to protect the oceans, mankind must begin to think of the animals beneath the sea surfaces as a part of our community, creating a "sea ethic" in our thinking and policy-making. The author relays the warning signs: an expanding fishery that poisons reefs with sodium cyanide engulfing the richest one-third of the world's coral habitat; salmon runs on the Pacific Northwest fading into extinction on almost a daily basis; and schools of bluefin tuna disappearing like the American bison. Yet, he writes the book to deliver a message of hope. "The greatest mystery of nature is its power to generate life, and life's regenerative power responds generously whenever people find within themselves the will to allow it. The only requirement: heart, hope, and unusual courage." ✓





Lagniappe (a little something extra)



Around the Gulf . . .

In September, the National Marine Fisheries Service listed the **Johnson's seagrass** in southeastern Florida as a threatened species. This is the first marine plant listed as threatened or endangered under the Federal Endangered Species Act.

Scientists reported that the annual summer "**dead zone**" of oxygen-deprived water in the Gulf of Mexico appeared smaller but deeper this year. In past years, the zone covered up to 7,000 square miles but in 1998, it measured 4,800 square miles.

For the ninth straight year, Florida led in all measures of **saltwater recreational fishing** activity in 1997, with 4.4 million salt water fishing participants, including over two million out-of-state tourists who took 24 million trips. Florida also led in catch and harvest numbers with a harvest weighing 69 million pounds of fish.

On September 15, a Federal judge in Florida struck down part of **Florida's Everglades Forever Act** that allows farmers to send discharges into the Everglades until 2006. The decision also directs the Environmental Protection Agency to take a more active role in plans to clean the Everglades.



Around the Nation and the World . . .



In August, Clinton announced the opening of nearly 4 million acres of the **National Petroleum Reserve** on Alaska's North Slope to oil leasing, leaving 580,000 acres off-limits to protect wildlife and hunting grounds used by native people. Touted as a compromise, the Arctic National Wildlife Refuge remains off-limits to leasing.

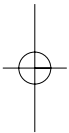
This summer, NOAA honored Jean-Michel Cousteau with the **Environmental Hero Award** for his outstanding dedication to the marine environment. Other recipients include Ted Danson of the American Oceans Campaign, National Geographic Explorer-in-Residence Sylvia Earle, and marine photographer Bob Talbot.

On September 15, the U.S. House of Representatives passed House Bill 3445 proposing to establish an **Oceans Policy Commission**. The Senate is considering a similar bill.

On October 3, the nation celebrated **National Estuaries Day** to educate the public about estuaries and water quality issues. Titled "Estuaries - Gateways to the Ocean," the event highlighted the EPA's National Estuary Program and NOAA's National Estuarine Research Reserve System.

For five days this summer, the Coast Guard pursued Chinese fishing vessels suspected of **high-seas driftnet fishing** from international waters off Russia to waters 500 miles southeast of Japan. The Coast Guard and the Russian Fisheries Patrol seized four vessels, one of the largest high-seas driftnet fisheries busts in history.

In July, Russia and Kazakhstan agreed to an accord that delimits the northern **Caspian Sea bed**, allowing the two countries to exploit resources lying under the sea bed. Other littoral states denounce it as a breach of internationally recognized agreements, insisting that the Caspian be divided by territorial waters. Oil deposits underlying the waters are driving the negotiations.





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. Graphic on page 5 ©1997 The Learning Company, Inc., picture on page 8 courtesy of Alabama Cooperative Fish and Wildlife Research, all other graphics ©Corel Gallery.



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MASGP-98-003-03

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