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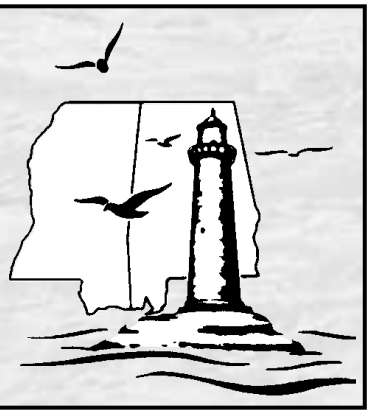
WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium



Corps Must Prepare Environmental Impact Statements for Mississippi Casinos

Friends of the Earth v. U.S. Army Corps of Engineers, 2000 U.S. Dist. LEXIS 11755 (Dist. D.C. 2000).

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

Following the Corps of Engineers' decision that three new casino developments on the Mississippi Gulf coast would not have a significant impact on the coastal environment, the environmental groups Friends of the Earth and Gulf Islands Conservancy challenged the decision as a violation of federal law. The plaintiffs claimed that the Corps of Engineers (Corps) failed to consider a number of direct, indirect, and cumulative environmental impacts in making its determination, resulting in a violation of the National Environmental Policy Act (NEPA) which requires federal agencies to "take a hard look at environmental consequences" of permitted projects.[1] The U.S. District Court for the District of Columbia agreed, concluding that the Corps failed to adequately consider a number of potential impacts and

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Two New National Ocean Commissions Established

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

The year 2000 has been an eventful year for the marine law and policy community. For over a decade, the community has supported the establishment of a national blue-ribbon commission to make recommendations for a coordinated and comprehensive national ocean policy. This year, that effort culminated in the creation of two ocean commissions.

The Pew Foundation, which has supported a wide variety of ocean and coastal conservation projects over the years, has contributed 3.5 million dollars to create the Pew Oceans Commission. The bipartisan Commission will be co-chaired by Governor Christie Todd Whitman of New Jersey and former Clinton White House Chief of Staff Leon Panetta. Other members of the

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Conservation Easements Prove to Be Flexible Tools for Landowners

Tammy L. Shaw, J.D.

In recent years, there has been growing interest in alternative methods for environmental conservation and preservation that can be utilized by private property owners and local citizen-based groups. One very popular method is the use of conservation easements for the preservation of privately held real property as natural habitat, scenic open spaces, important historic sites, or farm and forest lands.[1]

A conservation easement is an enforceable agreement by which an owner of real property voluntarily splits the bundle of rights associated with ownership. The purpose of the agreement is accomplished by restricting development of the property and prohibiting the landowner from engaging in a range of activities that might otherwise degrade important natural attributes of the property or harm sensitive ecological and aesthetic qualities associated with the land. Conservation easements provide landowners a means to protect and preserve their land and still retain the benefits of private property ownership. For example, a landowner may agree not to engage in any land-disturbing activities such as construction of roads or structures. The landowner may agree not to subdivide the property, not to allow dredging or filling of wetlands, or discharge of chemicals or other pollutants into a river or flood plain. Conservation easements are flexible conservation tools, whereby the landowner may specify or retain certain rights of ownership, as long as those rights do not impair the purpose of the easement. The landowner may retain the right to use the property, to lease or assign the parcel, to maintain agricultural or timber activities or to reserve certain sites for future construction.

Conservation easements provide landowners a means to protect and preserve their land and still retain the benefits of private property ownership.

To qualify for tax benefits conservation easements must serve a valid conservation purpose, such as protection of an undeveloped parcel of real property in its natural and wild state, protection of natural resources, preservation of open space for scenic enjoyment or public benefit, preservation of outdoor areas for recreation and education, preservation of historically important land or buildings, or preservation of agricultural or forest lands for farming, select harvest timbering, hunting and fishing.[2] The easement must be held by a qualified easement holder, usually a government entity or a private land trust whose goals include the acquisition and management of land and interest in land for conservation purposes

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, phone: (662) 915-7775, 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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Since the agreements are permanent and binding on both the present owner of the land and any future owners, the private landowner has a powerful conservation tool offering assurance that the property will be protected even after the land passes to future generations or subsequent owners. A conservation easement may also provide tax benefits for next-generation owners of the land that will allow heirs to keep the land in the family and not be forced to alienate the property in order to pay estate taxes. Other tax benefits include possible income tax deductions and reduced property taxes. Conservation easements offer landowners the benefits of conserving and preserving sensitive ecological and scenic lands without the burden of giving up ownerships rights in the property.

ENDNOTES

1. Conservation Easement Basics Workshop, Mobile, AL, May 2000.
2. Fowler, Laura, *A Landowner's Guide: Conservation Easements for Natural Resource Protection*, Georgia Environmental Policy Institute and Georgia Department of Natural Resources, Paper #1.

LAND TRUST FOR THE MISSISSIPPI COASTAL PLAIN

Efforts are under way in Mississippi to establish a new land trust program. According to its mission statement, the Land Trust for the Mississippi Coastal Plain seeks to "protect and promote opens spaces and green places with ecological, cultural and scenic significance." Except for a grant provided by the U.S. Environmental Protection Agency to fund an executive director position, the land trust will be privately funded by individual memberships and will focus on land acquisition in Mississippi's six coastal counties and act as a qualified conservation easement holder in the state. The new land trust joins two other programs already active in the state, the Nature Conservancy and the Delta Land Trust. For more information contact: Margaret Bretz, Secretary of State's Office, (228) 864-0254 or Cynthia Ramsuer, The Nature Conservancy, Mississippi Chapter, (228) 872-8452.

ALABAMA'S FOREVER WILD LAND TRUST

In 1992, the citizens of the state of Alabama voted in favor of constitutional amendment No. 543, creating the state's first land trust program. The Forever Wild Land Trust was created to purchase and maintain unique lands in Alabama. Funding for the program comes from interest earned on royalties from offshore natural gas leases.

The Forever Wild Land Trust acquires land for preservation and public use, with the acquisitions principally designated in one of four categories: nature preserves, recreation areas, state parks or wildlife management areas. Each of the four designations have varying requirements and each proposed acquisition is assessed to determine the best category under which a tract may be purchased. The Land Trust is also a qualified holder for conservation easements in the state of Alabama.

Any citizen of the state of Alabama may nominate property for acquisition. For more information on the Forever Wild Program or conservation easements, contact the Alabama Department of Conservation and Natural Resources, State Lands Division, 64 North Union Street, Montgomery, AL 36130, or (334) 242-3484.

Fourth Circuit Denies Private Claim to Spanish Shipwrecks

Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels, 221 F.3d 634 (4th Cir. 2000).

Jimmy Hall, 3L

Technological improvements in shipwreck detection have caused an increase in claims by private parties, states, and countries to previously inaccessible shipwrecks and their cargo. The recent discovery of JUNO and LA GALGA, two Spanish military vessels that capsized during the mid-eighteenth and early nineteenth centuries along the Virginia coast, prompted the U.S. to challenge a private salvage company's claim to the vessels. In July, the Fourth Circuit responded by reversing a lower court's decision to grant Sea Hunt, a private salvage company, title to LA GALGA, holding that Spain retained title since Sea Hunt could not prove that Spain had abandoned the vessel.

Sea Hunt Locates LA GALGA and JUNO

In 1998, Sea Hunt obtained permits from the Virginia Marine Resources Commission to explore for submersed vessels along the Virginia Coast. After spending nearly a million dollars in its search, Sea Hunt revealed that it had located the sunken remains of JUNO and LA GALGA. In order to resolve title to the shipwrecks, Sea Hunt sought a declaratory judgment from the district court stating that Virginia, rather than Spain, owned the vessels. The United States, fearing that the judgment would persuade other nations to divest its similarly situated shipwrecks, filed a claim on Spain's behalf asserting ownership over the vessels. The district court rejected the United States' efforts, but permitted Spain to file its own verified claim. Then, the district court, applying an express abandonment standard, held that Spain retained ownership over JUNO, but had expressly abandoned LA GALGA through Article XX of the 1763 Definitive Treaty of Peace between France, Great Britain and Spain (1763 Treaty).

Fourth Circuit Declares Spain as Owner

Under the Abandoned Shipwreck Act of 1987 (ASA), a state acquires title to all abandoned vessels embedded within its submerged lands. In defining the term abandoned, the ASA merely provides that abandonment occurs the moment an owner relinquishes its rights to a sunken vessel. On appeal to the Fourth Circuit, Virginia and Sea Hunt argued that the ASA's definition of abandonment should permit a court to imply abandonment where a sovereign fails to declare its ownership in a timely manner. The Fourth Circuit disagreed, holding that, as under admiralty law, a sovereign owner appearing before a court to assert its ownership to a shipwreck retains title to the vessel unless an express and affirmative declaration of abandonment is proven.

The Fourth Circuit applied the express abandonment standard to the 1763 Treaty and determined that Spain had not relinquished its rights to LA GALGA. First, although Article XX of the treaty contains "sweeping language of Spain's cession," it never explicitly refers to vessels, warships, shipwrecks, or frigates. Since the treaty contains a detailed catalogue of "non-territorial state property" to be conveyed, but does not include shipwrecks, the Fourth Circuit concluded that Spain had not expressly abandoned its title to the vessels. Likewise, Article XX expressly limits the cession to Spanish property located "on the continent of North America." The specificity of this territorial limit convinced the court that the shipwrecks were not part of the cession since they were located on the seabed. Next, the court noted that Article XX grants the King of Spain an unlimited amount of time to retrieve his personal property; the other provisions of the treaty specifically set time limits on similar actions. Therefore, absent an affirmative act of abandonment, Spain could retrieve the vessels at any time. Finally, both Spain and Great Britain agreed that the vessels were not included under Article XX. When the parties to a treaty agree to the interpretation of its provisions, the courts must defer to the parties' understanding unless there is "extraordinarily strong contrary evidence." The court was bound by Spain and Great Britain's interpretation since Virginia and Sea Hunt were unable to rebut.

In concluding that Spain retained its right to both LA GALGA and JUNO, the Fourth Circuit emphasized that anything short of an affirmative act of abandonment will undermine a state's or private salvage company's claim to a sovereign shipwreck. This decision stresses that, as under customary international law, sovereign shipwrecks should be protected from unauthorized interference.

Columbia River Basin Salmon and Steelhead Recovery: No Easy Answers

The Latest from the Pacific Northwest

Scott B. Yates, J.D.

On July 27, 2000, the federal government released the latest Pacific Northwest salmon and steelhead recovery plan. The plan is made up of the National Marine Fisheries Service's Federal Columbia River Power System draft Biological Opinion[1] and joint federal agency (CITE agencies) Conservation of Columbia Basin Fish Draft Basin-wide Salmon Recovery Strategy, known as the All-H Paper[2]. In addition, earlier the same month, the governors of Oregon, Idaho, Montana, and Washington released joint recommendations "for the protection and restoration of fish in the Columbia River Basin."[3] These federal and state documents are expected to play a large part in the future management of ESA-listed stocks and ensure not only short-term survival but also long-term recovery. However, the jury regarding the substance and legality of the plans is still out. With no easy answers and sparse talk in terms of substantive stakeholder negotiations, there is little doubt that the latest salmon recovery plans will be the subject of numerous lawsuits and endless political wrangling for years to come.

History

Over the last twenty years, billions of dollars have been allocated to Columbia River Basin anadromous fish recovery efforts. During this time period, salmon and steelhead numbers continued to decline and local extinctions were common. Six years ago after reviewing the National Marine Fisheries Service's (NMFS) 1993 Federal Columbia River Power System draft Biological Opinion (FCRPS BiOp), U.S. District Court Judge Malcolm Marsh admonished the NMFS for piecemeal and inadequate ESA recovery efforts.[4] Judge Marsh explicitly stated that the federal program was "too heavily geared towards the status quo" and that the "situation literally cries out for a major overhaul.[5] Against this legal backdrop, NMFS has worked since 1994 to develop a long-term recovery plan for ESA-listed stocks throughout the Columbia River Basin.[6] While NMFS issued an amended 1995 BiOp and won subsequent litigation, the agency's victory was based in part on the interim nature of the 1995 plan, and the fact that the agency had promised to put forth a more extensive and long-term recovery plan by the end of 1999.[7]

Science has played an increasingly large role in regional long-term recovery plan deliberations in recent years. Following Judge Marsh's 1994 BiOp decision, NMFS established a collaborative federal, state, and tribal science team to model possible recovery options. Referred to as the "Plan for Analyzing and Testing Hypotheses" (PATH) Team, these agency and tribal biologists and scientists toiled for over four years with the majority of the participants concluding both that the hydrosystem is the likely cause of delayed mortality for Snake River stocks and that dam breaching was the management alternative most likely to recover Snake River spring/summer and fall chinook and steelhead.[8] The PATH findings are cited by conservation groups, Oregon Governor John Kitzhaber, and the Idaho and Oregon chapters and Western Division of the American Fisheries Society (AFS) to defend dam breaching as the most scientifically defensible Snake River fish recovery mechanism. NMFS, on the other hand, has recently tried to distance itself from PATH findings. The agency has established an in-house program referred to as the "Cumulative Risk Initiative " (CRI). According to NMFS, the CRI is a "network of NMFS scientists working to synthesize information and provide clear, consistent and scientifically rigorous decision support for salmonid conservation."[9] The NMFS has relied primarily on initial CRI modeling and risk assessment results to support specific measures outlined in the draft BiOp.

The NMFS BiOp and federal All-H Paper

The NMFS draft BiOp and federal All-H Paper are separate and distinct documents. The draft BiOp is a decision document that once final, is subject to judicial review. The All-H Paper is meant to provide a generic basin-wide plan for recovery, and it also applies to federal agencies not part of FCRPS operations. The All-H Paper is incorporated by reference throughout the BiOp.

The general theme of the proposed BiOp and federal program is to prioritize recovery actions based on the

Salmon, from page 5

likelihood that all ESA-listed stocks would benefit from a particular action. The general consensus is that the framework set forth in the draft BiOp for species recovery – deal with species-specific mortality factors in a systematic and coordinated manner – is workable. However, while the federal documents claim to deal with each of the major "Hs" – hydroelectric, habitat, hatcheries, and harvest – the specific management activities delineated in the plan illustrate otherwise. For instance, important biological performance measures are left undefined, many of the management actions are merely plans for more planning, and perhaps most alarming, the BiOp's reasonable and prudent alternatives for hydro operations look strikingly similar to those outlined in the 1995 BiOp.[10] Further, in light of the federal decision to tread lightly on structural and operational changes to FCRPS projects, the document is extremely quiet in terms of utilizing regulatory authority to ensure federal Clean Water Act compliance or other identifiable "hard choice" recovery mechanisms such as disallowing or shutting down certain land or water use activities on federal, state, and private lands.[11]

The decision to prioritize management activities based on the likelihood that all stocks will benefit makes theoretical sense as part of a comprehensive recovery plan. However, it is doubtful that such approach relieves the legal burden for the federal government to ensure survival and recovery for each of the listed stocks in the Columbia River basin. For instance, while Snake River fish will undoubtedly benefit from estuary and tributary habitat restoration, hatchery reforms, and status quo harvest curtailments, it is difficult to imagine a legally defensible recovery strategy that fails to deal with the primary mortality factor for Snake River spring/summer and fall chinook, sockeye, and steelhead: the four lower Snake River dams. While there are certainly few if any silver bullet recovery measures for anadromous fish in the Columbia River Basin, dam breaching for Snake River fish – especially fall chinook – is an essential component of a long-term species recovery program. So the burden is on the federal government to show that improvement to tributary or estuary life stage survival for Snake River fish will in fact both ensure survival and recovery for Snake River fish.

In fairness to NMFS, the agency has not ruled out dam breaching as a viable recovery alternative for Snake River fish. The BiOp includes a requirement for periodic check-ins to ensure performance standards are met and life stage improvements attained, with dam removal as the back-up plan for Snake River stocks if other efforts fail. However, while the check-in points are clear, the consequences for failing to meet certain goals are not clearly identified. Further, the draft BiOp does not include a specific timeline for dam breaching engineering and implementation studies to be complete so that such measures can be implemented in a timely fashion if the "anything but hydro" plan doesn't work.

The Four-Governor's Joint Recommendations

Amidst the restlessness in the weeks prior to the release of the federal draft recovery documents, the governors of Oregon, Idaho, Montana, and Washington issued a relatively tame document detailing recommendations to protect and restore fish in the Columbia River Basin. Like the federal BiOp and All-H paper, the Governor's plan categorizes reforms according to the four Hs. However, unlike the federal documents, the state recommendations are general in nature and designed to highlight areas where consensus already exists for key elements of a multi-species recovery plan that can serve as a "nucleus of a regional approach to the recovery of ESA-listed aquatic species."[12] Obviously, the state recommendations are not heavy handed; it is clearly stated that the four governor's joint recommendations are intended to merely advise the federal decision-making process, and help streamline recovery plan implementation by identifying areas where government stakeholders all agree something should be done.[13]

The general nature of the state recommendations does not discount the significance of the quad state agreement. The four Columbia River Basin states rarely reach consensus on anything let alone long-term salmon recovery issues. In fact, just months earlier as the keynote speaker at the annual Oregon AFS meeting Governor Kitzhaber broke ranks with the other three states by declaring that breaching the four lower Snake River dams is the most scientifically defensible measure to ensure Snake River salmon and steelhead recovery.[14] In the AFS speech, the Oregon governor emphasized that any legally and biologically defensible non-breaching recovery plan must be extraordinarily aggressive and may actually have more economic impact than the breaching alternative.[15]

While the governors of Idaho, Montana, and Washington continue to disagree with Governor Kitzhaber regarding the breaching issue, the joint state

recommendations identify some common ground on less volatile subjects such as establishing science-based performance standards to measure the success of salmon recovery actions, the importance of instream flows and creating and funding state law programs to encourage voluntary water exchanges and banks, the need to study possible reintroduction programs above massive multi-purpose Columbia and Snake River projects such as Chief Joseph and Grand Coulee dams and the Hells Canyon Complex, and implementing the Lower Columbia River National Estuary Program.[16] Further, the states call for continued research, study, and aggressive actions in regards to difficult hatchery and harvest issues.[17]

Conclusion

Establishing a multi-species conservation program that benefits all ESA-listed salmon and steelhead stocks sounds good on paper, but providing such a plan removes neither the legal burden to ensure both the survival and recovery of Snake River fish, nor the duty to identify and develop a program to address the specific mortality factors affecting each listed stock in the Columbia River Basin. For some stocks, such as Snake River chinook and sockeye salmon and steelhead, this means squarely addressing the primary life history bottleneck – hydro mortality – and not merely turning to off-site mitigation to ensure species recovery. The draft federal documents were released in the middle of an election year, and the content of the final versions will undoubtedly depend on the outcome and tenor of the November elections. Fortunately for the fish, there isn't necessarily a nexus between what is politically palatable and what is legally defensible. Sooner or later the federal government must defend their plan in front of a judge that is cognizant of past federal failures and decades of tinkering with little or no benefits accrued to listed species.

Scott Yates is the Western Legal and Policy Analyst for Trout Unlimited in Portland, Oregon.

ENDNOTES

1. U.S. DEP'T OF COMMERCE, ENDANGERED SPECIES ACT – SECTION 7 CONSULTATION, DRAFT BIOLOGICAL OPINION, OPERATION OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM AND JUVENILE TRANSPORTATION PROGRAM (July 27, 2000) [hereinafter DRAFT BIOP].
2. NATIONAL MARINE FISHERIES SERVICE, CONSERVATION OF COLUMBIA BASIN FISH: DRAFT BASIN- WIDE SALMON RECOVERY STRATEGY (July 27, 2000) [hereinafter ALL-H PAPER]. The All-H Paper was prepared by NMFS in consultation with the other members of the "federal caucus" including the Army Corps of Engineers, Bonneville Power Administration, Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Environmental Protection Agency, Fish & Wildlife Service, and Forest Service.
3. OFFICES OF THE GOVERNORS, RECOMMENDATIONS OF THE GOVERNORS OF IDAHO, MONTANA, OREGON, AND WASHINGTON FOR THE PROTECTION AND RESTORATION OF FISH IN THE COLUMBIA RIVER BASIN (JULY 2000) [hereinafter GOVERNORS PLAN].
4. Idaho Department of Fish & Game v. National Marine Fisheries Service, 850 F. Supp. 886 (D. Or. 1994), remanded with instructions to vacate and dismiss as moot, 56 F.3d 1071 (9th Cir. 1995).
5. *Id*. at 900. Judge Marsh also asserted that "NMFS and the other action agencies have narrowly focused their attention on what the establishment is capable of handling with minimal disruption." *Id*.
6. Thirteen Columbia River anadromous fish stocks are now listed as threatened or endangered under the federal ESA including Snake River (fall and spring/summer), Lower Columbia River, Upper Willamette, and Upper Columbia River (spring) chinook, Snake River sockeye; and chum salmon; and Upper Columbia, Snake River, Lower Columbia, Upper Willamette, and Middle Columbia steelhead and lower Columbia River sea-run cutthroat trout.
7. U.S. DEP'T OF COMMERCE, ENDANGERED SPECIES ACT – SECTION 7 CONSULTATION, BIOLOGICAL OPINION, REINITIATION OF CONSULTATION ON 1994-1998 OPERATION OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM AND JUVENILE TRANSPORTATION PROGRAM IN 1995 AND FUTURE YEARS (1995) (noting that BiOp measures will eventually be combined with a long-term recovery plan to ensure the survival and recovery of listed species).
8. PLAN FOR ANALYZING AND TESTING HYPOTHESES (PATH): FINAL REPORT FOR FISCAL YEAR 1998 (DR. Marmorek & C.N. Peters eds. 1998). *See also* Margaret Hollenbach, *PATH Presents FY 1998 Final Report*, COLUMBIA BASIN BULLETIN (Dec. 11, 1998) http://www.nwppc.org/bulletin/bull_25.htm#2.
9. *See* http://research.nwfsc.noaa.gov/cri/.
10. For instance, the Draft BiOp proposes hydrosystem incidental take levels for Snake River fish up to 88% for fall chinook, 54% for steelhead, and 43% for spring/summer chinook. *See* DRAFT BIOP, at 10- 3.
11. It is debatable whether NMFS can rely on "off-site" mitigation measure to compensate for action agency hydro impacts. Section 7 of the ESA requires NMFS to "suggest those reasonable and prudent alternatives which [it] believes would not violate subsection (a)(2) of this section and can be taken by the Federal agency or applicant in implementing the agency action. 16 U.S.C. § 153(b)(3)(A); *see also* Aluminum Company of America v. Bonneville Power Administration, 175 F.3d 1156, 1159 (9th Cir. 1999)(defining reasonable and prudent alternatives as measures that NMFS "believes would not violate section 7(a)(2) and that can be implemented by the action agency").
12. GOVERNORS PLAN, at 1.
13. *Id*.
14. *See* www.governor.state.or.us/governor/speeches.htm.
15. *Id*.
16. *Id*. at 2-7.
17. *Id*. at 10-13.

United States Must Pay Restitution for Breach of Lease Agreements

Mobil Oil Exploration & Producing Southeast, Inc. v. United States, 120 S. Ct. 2423 (2000).

Stacy Prewitt, 3L
Tammy L. Shaw, J.D.

The U.S. Supreme Court recently ruled that when a new statute prevented the U.S. from performing its part in a lease contract with oil companies, the government violated the contract and the oil companies were entitled to a refund. The Supreme Court determined that, like an individual, the U.S. is bound by contract law and must pay when it fails to perform a contractual duty.

Background

In 1981, Mobil Oil Exploration and Producing Southeast, Inc. and Marathon Oil company paid $158 million in non-refundable "bonus" payments to the U.S. in exchange for 10-year renewable lease contracts. The U.S. promised the companies that they could explore for oil off the North Carolina coast and develop any oil that they found, provided they applied for and were granted permission according to various statutes and regulations. The contracts were conditioned on the companies receiving permission from the federal government and North Carolina subject to the provisions of the Outer Continental Shelf Lands Act[1] (OSCLA) and the Coastal Zone Management Act[2] (CZMA).

In order to apply for permission, the oil companies must complete a lengthy and complicated four step approval procedure. First, the company must submit a Plan of Exploration to the Department of the Interior. If the plan warrants approval, Interior must grant its approval within 30 days of the submission of the proposed plan. Second, the company must obtain an exploratory well drilling permit under the CZMA. To obtain this permit, the company's plan must be consistent with the North Carolina's coastal zone management program. If the state objects to the plan, certification fails unless the Secretary of Commerce overrides the state's objection. Third, if waste discharge is an issue, the company must obtain a National Pollutant Discharge Elimination System permit from the Environmental Protection Agency, which is also dependent on the approval of North Carolina. Fourth, if exploration is successful, the company must gain approval of the Department of Interior by way of a Development and Production Plan that describes the proposed drilling and the environmental safeguards the oil company proposes to implement.

The issues in this case involve the first two steps of this process: the Exploration Plan and the CZMA consistency requirement for North Carolina. In 1981, the companies entered into the contracts with the U.S. government and paid $158 million dollars for the privilege of exploring for oil. In September of 1989, the companies submitted an initial draft of their Exploration Plans to the Interior Department and North Carolina. Ten months later, after an intense review of the companies' plans, Interior made a report concluding that the proposed exploration would not "significantly affect" the marine or the human environment. In August of 1990, the companies submitted their final Exploration Plans and the CZMA consistency certification.

Outer Banks Protection Act

Just two days before the companies submitted their final plans, the Outer Banks Protection Act (OBPA) went into effect. The OBPA prohibited the Secretary of the Interior from approving any Exploration or Development and Production Plans until a number of new conditions had been met. The OBPA created a new kind of review to be conducted by an Environmental Sciences Panel which reported to the Secretary of the Interior and in no event could the Secretary issue any approval for the next 13 months. The Interior Secretary suspended all North Carolina offshore oil leases. In addition, North Carolina refused to certify the oil companies' plan under the CZMA.

In October of 1992, the oil companies brought a lawsuit against the U.S. for breach of contract. The Court of Federal Claims found that the U.S. had broken its contractual promise to follow the OCSLA and that the oil companies were entitled to a refund of their up-front payments. The Court of Appeals for the Federal Circuit reversed holding that the government's failure to consider the oil companies' plan was not the

cause of any failure to carry out the contract's terms. The Supreme Court granted review.[3]

First, the government argued that there was no breach of the contract. The U.S. relied upon the fact that the contracts were conditioned upon a variety of statutes and regulations and that pursuant to the OCSLA, the Department of Interior is authorized to refuse the submitted Exploration Plan or to suspend activity to conduct an environmental analysis or when there is a "threat of serious, irreparable or immediate harm or damage to life . . ., to property, to any mineral deposits . . ., or to the marine, coastal, or human environment."[4] The Court rejected these arguments stating that while the OCSLA did give the Interior the authority to refuse or suspend the leases, the action was taken in light of the new OBPA statute which had not been in effect at the time the agreements were entered into. The Court noted the lease contract language specifically stated that the lease was subject to then-existing regulations and to only certain future regulations, including those issued pursuant to OCSLA and §§ 302 and 303 of the Department of Energy Organization Act. The Court reasoned that the lease contracts' explicit reference to future regulations makes it clear that only regulations made pursuant to statutes in existence at the time the contract was entered into should apply.

The Supreme Court found that timely and fair consideration of a submitted plan was a material condition of the contract and the delay of 13 months or more caused by the OBPA requirements was substantial and resulted in government repudiation of the contracts. Thus, by modifying the approval process, the government denied the companies certain elements of the permission-seeking opportunities they were promised and breached the contract.

Secondly, the government argued that the oil companies had waived their right to restitution by continuing to accept the government's performance on the contracts after the OBPA had been passed. The Court pointed out that determination of waiver focuses not on what the companies asked for, but rather what they received from the government. The Court found that none of the government's actions after the enactment of OBPA amounted to significant performance on the lease contracts and that the companies did not waive their rights to restitution.

Finally, the government argued that its repudiation did not hurt the companies because the companies did not meet North Carolina's CZMA requirements and would not have been granted permission to drill for oil. The Supreme Court concluded that it did not matter whether or not the contracts would lead to the right to explore and to corresponding financial gain, instead the companies had a right to performance on the existing 1981 lease agreements. Failure of that performance by the U.S. constituted breach of contract and entitles the oil companies to restitution.

Conclusion

The Supreme Court ruled that the oil companies gave the U.S. money in exchange for a promise to follow pre-existing statutes and regulations and that subsequent enactment of the OBPA caused the government to breach its part of the contract by imposing new requirements and lengthy delays for the oil companies. This breach substantially impaired the value of the contracts and the oil companies are entitled to a refund of their initial bonus payments.

ENDNOTES

1. 43 U.S.C. § 1331 et seq. (2000).
2. 16 U.S.C. § 1451 et seq. (2000).
3. Mobil Oil Exploration & Producing Southeast, Inc. v. U.S., 120 S. Ct. 2423 (2000).
4. 43 U.S.C. § 1334 (a)(1) (2000).

Court Closes Areas to Longlining

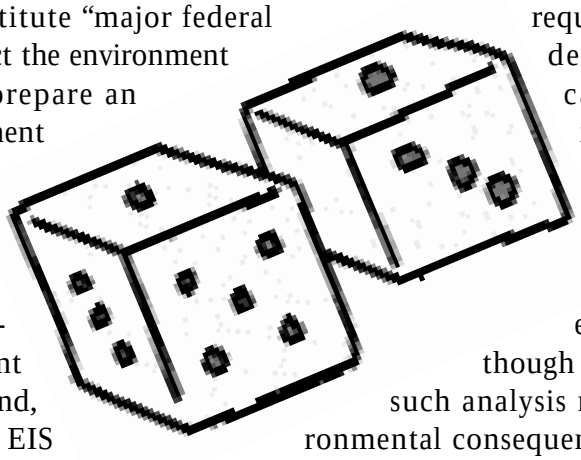
The Hawaii-based longline fishery has been in flux during the last year awaiting decisions of Federal District Judge David Ezra who, in November 1999, closed certain federal waters in the Pacific to the fishery because longlining boats fishing for tuna and swordfish were also hooking endangered and threatened sea turtles. This summer, Judge Ezra modified the earlier order which closed one million square miles of the Pacific Ocean to the fishery to now include more than six million square miles to reduce the longliners' impacts on threatened and endangered sea turtles. Ezra also ruled that within 30 days, federal observers must be on board every longlining ship on every fishing trip in the Hawaii Longlining industry. After the ruling, the judge reconsidered the controversial order and is now acting in an arbiter's role to determine a proper solution to protecting endangered species without shutting down a fishery. WATER LOG will report on the outcome of the lawsuit when the parties and Judge Ezra reach a conclusion about the longlining fishery in the Pacific.

Casinos, from page 1

that an Environmental Impact Statement is required for the Circus Circus, Casino World, and Royal D'Iberville casino developments.

The proposals were not small by comparison to other gulf coast developments. The proposal for Casino World, to be located on the relatively undisturbed shore of Bay St. Louis, consisted of two 600 foot casino barges, a 150 foot floating gazebo, and elevated access road covering 4.8 acres of water bottom. The landside portion of the project included a 450 room hotel, 2,000 seat entertainment facility, tennis court, golf course, recreational vehicle park, and parking garage. The plan for Circus Circus, also proposed for Bay St. Louis, proposed a 300 x 500 foot casino barge and a land-based conference center, theater, food and beverage court, entertainment facilities, hotel and parking. Finally, the proposal for the Royal D'Iberville casino, planned for the shore of Bay of Biloxi, included a 462 x 120 foot casino barge, concrete ramp and deck with a parking garage and lot and 300 room hotel on land.

Because gambling establishments in Mississippi may only be built on floating vessels, all three proposed casinos were required to apply for federal permits as they would have an impact on navigable waters.[2] Under the NEPA, the granting of such permits by the Corps may constitute "major federal actions" that significantly affect the environment and require the Corps to prepare an Environmental Impact Statement (EIS). To determine the significance of each project, the Corps prepared an Environmental Assessment (EA) and found that the projects would not have significant impacts on the environment and, therefore, determined that no EIS was necessary. The plaintiff environmental groups sued to compel the Corps to conduct a full EIS. The court first examined the sufficiency of the Corps analysis of environmental impacts, giving due deference to the federal agency.[3]



Environmental Impacts

Direct Impacts: Direct impacts are those that are caused by the action and occur at the same time and place as the action. The plaintiffs first challenged the Casino World casino which claimed that no dredging would be necessary. The plaintiffs pointed to the impossibility of meeting the statutory requirement of having a 6 foot draft when the average depth of the Bay of St. Louis is only 4.4 feet. The court explained that "while it is hard for the Court to fathom how Casino World will comply with the statutory requirements without dredging in a body of water averaging under six feet in depth, the record does not demonstrate that the Corps failed to consider this impact."[4] Similarly, the Corps was found to have given adequate consideration to water quality concerns and the scouring of the bottoms of Bay of Biloxi.

However, the Corps must reevaluate the potential wetlands degradation, effects on aquatic habitat, and the intake of larvae and eggs under the barges because while the Corps made conclusory statements regarding what it considered to be insignificant impacts, the EAs lacked true analysis for which the determinations could be made.

Indirect Impacts: Indirect Impacts are those that are caused by the action or are reasonably foreseeable but are later in time or further removed in distance from the projects. The plaintiffs claimed that the Corps was required to analyze both upland development adjacent to the casino barges and the inevitable secondary development that would result from the casinos. The Corps rebutted that it does not have to consider upland impacts even though a Corps regulation states that such analysis must occur when the "environmental consequences of the larger project are essentially products of the Corps permit action."[5] After concluding that the Corps must consider upland impacts, the court determined that the Corps' cursory analysis failed to take a "hard look" at the impacts or "make a 'convincing case' for its finding."[6] The court also faulted the Corps for failing to consider the "growth-inducing effects," finding that "the Corps itself recognizes in a classic example of understatement that 'it is likely that this area ma be developed in the future.'"[7]

Because economic development is a stated goal, the environmental analysis must appraise the growth-inducing effects of the casinos.

"while the Corps dedicated nine or ten pages of each EA to cumulative impacts, the discussion provides no analysis at all."

Cumulative Impacts: Cumulative impacts are those that result from individually minor but collectively significant actions taking place over a period of time. The U.S. Supreme Court has determined that when actions will have cumulative environmental impacts upon a region and are pending concurrently before an agency, that the environmental consequences must be considered together.[8] With over twenty casinos permitted along the Mississippi coast and the controversial nature of the potential cumulative impacts, the district court found that "while the Corps dedicated nine or ten pages of each EA to cumulative impacts, the discussion provides no analysis at all."[9] Finding that conclusory remarks without true examination cannot equip a decision-maker to make an informed decision about alternative courses of action, the court found the Corps' analysis of the cumulative impacts of the three casinos inadequate.

Requirement of an EIS

The plaintiffs final contention was that an EIS is required under NEPA and its regulations because the impacts of the proposed casinos are significant by definition. Two key components of finding significant impact are (1) whether the action has impacts on wetlands or ecologically critical areas and (2) whether the effects on the environment are "highly controversial." The court found it significant that though the Corps maintained that the areas at issue were not "ecologically critical," the EAs referred to Bay St. Louis as "one of the largest expanses of relatively undisturbed marsh within Mississippi."[10] Because the record in front of the court also included expert opinions regarding the ecological significance of the area and the highly controversial nature of the projects as evidenced by challenges from the public, three federal agencies, and one state agency, the court found that NEPA does require the Corps and applicants to prepare an EIS for the Circus Circus, Casino World, and Royal D'Iberville casino developments.

The court concluded by quoting the Mississippi Department of Marine Resources which stated that "there are too many unanswered questions raised by the three projects."[11] The permits issued were vacated as arbitrary and capricious awaiting environmental analysis of the EIS. Two of the intervenors in this case, Casino World and Royal D'Iberville, filed an appeal. Neither the U.S. Army Corps of Engineers nor Circus Circus appealed the decision. Water Log will report on the outcome of the appeal in a later issue.

ENDNOTES

1. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).
2. All three casinos applied for a permit under § 10 of the Rivers and Harbors Act (33 U.S.C. § 403 (2000)) and Circus Circus and Royal D'Iberville applied for a permit under § 404 of the Clean Water Act (33 U.S.C. § 1344 (2000)). The Casino World developers claimed that no dredging was necessary for its site so they did not apply for a Clean Water Act permit.
3. The Plaintiffs must meet the high standard of "arbitrary and capricious" meaning that "a reviewing court may only set aside agency actions, findings, or conclusions when they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A) (2000). An agency action is arbitrary and capricious if it has "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Friends of the Earth v. U.S. Corps of Engineers*, 2000 U.S. Dist. LEXIS 11755, at 10, *quoting Motor Vehicle Mfr. Ass'n v. State Farm Mutual*, 463 U.S. 29, 42 (1983).
4. *Friends of the Earth* at 18.
5. 33 C.F.R. § 325 App. B § 7(b) (2000).
6. *Friends of the Earth* at 33.
7. *Id.* at 33-34.
8. *Kleppe v. Sierra Club*, 427 U.S. at 410.
9. *Friends of the Earth* at 36.
10. *Id.* at 38.
11. *Id.* at 41.

2000 Alabama Legislative Update

John David Shaw, 2L

The following is a summary of coastal, fisheries, marine, and water resources related legislation enacted by the Alabama legislature during the 2000 session.

2000 Alabama Laws 798. SB 446
Approved May 25, 2000. Effective September 1, 2000.
Amends § 22-28-23 to give local governments with air pollution ordinances in effect before July 1, 1969 the ability to impose stricter air pollution standards than provided for by state regulations. Local governments may regulate different classes of air pollutants not covered by state standards, but they must notify state authorities of any new ordinances within fifteen days of adoption.

2000 Alabama Laws 806. SB 243
Approved May 25, 2000. Effective September 1, 2000.
Amends § 9-13-62 to make any person cutting timber without permission from the landowner liable to the owner for double the value of the timber. The statute also removes the requirements that the cutting be done willfully and knowingly.

2000 Alabama Laws 37. HJR 13
Approved February 15, 2000. Effective February 15, 2000.
Supports the drilling and development of natural gas reserves on the Outer Continental Shelf.

2000 Alabama Laws 449. HB 62
Approved May 11, 2000. Effective September 1, 2000.
Provides for regulation of activities leading up to the construction of artificial reefs in offshore waters and gives the state the authority to inspect and require permits for any material used in the construction of artificial reefs. The Marine Resources Division of the Department of Conservation has the authority to inspect, and the statute provides for misdemeanor penalties for violators of the regulation.

2000 Alabama Laws 491. HB 894
Effective without Governor's signature on May 15, 2000.
A proposal to amend the state constitution and establish a trust funded by oil and gas payments which would fund capital improvements at the port of Mobile, economic development and industrial recruitment activities, match monies for local governments to improve road and bridges, and direct payments to cities for infrastructure improvement.

2000 Alabama Laws 598. SB 547
Approved May 18, 2000. Effective September 1, 2000.
Amends the Alabama State Port Authority enabling legislation (§ 33-1-2 through § 33-1-22, and 33-2-213) to create the Alabama State Port Authority. The Authority is given the same powers and duties held previously by the Alabama State Docks Department. The act provides for the structure of the authority, grants the transferred employees of the department the same rights and benefits, and transfers the existing indebtedness from the department to the port authority.

2000 Alabama Laws 676. HB 673
Approved May 23, 2000. Effective May 23, 2000.
Adds §§ 9-15-54, 9-15-60, 9-15-61, 11-47-250, 11-47-251, and 11-47-252 to provide for the following: the use of sand from the public water bottoms by local governments in beach restoration projects, the issuance of permits for restoration activities, and the retention of title by the state to all submerged lands filled by beach restoration projects. Amends § 18-1A-171 so that owners of condemned lands will receive the full value of their land by the government, and the value will no longer be decreased according to any benefit to other lands the owner might receive due to condemnation. Amends § 33-1-18 to give the Director of the State Docks Department complete authority to obtain and negotiate the sale of submerged lands, and the authority to obtain an appraisal of the land.

2000 Alabama Laws 708. SB 410
Approved May 23, 2000. Effective May 23, 2000.
Implements the provision of Amendment 617 of the Alabama State Constitution. The act allows the state to issue up to $110 million in bonds for the general improvement of the state parks system. The act provides for the organization, duties, and powers of the Alabama State Parks System

Improvement Corporation and the Alabama Public Historical Sites and Parks Improvement Corporation.

2000 Alabama Laws 714. SB 234
Approved May 23, 2000. Effective September 1, 2000.
Amends §§ 9-17-1, 9-17-6, 9-17-12, 9-17-13, 9-17-24, 9-17-80, 9-17-81, 9-17-82, 9-17-84, and 9-17-85 and gives more power to the Alabama State Oil and Gas Board for oversight of plants and processing facilities, and gives authority to prevent pollution of fresh water supplies by oil and gas operations. The act also allows drilling outside the regular 160 acres of area allowed by the board per drilling unit, if the owners can show trying to drill the area with one unit would be wasteful or unduly burdensome.

2000 Alabama Laws 735. SB 394
Approved May 24, 2000. Effective June 1, 2000, except Section 1, which became effective September 1, 2000.
Amends §§ 9-11-44, 9-11-53, and 9-11-53.1 to set ages 16 and older as the age at which individuals are required to procure a license in order to hunt or fish in Alabama. The act sets the fee for the license at $15. The act also provides that any individual age 64 procuring a gaming license will be issued the license on a lifetime basis and exempts any individual age 65 or older from the license purchasing requirement of the act.

2000 Alabama Laws 736. SB 517
Approved May 24, 2000. Effective May 24, 2000.
Amends § 40-17-31, and provides that .0123 percent of a twelve-cent tax on gasoline sales will be credited to the State Water Safety Fund, the Seafood Fund, and the Game and Fish Fund of the Division of Wildlife and Freshwater Fisheries. Fuels sold to city and county schools, or used for airplane propulsion, are exempt from the tax.

2000 Alabama Laws 737. HB 597
Approved May 24, 2000. Effective September 1, 2000.
Amends §§ 9-12-54.1, 9-12-54.2, 9-12-54.3, 9-12-54.4, 9-12-54.5, 9-12-54.6, and 9-12-54.7 to regulate the transportation of dead saltwater bait for commercial purposes, and define live saltwater bait. The act requires any dealer of bait to obtain a license through the Department of Conservation and Natural Resources, and provides punishment for violators.

Clinton Signs Treaty to Protect Sea Turtles

In October, President Clinton signed the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC), hailed by environmental groups as the first comprehensive international treaty for the protection of endangered sea turtles and their habitats. Ratification of the convention was already approved by the Senate but to bring the convention into force, it must be ratified by eight countries. Presently, seven nations, Venezuela, Peru, Mexico, Brazil, Costa Rica, Ecuador, and the U.S. have ratified it. President Clinton remarked that "effective conservation measures depend on close international cooperation. This treaty fosters that cooperation and serves as a model for others' focus on conserving the world's most endangered species."

The species of sea turtles found in the western hemisphere are threatened and endangered and their migration patterns span thousands of miles in both the Atlantic and Pacific oceans. Human activity and the coastal population explosion in the last few decades has threatened migration patterns, breeding, and habitats of sea turtles.

Under the IAC, countries agree to conserve sea turtle habitat, protect nesting beaches, limit intentional and accidental capture, prohibit international trade in sea turtles and their products, and support sea turtle research. In addition, the convention targets turtle mortality as a result of fishing activities by agreeing to "the reduction, to the greatest extent practicable, of the incidental capture, retention, harm or mortality of sea turtles . . . through the appropriate regulation of such activities, as well as the development, improvement and use of appropriate gear, devices or techniques, including the use of turtle excluder devices (TEDs)."

The text of the Inter-American Convention for the Protection and Conservation of Sea Turtles is available at http://www.seaturtle.org/iac/intro.shtml .

Commissions, from page 1

Commission will be made up principally of highly respected government officials, and leaders from the science, business, and conservation communities.

The Commission will assess the condition of America's oceans and living marine resources and set priorities to protect and manage them for future generations. Regional hearings on specific topics will be held during the next year and a half and final recommendations will be presented to Congress in January 2002. Included among the issues that will be examined are ocean pollution, unintended fishing impacts, adverse impacts of coastal development, climate change, aquaculture, and invasive species.

In August, four months after the Pew Commission was established, President Clinton signed the Oceans Act of 2000 (Public Law 106-256) creating the Commission on Ocean Policy. The purpose of this Commission is to examine all aspects of the utilization, conservation, and governance of the nation's ocean and coastal regions. Specific recommendations will be developed to promote protections from marine hazards, stewardship of fisheries resources, prevention of marine pollution, enhancement of marine transportation, expansion of marine scientific research, improvement in efficiencies of marine technologies, and creation of a more coordinated and coherent coastal and ocean governance system.

The Commission will be composed of sixteen members appointed by the President. Four members will be appointed from nominees put forward by the Majority Leader of the Senate, four from nominees selected by the Speaker of the House of Representatives; two shall be appointed from nominees of the Minority Leader of the Senate, and two from nominees of the Minority Leader of the House. The President has the authority to appoint the remaining four members.

Regional meetings open to the public will be held in the Northeast, Southeast, Southwest, Northwest, and Gulf of Mexico. Within eighteen months after the establishment of the Commission, a final report of findings and recommendations will be submitted to Congress and the President. Within 120 days after receiving the report, the President is required to submit to Congress a statement of proposals to implement or respond to the Commission's recommendations. However, nothing in the Act authorizes the President to take any administrative or regulatory action as a result of the report in the absence of Congressional mandate. Moreover, the President made it clear in his statement upon signing the Act that he interprets his Constitutional authority to allow him to also present his own recommendations as well as decline to offer any recommendation.

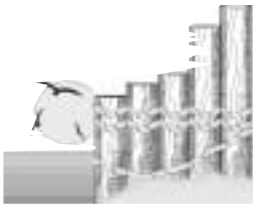
Modeled, to some extent, after the well known and highly successful Stratton Commission created in 1966, the new Commission is hoping to have an equally strong influence over the development of ocean policy in the new century. The Stratton Commission's final report in 1969, *The Nation and the Sea*, spurred Congress to introduce a series of bills leading to the creation of the National Oceanic and Atmospheric Administration (NOAA) as well as passage of the Coastal Zone Management Act of 1972, which continues to serve as the foundation of the nation's coastal and ocean governance efforts.

Prior to the enactment of the Oceans Act of 2000, the Pew Foundation's Ocean Commission was viewed as the primary vehicle to gather information and promote reforms of existing federal coastal and ocean policies. In light of the new nationally-mandated and Congressionally-sponsored Commission on Ocean Policy, it is likely that the privately-funded Pew Commission will unfortunately be relegated to a subsidiary role in the ocean planning effort. Such an outcome would be a shame. Both efforts can only enhance the gathering of information and serve to increase public awareness of threats to our ocean and coastal areas. As long as the two Commissions collaborate to avoid as much unnecessary duplication of effort as possible, the nation's citizens will clearly benefit from the insights and expertise offered by both groups.

The growing number of new voices that will engage in the debate over national ocean policy during the next two years is a welcome change after years of political neglect. We can only hope that the President and Congress will act boldly on the resulting recommendations to better meet the nation's current and future needs in the new century.

For more information on the Pew Oceans Commission and its activities, or to sign up for the Commission's e-mail newsletter, visit www.pewoceans.org.

Lagniappe *(a little something extra)*



Around the Gulf . . .

The Mississippi Commission on Marine Resources has installed new officers and sworn in newly-appointed members for the 2001 fiscal year. The new officers and members are:

William Mitchell, Chairman - represents non-seafood business, Jackson County
Vernon Asper, Vice Chairman - represents nonprofit environmental organizations, Hancock County
Oliver Sahuque - commercial fisherman, Hancock County
Rickey J. Hemba - sports fisherman, Jackson County
Rudy A. Lesso - shrimper, Harrison County

Alabama Gov. Don Siegelman launched his 58-member Commission on Environmental Initiatives in August with a mission to determine ways to improve air and water quality in Alabama, enforce existing environmental laws, and strengthen the Department of Environmental Management. Gov. Siegelman explained that Alabama would not "compromise the protection of our environment and natural heritage" for jobs.

The U.S. Environmental Protection Agency recently awarded a $440,000 grant to the Alabama Department of Environmental Management (ADEM) to help restore wetlands in the Mobile-Tensaw Delta, Weeks Bay and Perdido Bay. The three-year project will be administered by ADEM and the state's lands division.

Around the Nation and the World . . .

On October 3, the National Oceanic and Atmospheric Administration celebrated its thirtieth anniversary. Congress established the NOAA in 1970 "for better protection of life and property from natural hazards … [and] for exploration and development leading to the intelligent use of our marine resources." One of the ancestors of NOAA was the nation's first science agency, Survey of the Coast, founded by President Thomas Jefferson. The Survey of the Coast later evolved into the National Ocean Service, the country's principal advocate for coastal and ocean conservation.

In an event of "almost biblical proportions," a rain of fish fell on Norfolk, England, after a powerful updraft, generated during a thunderstorm over the North Sea, formed a mini-tornado which scooped up and carried away thousands of small fish swimming close to the surface. The storm clouds carried the fish a half mile inland and deposited them onto land.

President Clinton recently excluded Japan fishers from soon-to-be-opened U.S. waters after that country's decision to expand its whaling program to include two species protected by U.S. law, Byrde's and sperm whales. Foreign fishing has been prohibited in U.S. waters, but these waters are expected to be opened next year for the first time in a decade. In August, the U.S. joined with fourteen other nations in a diplomatic protest of Japan's actions, has canceled its annual fisheries meeting with Japan, and is considering trade and other economic sanctions against Japan.

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Marine Reserves On-Line

Check out these links to valuable Marine Reserve information.

View the Legal Program Slide Show on the current state of Marine Reserves in the U.S. at:
http://www.olemiss.edu/orgs/masglp/slide.htm .

Participate in an On-line Discussion on Marine Reserves sponsored by the National Fisheries Conservation Center at:
http://www.nfcc-fisheries.org .

View the Australian Executive Summary on Marine Coastal & Estuarine Investigation Final Report, a full report on Australia's marine national parks is now on the web at:
http://www.nre.vic.gov.au/ecc/marine/report2000.htm .

In the Next Issue:

- Review of a Ninth Circuit decision finding the environmental analysis performed prior to permitting the Makah whale hunt to be insufficient.
- Review of the 2000 Federal legislative session, including analysis of the Oceans Act, Beach Act, and the fate of "CARA."
- Review of a federal court decision ordering the National Marine Fisheries Service to reevaluate the protection of Essential Fish Habitat in certain regions.

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