Volume 22, Number 3, 2003

WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium

Florida Supreme Court Determines Authority of Wildlife Commission

Caribbean Conservation Corporation v. Florida Fish and Wildlife Conservation Commission, 2003 Fla. Lexis 41 (Fla. Jan. 16, 2003).

Joseph M. Long, 2L
Stephanie Showalter, J.D., M.S.E.L.

In a recent decision, the Supreme Court of Florida addressed the issue of whether newly enacted state laws unconstitutionally usurped the state constitutional authority of the Florida Fish and Wildlife Conservation Commission (FWCC) to regulate marine life.

Background

Prior to 1998, the regulation of marine life in Florida was divided between three agencies, the Florida Game and Fresh Water Fish Commission, the Marine Fish Commission (MFC), and the Department of Environmental Protection (DEP). The Game Commission had regulatory authority over fresh water aquatic life. Endangered and threatened marine species were regulated by the DEP, and the MFC had jurisdiction over all marine life, with the exception of endangered species. Although the MFC could not directly implement regulations with respect to endangered

See FWCC, page 6

Interveners Allowed in Georgia Water Suit

Georgia v. United States Army Corps of Engineers, 302 F.3d 1242 (11th Cir. 2002).

Amanda M. Beard, J.D.

When Georgia brought an action against the Army Corps of Engineers (Corps) seeking to increase the amount of water available to the city of Atlanta from Lake Lanier, a reservoir owned and managed by the Corps, the state of Florida and Southeastern Federal Power Customers, Inc. (SeFPC), a preference customer of the reservoir, filed motions to intervene as defendants in the suit. When the United States District Court for the Northern District of Georgia denied the motions, Florida and SeFPC appealed. The 11th Circuit Court of Appeals reversed and remanded the lower

See Georgia, page 2

In This Issue . . .

Georgia, from page 1

court's findings, holding Florida and SeFPC were both entitled to intervene in the action.

Background

The Apalachicola-Chattahoochee-Flint River Basin (ACF Basin) provides a shared water supply to Georgia, Alabama, and Florida. In 1997, the three states formed the ACF Compact, which was enacted by their legislatures and Congress to negotiate the equitable allocation of the states' shared water supply. Having not reached an agreement by the original December 21, 1998 deadline, the three states agreed to extend their negotiation deadline to January 31, 2003. Since January, the Governors of the three states have entered the negotiations and again extended the deadline.

Lake Lanier, a reservoir owned and managed by the Army Corps of Engineers is located within the ACF Basin, just north of Atlanta, Georgia. Two years ago, Georgia's Governor requested additional withdrawals of water from the reservoir until the year 2030, to meet the growing needs of the city of Atlanta. After nine months without a response from the Corps, Georgia filed suit, seeking an order compelling the Corps to grant the water supply request as well as a determination of the Corps' authority and obligations to Georgia regarding Lake Lanier.

Florida filed a motion with the court to intervene as a defendant in the suit, or in the alternative, a motion to dismiss the suit. SeFPC also filed a motion to intervene as a defendant, six months after Georgia's initial filing of the suit. The district court denied both motions. After the motions to intervene had been denied and before the appeal was heard, the Corps denied Georgia's water supply request.

Florida's Motion to Intervene

To determine whether Florida had a right to intervene as a defendant in the suit between Georgia and the Army Corps of Engineers, the 11th Circuit Court of Appeals considered the following criteria: whether Florida made a timely motion to intervene, whether Florida has an interest in the subject matter of the suit, whether the outcome of the litigation will impact Florida's ability to protect its interest, and whether the existing parties have an ability to represent Florida's interest. After the court stated that the timeliness of Florida's motion was not disputed, the court went on to discuss the other factors.

First, the court considered whether Florida has an interest in the subject matter of the suit. To make the determination, the court looked to the subject matter of the suit and found that Florida does have a legally protectable interest in the "quality and quantity of water in the Apalachicola River and Bay,"[1] which are contained in the ACF Basin. The court noted that because of the "interrelatedness of the Chattahoochee and the Apalachicola, and the impact of diverting more water from Lake Lanier for municipal purposes and permitting additional releases to accommodate increased wastewater discharges,"[2] Florida's interest in the water in the ACF Basin would be affected.

Second, the court considered whether the outcome of the litigation, as a practical matter, would affect Florida's ability to protect its interests. Though Georgia argued that the proper forum for the adjudication of Florida's rights is the United States Supreme Court, the court expressed doubt that the U. S. Supreme Court would be willing to hear an equitable apportionment action brought by Florida. The court also noted that "none of the equitable apportionment cases decided by the Supreme Court has ever been brought while an interstate compact was being negotiated."[3] In addition, the court speculated that even if the Supreme Court were to take jurisdiction over an equitable apportionment case brought by Florida, the outcome of Georgia's lawsuit might have an adverse affect on it. Thus, the court found, as a practical matter, the outcome of this lawsuit would impact Florida's ability to protect its interests in the waters of the ACF Basin.

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, P. O. Box 1848, University, MS, 38677-1848, 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.

Editors: **Kristen Fletcher, J.D., LL.M.**
Stephanie Showalter, J.D., M.S.E.L.

Publication Design: **Waurene Roberson**

Contributors:
Amanda M. Beard, J.D. **Jason Dare, J.D.**
Sarah Elizabeth Gardner, J.D. **Joseph Long, 2L**
Jason Savarese, 2L **S. Beth Windham, J.D.**

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

Third, the court considered the ability of existing parties in the lawsuit to represent Florida's interests. Because the Army Corps of Engineers has no "independent stake in how much water reaches the Apalachicola,"[4] the court held that Florida's interest in an equitable allocation of the waters of the ACF Basin could not be adequately represented by the Corps. Therefore, Florida met its "minimal" burden of showing that existing parties could not adequately represent its interests.

SeFPC's Motion to Intervene

The court considered the same factors for SeFPC's right to intervene.

First, the court considered SeFPC's interest in the subject matter of the suit. The members of SeFPC have contracts to purchase the surplus hydropower produced by the Buford Dam, located on Lake Lanier. Thus, if Georgia's request is granted, less water will flow through Buford Dam, and less hydropower will be generated and distributed to the SeFPC members. Accordingly, the court held that because granting Georgia's water supply request would result in a "diminution of the overall production of hydropower,"[5] the SeFPC has a legally protectable interest in the suit.

Second, the court considered whether the impact of the litigation would affect SeFPC's ability to protect its interest. The court found that since SeFPC has a suit pending against the Corps, any decision in the present case could impact the SeFPC's ability to litigate their suit.

Third, the court considered the ability of the existing parties to represent SeFPC's interest. The court ruled that SeFPC, too, satisfied this "minimal" burden, stating that they do not believe that "a federal defendant with a primary interest in the management of a resource has interests identical to those of an entity with economic interests in the use of that resource."[6]

Finally, the court evaluated the timeliness of SeFPC's motion to intervene. After considering many factors, including the interests of justice, the court did not believe that SeFPC's six month delay constituted untimeliness.

Thus, the court also reversed the district court's ruling that denied SeFPC's motion to intervene in the suit between Georgia and the Army Corps of Engineers.

Conclusion

The 11th Circuit Court of Appeals allowed both Florida and SeFPC to intervene in the lawsuit. In reversing the district court, the Court found that both parties met the requisite criteria, mainly that their respective interests would not be protected if not allowed to intervene.

ENDNOTES

1. *Georgia v. United States Army Corps of Engineers*, 302 F.3d 1242, 1252 (11th Cir. 2002).
2. *Id.*
3. *Id.* at 1254.
4. *Id.* at 1256.
5. *Id.* at 1258.
6. *Id.* at 1259.

Procedures of California Coastal Commission Ruled Unconstitutional

Marine Forest Society v. California Coastal Commission, 128 Cal. Rptr. 2d 869 (Cal. Ct. App. 2002).

Stephanie Showalter, J.D., M.S.E.L.

In December, 2002, a California court of appeal held that the appointment structure of the California Coastal Commission violates the separation of powers clause in the California Constitution. The court enjoined the Commission from granting or denying permits for coastal development and from issuing cease and desist orders. This decision leaves the California Coastal Commission powerless to regulate or stop development along the California coast.

The Commission

Created in 1972, the California Coastal Commission (Commission) is the primary agency responsible for the implementation of the California Coastal Act of 1976. The Coastal Act governs land use planning along the California coast and contains provisions on public access and recreation, coastal resources, and residential and industrial development. The Commission's 12 voting members are appointed as follows: 4 by the Governor of California, 4 by the Speaker of the Assembly, and 4 by the Senate Committee on Rules. Members appointed by the above authorities serve two-year terms "at the pleasure of their appointing authority."[1] The Commission is a permanent body which acts by majority vote. It is empowered to take a variety of actions to ensure the implementation of the Coastal Act, including promulgating regulations, hearing applications for coastal permits, and issuing cease and desist orders to halt illegal development.

The Appeal

The Marine Forest Society (Society) is a nonprofit corporation involved in an experimental project to create marine forests. "The object and purpose of the Marine Forest Society is to discover techniques and economics facilitating the creation of large scale marine forests where seaweed and shellfish growing on sandy bottoms will replace the lost marine habitats."[2] The Society planted its first forest, created from a mix of materials, including tires, plastic jugs, and concrete blocks, in 1986. In 1993, the Commission determined that the activities of the Society were a coastal zone development project requiring a permit under the Coastal Act. The Society applied for an after-the-fact permit which was denied. In October 1999, the Commission issued a cease and desist order for the experimental site.

The Society filed a lawsuit against the Commission for injunctive relief from the cease and desist order. The Society argued that the Commission lacked the authority to issue such orders as "the mechanism by which the majority of its voting members are appointed violates the separation of powers doctrine."[3] The trial court agreed with the Society and issued an injunction preventing the Commission from granting or denying coastal permits and issuing cease and desist orders. The Commission appealed the injunction.

Separation of Powers

The California Constitution states "the powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."[4] The separation of powers doctrine prevents one branch of government from exercising control over the functions of another branch. The legislative branch makes the laws while the executive branch executes the laws. It is impermissible for the legislative branch to also execute the laws it makes. The Society argued that the appointment structure of the Commission allowed the Legislature to improperly exercise control over the execution of the Coastal Act.

Administrative agencies, such as the Commission, are part of the executive branch of government and they exercise executive powers. The powers to adopt rules and regulations, conduct investigations, and review local coastal programs are all executive in nature. The Commission also exercises quasi-judicial powers by granting and denying permits and issuing cease and desist orders. An administrative body may exercise such quasi-judicial powers if incidental to, and reasonably necessary to accomplish, the agency's executive mandate. These quasi-judicial powers are not legislative powers, however, but executive powers exercised to assist the agency in carrying out its executive functions.

In California, the Legislature has the authority to create new agencies and, if the law creating the agency so prescribes, also the power to appoint agency members. It is permissible for the appointees to be removable at the will of the Legislature. If the appointment power is not prescribed by law, it remains with the Governor. Although the Legislature can appoint executive branch officers via an administrative agency and remove them at will, this power is not unlimited. The appointment mechanism must contain adequate safeguards to ensure that the inherent authority of the executive branch agency is not materially infringed upon by the appointing authority. For example, an appointment mechanism allowing the Governor and the California Legislature to appoint three of the five judges of the State Bar Hearing Department did not violate the separation of powers doctrine because the appointees had to be evaluated in accordance to California Supreme Court rules and found qualified by a committee appointed by the Supreme Court.[5] The judges were also subject to discipline by the Supreme Court and their findings were reviewable by a Supreme Court committee. These safeguards ensured that the Supreme Court's authority over the judicial branch was not impaired by the appointment mechanism.

Such safeguards are not present in the appointment mechanism for the Commission. The Court of Appeals determined that the appointment mechanism for the Commission violates the separation of powers doctrine because it gives the Legislature almost complete discretion to appoint 8 of the 12 members. These Commissioners serve at the pleasure of the Legislature and can be removed at any time for any reason, even without cause. Furthermore, the Coastal Act contains no procedural safeguards to protect against the Legislature's use of its appointment or removal authority. The United States Supreme Court has held that an agency's executive power is impermissibly interfered with if a majority of the voting members of the agency are removable at the pleasure of the legislative branch.[6] The majority of the Commission's members are removable at the pleasure of the Legislature. "The presumed desire of those members to avoid being removed from their positions creates an improper subservience to the legislative branch of government."[7]

Conclusion

Because the mechanism for appointing members to the Commission violates the separation of powers doctrine, the California Court of Appeals affirmed the decision of the trial court and reinstated the injunction. The Commission is, therefore, prohibited from granting, denying, or conditioning any coastal development permits and issuing cease and desist orders. Because of the ramifications of this opinion for coastal planning in California, the Commission will likely appeal this decision to the California Supreme Court.

ENDNOTES

1. CAL. PUB. RES. CODE § 30312 (2002).
2. Marine Forest Society homepage, http://www.marinehabitat.org (last visited Feb. 14, 2003).
3. *Marine Forest Soc'y v. Cal. Coastal Comm'n*, 128 Cal. Rptr. 2d 869, 874 (Cal. Ct. App. 2002).
4. CAL. CONST. art. III, § 3.
5. *Obrien v. Jones*, 96 Cal. Rptr. 2d 205 (Cal. 2002).
6. *Marine Forest Soc'y*, 128 Cal. Rptr. 2d at 881 (*citing Bowsher v. Synar*, 478 U.S. 714 (1986)).
7. *Id.* at 882.

UPDATE

California Governor Amends the Appointment Procedures for the California Coastal Commission

On February 24, 2003, Governor Gray Davis of California signed a bill setting the term of office for legislative appointees to the California Coastal Commission to four-year terms. The bill was introduced after the Commission was ruled unconstitutional by a state appeals court. Because those commissioners appointed by the legislative branch will no longer serve at the pleasure of the legislature, the court's concerns that the legislature could exercise control over the Commission should be alleviated. Under the new legislation, the Governor will continue to appoint four of the 12 commissioners. These four members serve two-year terms at the pleasure of the Governor.

FWCC, from page 1

marine species, the MFC was allowed to issue rules impacting endangered species, such as gear specifications.[1]

This division of power was altered in 1998, however, with the creation of the Florida Fish and Wildlife Conservation Commission (FWCC). Article IV of the Florida Constitution established the FWCC stating that "the commission shall exercise the regulatory authority and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life."[2] Article XII transferred the jurisdiction, power, and rules of the MFC to the FWCC. The Game and Fresh Water Fish Commission and the MFC were disbanded.

Following the approval of the constitutional amendment, the Florida legislature enacted chapter 99-245. Chapter 99-245 gave the FWCC "full constitutional rule making authority over marine life and listed species as defined in [section] 372.072(3), except for endangered or threatened marine species for which rule making shall be done pursuant to chapter 120."[3] Chapter 120 contains the provisions of Florida's Administrative Procedure Act (APA) which set out the various procedures an agency must adhere to when issuing rules and regulations. Chapter 99-245 also grants the protection of the APA to any party whose interests will be affected by the Commission's performance of its statutory duties, including "research management responsibilities for marine species listed as endangered, threatened, or of special concern, including, but not limited to, manatees and marine turtles." The FWCC is also required to comply with the APA when adopting rules concerning marine turtles and manatees.

These sections of Chapter 99-245 were challenged by environmental organizations under Articles IV and XII of the Florida Constitution. The petitioners argued that the above provisions of chapter 99-245 were unconstitutional. They contended that the Legislature gave full constitutional rule making authority over all marine life to the FWCC and, therefore, the Legislature could not require the FWCC to comply with the APA when issuing regulations with respect to endangered and threatened species or species of special concern. In 1996, Florida's APA was amended to improve legislative oversight of the rulemaking process. The petitioners apparently felt that additional legislative oversight of the FWCC infringed upon the agency's authority to issue regulations.

Lower Court Decisions

The circuit court, the trial court in Florida, agreed with the petitioners and held that the FWCC's exercise of authority over endangered and threatened marine species could not be made subject to the provisions of the APA. The circuit court held that the FWCC "acts not as an administrative agency but as a constitutional commission with 'constitutional authority to promulgate rules that impact upon endangered and threatened species and to otherwise act in reference to endangered and threatened species.'"[4] Chapter 99-245 is therefore unconstitutional, according to the circuit court, to the extent it requires the FWCC to adhere to the APA when exercising its constitutional powers.

The First District Court of Appeals, a mid-level appellate court, disagreed with the circuit court's conclusion that the FWCC has constitutional authority over endangered species and is exempt from the APA. The district court ruled that chapter 99-245 was constitutional. The petitioners appealed to the Supreme Court of Florida.

Authority of the FWCC

The Florida Supreme Court initially examined whether the Florida Constitution gave the FWCC full constitutional regulatory authority over all marine life. The petitioners argued that Article IV, section 9 of the Florida Constitution gave the FWCC full authority. The court read the language of the Article IV, in conjunction with Article XII, and concluded that the two provisions "gave to the FWCC regulatory and executive powers with respect to marine life, including the regulatory and executive powers of the Marine Commission in effect on March 1, 1998."[5] The court found that the FWCC did gain regulatory and executive powers with respect to some marine life, but not all, because some power over endangered and threatened marine life remained with the DEP.

Prior to the enactment of the Constitutional amendment, the DEP regulated endangered and threatened marine life. The MFC did not have authority over these species. The Supreme Court, therefore, determined that the transfer of authority to the FWCC did not include any authority over endangered or threatened marine life. This conclusion is consistent with the language of the Article IV and the legislative history of the amendment. The Supreme Court stated that Article IV gave the FWCC some regulatory powers with respect to marine life, but not "the" regulatory power of the state. The court reached this conclusion by dissecting

See FWCC, page 9

the phrasing of Article IV. While there is a "the" before "regulatory" in the phrase, "FWCC shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh aquatic life," there is no "the" prior to "regulatory" in the phrase immediately following which states, "shall also exercise regulatory and executive powers of the state with respect to marine life." The missing "the" indicated a difference in the level of authority designated to the FWCC by the Florida Congress. While the FWCC has the full powers of the state with respect to wild animal life and fresh water aquatic life, the Commission only has some powers with respect to marine life. In reviewing other relevant sections of the Florida Constitution and the legislative history of the provisions, the Court found that it was the intent of the Florida Constitutional Revision Committee to keep the "regulatory authority which is being transferred . . . narrow in scope."[6] The Revision Committee transcripts also indicate a specific intent to allow regulatory authority over endangered and threatened species to remain with the DEP.

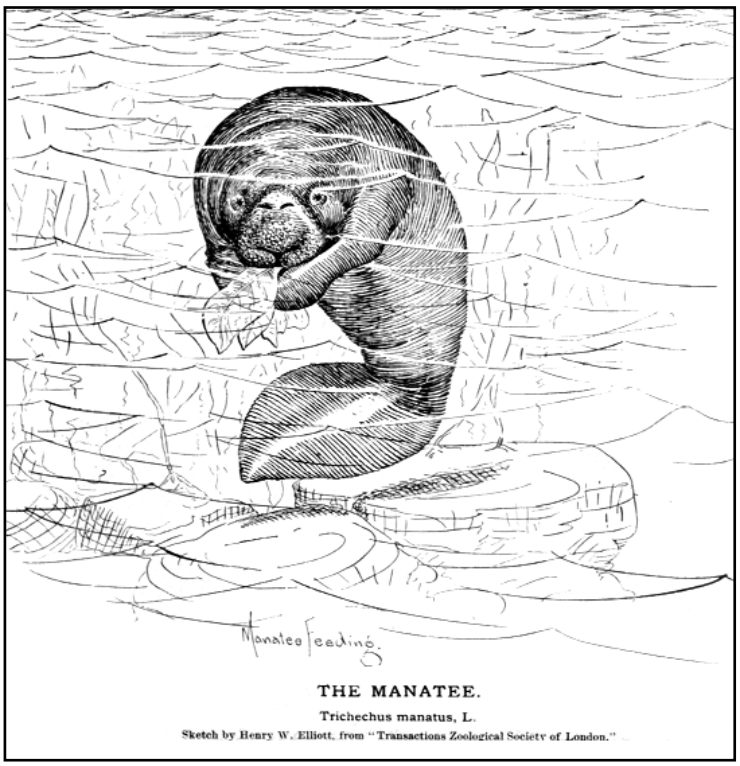
Conclusion

The challenged sections of the Florida Statutes, concerning the FWCC's regulatory and executive authority over marine life, are constitutional. The FWCC must comply with the APA when issuing rules and regulations concerning endangered and threatened marine species.

ENDNOTES

1. *State v. Davis*, 556 So. 2d. 1104, 1006 (Fla. 1990). In *Davis*, the MFC passed an emergency rule that prohibited possessing a trawler rig that was not equipped with a qualified turtle excluder device.
2. FLA. CONST. art. IV, § 9.
3. FLA. STAT. ANN. § 20.331(6)(c) (2002).
4. *Caribbean Conservation Corp. v. Florida Fish and Wildlife Conservation Comm'n*, 2003 Fla. Lexis 41, at *16 (Fla. Jan. 16, 2003).
5. *Id.* at *24.
6. *Id.* at *27.

Illustration courtesy of NOAA, Historic NMFS Collection



Fisheries Amendment Adopted in FY '03 Appropriations

On January 23, 2003, the Senate passed the FY '03 Omnibus Appropriations Bill. In the bill, three amendments related to the National Marine Fisheries Services were cleared by the bipartisan leadership and agreed to en bloc.

- The Secretary of Commerce is required to implement a fishing capacity reduction program for the West Coast groundfish fishery. The capacity reduction program will focus on the harvesting of Pacific groundfish, Dungeness Crab, and Pink Shrimp, but excludes Pacific whiting. The amendment also calls for a referendum by eligible fisherman regarding a permit buy back program.
- The amendment provides for the establishment of the Alaska Fisheries Marketing Board, appointed by the Secretary of Commerce, to award grants "to market, develop, and promote Alaskan seafood and to improve related technology and transportation with an emphasis on wild salmon."
- The amendment also provides $3,000,000 to the oyster industry in the State of Louisiana to assist in the recovery efforts after Hurricanes Isidore and Lili.

No Deference for NMFS Interpretation of Quota Program

Wards Cove Packing Corp. v. National Maine Fisheries Service, 307 F.3d 1214 (9th Cir. 2002).

Stephanie Showalter, J.D., M.S.E.L

The Ninth Circuit recently held that the National Marine Fisheries Service's interpretation of the halibut and sablefish Individual Fishing Quota program regulations was not entitled to deference, because the agency failed to comply with the plain language of the regulations.

Background

In the years before the implementation of fisheries management plans in the Pacific Northwest, fishing for halibut and sablefish was a race to harvest as many fish as possible before the fishery closed for the year. This type of fishing caused numerous problems for fishermen and the public. In 1991, the North Pacific Fishery Management Council recommended the creation of a quota system to improve the management of the halibut and sablefish fisheries. In 1993, the Secretary of Commerce promulgated final regulations for the Individual Fishing Quota (IFQ) program for the fixed gear halibut and sablefish fisheries in the Pacific region.

In order to receive an IFQ, a person must be qualified. An applicant is qualified if s/he "owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear from any IFQ regulatory area, in any QS [Quota Share] qualifying year."[1] The QS qualifying years are 1988, 1989, and 1990.[2] If qualified, an applicant is entitled to receive an annual quota share of the particular species. In 1995, the National Marine Fisheries Service (NMFS) adopted an interpretative rule stating that an applicant must have legal landings of *both* halibut and sablefish during the qualifying year to qualify for a quota share in both fisheries.

The Lawsuit

Wards Cove Packing Corporation applied for a Quota Share (QS) for both halibut and sablefish. Wards Cove had made legal landings of halibut in 1988, 1989, and 1990 and sablefish in 1985, 1986, and 1987. The NMFS issued Wards Cove an initial QS for halibut, but denied Wards Cove's application for sablefish on the basis that Wards Cove failed to make legal landings of sablefish during the qualifying years.

Wards Cove appealed the agency's decision arguing that because it had made legal landings of one of the species during the qualifying year and had landings of both species during the species base period, it was entitled to an initial quota share for both species. The district court determined that the regulation for the IFQ program was ambiguous and ruled that the NMFS's interpretation was entitled to deference. Wards Cove again appealed.

Qualified Person

"The plain meaning of a regulation governs and deference to an agency's interpretation of its regulation is warranted only when the regulation's language is ambiguous."[3] The Ninth Circuit held that the regulations for the sablefish and halibut QS program are unambiguous.

The Regional Administrator is authorized to assign a halibut and sablefish fixed gear fishery QS to qualified persons.[4] A qualified person is someone who owned or leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, in 1988, 1989, 1990.[5] The court determined that this language is clear. "It provides that a person that made a legal landing of either halibut *or* sablefish is qualified to receive an initial QS."[6]

The NMFS argued, however, that the regulation is ambiguous because § 679.40(a)(4) differentiates between the two species in the calculation of the initial QS. A qualified person's halibut initial QS is calculated "based on that person's highest total legal landings . . . for any 5 years of the 7-year halibut QS base period 1984 through 1990."[7] The sablefish initial QS is calculated in a similar fashion, except the QS base period is 1985 through 1990.[8] The court quickly reconciles the plain language of the statute with the calculation instructions, stating that the regulations recognize that fixed-gear commercial operators may switch between species of fish depending on market condition. The court reasoned that this flexibility gives applicants the benefit of their best years of operation and was not meant to exclude applicants who made legal landing of only one species in 1988, 1989, and 1990.

Conclusion

The Ninth Circuit held "that an applicant must have had legal landing of either halibut or sablefish during

the years between 1984 through 1990 to qualify for QS in either fishery."[9] Because Wards Cove made legal landings of halibut during the qualifying base period and had landings of both species during their respective species base periods, they were entitled to a QS for both halibut and sablefish.

ENDNOTES

1. 50 C.F.R. § 679.40(a)(2)(A) (2002).
2. 50 C.F.R. § 679.40(a)(3) (2002).
3. *Wards Cove Packing v. NMFS*, 307 F.3d 1214, 1219 (9th Cir. 2002).
4. 50 C.F.R. § 679.40(a)(1) (2002).
5. 50 C.F.R. §§ 679.40(a)(2), (a)(3) (2002).
6. *Wards Cove*, 307 F.3d at 1219 (emphasis in original).
7. 50 C.F.R. § 679.40(a)(4)(i) (2002).
8. 50 C.F.R. § 679.40(a)(4)(ii) (2002).
9. *Wards Cove*, 307 F.3d at 1220.

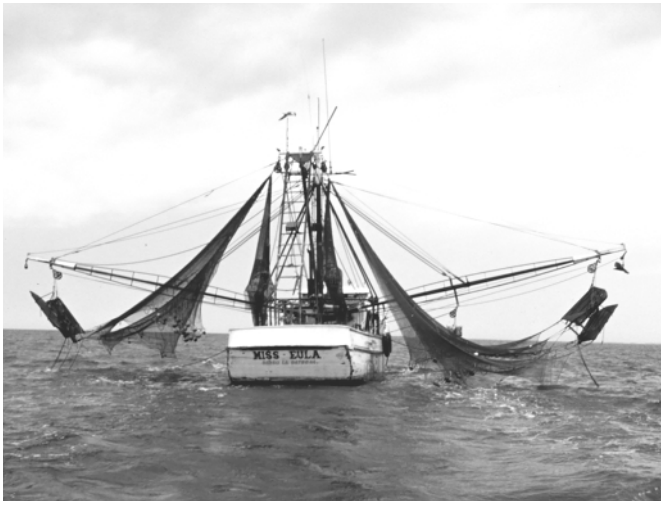


Photo courtesy of NOAA

Supreme Court Affirms Wetlands Fines

Borden Ranch Partnership v. United States Army Corps of Engineers, 123 S. Ct. 599 (2002).

Stephanie Showalter, J.D., M.S.E.L.

The United States Supreme Court recently affirmed the authority of the Army Corps of Engineers to require a permit for "deep ripping" activities. The defendant, Angelo Tsakopoulos, began "deep ripping" his ranch in 1993 without a permit. "Deep ripping" is a farming practice which uses four- to seven-foot prongs to churn the soil behind the tractor and prepare the soil for orchards and vineyards. Many of the areas chosen by Tsakopoulos contained protected swales, sloped wetlands which filter water and minimize erosion. The Army Corps of Engineers and the EPA informed Tsakopoulos that he needed a permit to continue, and when he failed to cease activities, issued an administrative order against him. Tsakopoulos filed a lawsuit in the United States District Court for the Eastern District of California challenging the authority of the Corps and the EPA. Tsakopoulos was fined $500,000 and required to restore four acres of wetlands.

On appeal, the Ninth Circuit held that the Corps had jurisdiction over the deep ripping. In order to discharge dredged or fill material into a wetland, a permit must be obtained from the Army Corps of Engineers.[1] Deep ripping, in this situation, redeposited soil into a wetland, resulting in the addition of a pollutant.[2] Tsakopoulos unsuccessfully argued that deep ripping falls within the farming exceptions, which exempt "the discharge of dredged and fill material from normal farming...activities such as plowing" from Clean Water Act regulations.[3] However, if plowing is conducted to bring "an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired," a permit is required.[4] The court found that conversion of ranch land into orchards and vineyards brought the land into a new use. Since the flow of water on Tsakopoulos land would be impaired by this conversion, he could not take advantage of the "farming exceptions."

The United States Supreme Court affirmed the decision of the Ninth Circuit in a 4-4 vote, but refrained from issuing a written opinion. The vote indicates just how divided the Court is on the extent of Corps' authority under the CWA. A tie resulted because Justice Anthony M. Kennedy did not participate. Agency jurisdiction under the CWA is a key issue to watch for on future Supreme Court dockets, as the next vote could go either way.

ENDNOTES

1. 33. U.S.C. § 1344(a) (2002).
2. *See Rybachek v. U.S. EPA*, 904 F.2d 1276 (9th Cir. 1990) (holding that redeposits of materials can constitute an addition of pollutants).
3. 33. U.S.C. § 1344(f)(1)(A) (2002).
4. 33. U.S.C. § 1344(f)(2) (2002).

Federal Circuit Tweaks Takings Clause Analysis

Walcek v. United States, 303 F.3d 1349 (Fed. Cir. 2002).

Jason Dare, J.D.

The Federal Circuit Court recently decided a case regarding how to determine the value of private property involved in a "takings" claim. The U.S. Supreme Court has determined that a physical invasion or the loss of all economically beneficial use of private property is a "taking" in violation of the Fifth Amendment of the U.S. Constitution. When a property is affected by a government regulation that falls short of a physical invasion or total loss, the effect of the regulation on the property's value must be determined. In order to determine this, a court can look at the entire parcel of property or only the portion of the property affected by the regulation.

The Federal Circuit applied a 2002 decision by the U.S. Supreme Court holding that a court properly look at the "parcel as a whole" for purposes of regulatory takings analysis.

Background

In 1971, Dolores, Stanley and Albert Walcek, and Regina Ammons (the "Walceks") purchased a 14.5 acre tract of land near Bethany Beach, Delaware. They purchased the property with the intent to develop it for $117,731. The property was subject to various regulations at the time of the purchase: it was zoned as residential, between 4.5 and 5.2 acres are designated state wetlands by Delaware which would require a permit to develop, and a portion falls below the mean high water mark, triggering regulation by the Corps of Engineers under § 10 of the Rivers and Harbors Act.

In 1972, with the passage of the Clean Water Act (CWA), 13.2 acres of the Walceks' property became subject to federal regulation under § 404 of the CWA. Section 404 gives the Army Corps of Engineers ("Corps") permit authority over discharged dredge or fill material when the dumping is to fill waters of the U.S., including wetlands.[1] A § 404 permit is for a federal action that affects water quality and triggers § 401 of the Clean Water Act, which requires developers to obtain state water quality certification for the action.[2] Section 404 also requires that the Walceks obtain Coastal Zone Management Consistency Certification from Delaware.

In 1987, after receiving notification from the Corps that the aforementioned regulations applied to their property, the Walceks began filling and developing their property for a 77-lot residential development. When the Corps discovered these actions it issued a cease and desist order requiring the halt of the Walceks' operation until they acquired the requisite permits. On February 22, 1988, the Walceks applied to the Corps and the Delaware Department of Natural Resources and Environmental Control for a § 404 permit and various state certifications. In 1993, the Corps denied the Walceks' permit application and offered alternate ideas to their development plans. The Walceks appealed the decision to the Court of Federal Claims. After the complaint was filed, the Corps issued a permit to the Walceks authorizing some development of the property.[3]

The Walceks alleged the Corps had committed a permanent taking of their property by denying their permit request in 1993. The Walceks claimed that the per-

mit denial rendered their property economically useless. Upon review, the Court of Federal Claims determined that the denial of the permit failed to rise to the level of a *per se* taking because it allowed for the development of 2.2 acres, out of 13.2 wetland acres, which was not a denial of "all economically beneficial or productive use of [the] land."[4] Additionally, the court held no taking had occurred because the regulation caused "merely a noncompensable diminution in value" of the Walceks' property.[5] The Walceks appealed this decision to the Federal Circuit.

Regulatory Takings

The Fifth Amendment to the U.S. Constitution states that "private property [shall not] be taken for public use, without just compensation."[6] The Supreme Court, in *Penn Central Transp. Co. v. New York City*, set out three factors for courts to review when a landowner alleges a taking has resulted because of federal regulation. These are: "(1) the regulation's economic effect on the landowner; (2) the extent to which the regulation interferes with reasonable, investment-backed expectations; and (3) the character of the government action."[7]

The Walceks argued that the Court of Federal Claims erred by reviewing the relevant parcel as the entire 14.5 acres, instead of just the 13.2 acres of wetlands. The question of the "relevant parcel" has been litigated for years,[8] but the Supreme Court recently decided in *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* that the "parcel as a whole" approach was proper in a regulatory takings analysis.[9] Moreover, the Federal Circuit previously used the "parcel as a whole" approach in the wetland regulation context.[10] Therefore, the Federal Circuit held that the lower court committed no error when it included all of the Walceks 14.5 acres of property in the *Penn Central* analysis, instead of merely the 13.2 acres of wetlands. The impact of the regulation must be analyzed in light of the parcel as a whole. Because the Walceks could develop 2.2 acres of their property, they were not deprived of "all economically viable use" of their land and, therefore, no taking occurred.

Inflation Adjustment

The Walceks also argued that the lower court erred when it calculated the value of the property. According to the Walceks, if the court had adjusted the property value for inflation, the calculation would have produced a $93,000 loss. The Court determined the parcel would generate a $305,000 profit. The Federal Circuit held that when the fair market value was calculated, the "impact of inflation" was "inherently factor[ed] in."[11] Therefore, in the *Penn Central* analysis, the "fair market value at the time of the alleged taking" is compared to the original cost.[12] This reduces any speculation that may occur through calculations of inflation and deflation.

Conclusion

When determining whether a regulatory taking has occurred, courts should review the claimant's entire property, and not just what the claimant alleges was taken. Furthermore, instead of using inflation and deflation calculations to determine whether the alleged taken property can generate a profit, courts should only use the fair market value of the property at the time of the alleged taking.

ENDNOTES

1. 33 U.S.C. § 1344 (2002).
2. 33 U.S.C. § 1341 (2002).
3. The Walceks could build a 28-lot residential development, rather than the 77-lot development originally planned, and fill up to 2.2 acres of wetlands if 4.4 acres of wetlands were created or restored elsewhere.
4. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). When a permit "denies all economically beneficial or productive use of land," it is an automatic taking under the *Lucas* Rule, and requires no other analysis. The Walceks appealed this decision, alleging that the court should have reviewed the 11 acres of wetlands (13.2 acres minus 2.2 acres) that they could do nothing with, instead of the entire 13.2 acres of wetlands. The Federal Circuit held that since the Walceks had not raised this argument in the lower court, it could not be considered on appeal. *Walcek v. United States*, 303 F.3d 1349, 1355 (Fed. Cir. 2002).
5. *Walcek*, 303 F.3d 1349, 1354 (Fed. Cir. 2002).
6. U.S. CONST. amend. V.
7. *Penn Central Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124 (1978).
8. *See Keystone Bituminous Coal Ass'n v. DeBenedicts*, 480 U.S. 470 (1987) (reviewing claimant's entire property); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (reviewing only area in question).
9. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 122 S. Ct. 1465, 1481-84 (2002).
10. *See Tabb Lakes, Ltd. v. United States*, 10 F.3d 796, 802 (Fed. Cir. 1993).
11. *Walcek*, at 1356.
12. *Id.*

2002 Federal Legislative Update

Sarah Elizabeth Gardner, J.D.

The following is a summary of federal legislation related to coastal, fisheries, water, and natural resources enacted during the second session of the 107th Congress.

107 Public Law 142 - Pacific Northwest Feasibility Studies Act of 2002 **(H.R. 1937)**
Authorizes the Secretary of the Interior to engage in feasibility studies of water resource projects in the State of Washington to determine domestic and commercial water supply and distribution needs in the following regions: The Tulalip Tribes Water Quality Feasibility Study; The Lower Elwha Klallam Rural Water Supply Feasibility Study; and The Makah Community Water Source Project Feasibility Study.

107 Public Law 171 - Farm Security and Rural Investment Act of 2002 **(H.R. 2646)**
Provides for the continuation of agricultural programs through fiscal year 2007, specifically reauthorizing the Wetlands Reserve Program. It amends the Food Security Act of 1985 in relation to the Wetlands Reserve Program by setting the maximum number of total acres enrolled in the wetlands reserve program at 2,275,000 acres. The Act also establishes an Environmental Quality Incentives Program to promote agricultural production and environmental quality as compatible goals and to optimize environmental benefits.

107 Public Law 239 - Adak Island Land Rights Agreement Bill **(S. 1325)**
Ratifies an agreement between The Aleut Corporation and the U.S. to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island. The removal of a portion of the Adak Island land from refuge status will be offset by the acquisition of high quality wildlife habitat in other Aleut Corporation selections within the Alaska Maritime National Wildlife Refuge.

107 Public Law 253 - Inland Flood Forecasting and Warning System Act of 2002 **(H.R. 2486)**
Authorizes NOAA, through the U.S. Weather Research Program, to conduct research and development, training, and outreach activities relating to inland flood forecasting improvement, including inland flooding influenced by coastal and ocean storms. It authorizes $1,250,000 for each of the fiscal years 2003 through 2005, of which $100,000 shall be available each year for competitive merit-reviewed grants to institutions of higher education and $1,150,000 for each of the fiscal years 2006 and 2007, of which $250,000 shall be made available each year for competitive merit-reviewed grants to institutions of higher education each year.

107 Public Law 295 - Maritime Transportation Security Act of 2002 **(S. 1214)**
Amends the Merchant Marine Act of 1936, to establish a program to ensure greater security for U.S. seaports. The Secretary of Homeland Security shall assess the effectiveness of the antiterrorism measures maintained at: a foreign port, served by vessels documented under chapter 121 of this title; or from which foreign vessels depart on a voyage to the U.S.; and any other foreign port the Secretary believes poses a security risk to international maritime commerce. The Act authorizes the dispatch of properly trained and qualified armed Coast Guard personnel as "sea marshals" on vessels and public or commercial structures on or adjacent to waters subject to U.S. jurisdiction. The Deepwater Port Act of 1974 (DWPA) is amended by inserting "or natural gas" after "oil" each place it appears and by designating a deepwater port as a "new source" for purposes of the Clean Air Act. The DWPA is also amended to remove the FERC's jurisdiction for the "licensing, siting, construction, and operation of a deepwater natural gas port." The Coast Guard and MARAD now have exclusive jurisdiction.

107 Public Law 296 - Homeland Security Act of 2002 **(H.R. 5005)**
Establishes the Department of Homeland Security and a Secretary of Homeland Security to protect the U.S. from terrorists attacks and activities. The Act transfers, to the Department of Homeland Security, all of the authorities, functions, personnel, and assets of the Coast Guard, including the related authorities and functions of the Secretary of

Transportation, all of which shall be maintained as a distinct entity within the Department. It provides that living marine resources (fisheries law enforcement) and marine environmental protection are non-homeland security missions under the act and are preserved for the Coast Guard. The functions of the Secretary of Agriculture, relating to agricultural import and entry inspection activities under the penalties and enforcement section of the Endangered Species Act, are also transferred to the Secretary of Homeland Security.

107 Public Law 299 - National Sea Grant College Program Act Amendments of 2002 (H.R. 3389)
Reauthorizes the National Sea Grant College Program Act. It provides for the Secretary, along with all Sea Grant colleges and institutions, to develop a strategic plan setting program priorities which also includes evaluations and ratings of the programs at least every 4 years. The review panel members' terms are extended to 4 years for anyone appointed or repointed after the date of enactment of the amendments or to 3 years for those appointed or repointed before. The amendments ensure equal access to the fellowship program for minority and economically disadvantaged students and also reauthorize appropriations for the college programs.

107 Public Law 303 - Great Lakes Legacy Act of 2002 (H.R. 1070)
Amends the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research for remediation of sediment contamination in areas of concern in the Great Lakes.

107 Public Law 308 - North American Wetlands Conservation Reauthorization Act (H.R. 3908)
Amends the North American Wetlands Conservation Act by replacing "other habitats" with "associated habits" and by extending the "other habitats" for migratory birds to include both "associated habitats" and "habitats associated with wetland ecosystems." The Act also addresses cost sharing and allocation of money received from both Federal and non-Federal sources and the relative percentages required. It also extends appropriations for the Chesapeake Bay Initiative Act of 1998 from 2000 to 2008.

107 Public Law 349 - Klamath Basin Emergency Operation and Maintenance Refund Act of 2002 (H.R. 2828)
Authorizes the Secretary of the Interior to make payments to qualified Klamath Project water distribution entities equal to the amount charged or assessed in 2001 for the operation and maintenance of certain Klamath Project works. The Act also authorizes the refund of monies collected by the Bureau of Reclamation for reserved works in 2001.

107 Public Law 355 - Pipeline Safety Improvement Act of 2002 (H.R. 3609)
Amends Title 49 of the United States Code to improve the safety and security of the Nation's oil and natural gas pipelines by requiring operators to conduct risk assessments and carry out education programs on the use of one-call notification systems, providing grants for technical assistance to local communities relating to pipeline safety, requiring participating agencies to carry out a program of research and development to ensure the integrity of pipeline facilities, and creating an interagency committee to develop and implement a coordinated environmental review and permitting process.

107 Public Law 372 - Fisheries Conservation Act of 2002 (H.R. 4883)
Amends the Interjurisdictional Fisheries Act of 1986 by authorizing appropriations to the Department of Commerce for 2003 through 2006 for carrying out the Act. The Interjurisdictional Fisheries Act and the Anadromous Fish Conservation Act are amended by adding to the purposes of the Acts the promotion and encouragement of research for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of fishery resources throughout their range. The Anadromous Fish Conservation Act and the Atlantic Tunas Convention Act of 1975 are amended by appropriating money for the years 2003 through 2006. The Northwest Atlantic Fisheries Convention Act of 1995 is amended by extending the appropriating of $500,000 for each fiscal year through fiscal year 2006. The Oceans Act of 2000 is amended by dissolving the Commission 90 days after it summits its final report instead of 30 days after and decreasing the amount of time the President has to issue a statement based on the Commission's report from 120 days to 90 days and by increasing the appropriations for carrying out the reporting requirement in the Act from $6,000,000 to $8,500,000.

Court Orders Final Rule on Manatee Refuges

Save the Manatee Club v. Ballard, 215 F. Supp. 2d 88 (D.D.C. 2002).

S. Beth Windham, J.D.
Sarah Elizabeth Gardner, J.D.

The United States District Court for the District of Columbia ordered the United States Fish and Wildlife Service (FWS) and the Army Corps of Engineers (Corps) to publish a final rule for new manatee sanctuaries and refuges on peninsular Florida.[1] The court enforced a settlement agreement entered into by the parties, rejecting the argument of the FWS and the Corps that the agreement violated the Administrative Procedures Act.

Procedural History

Save the Manatee and seventeen other environmental groups filed suit against the FWS and Corps claiming they violated the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and the Marine Mammal Protection Act (MMPA) by failing to protect the endangered manatee in Florida. The parties entered into settlement negotiations for nine months under the direction of a United States Magistrate and finally reached a settlement agreement in January 2001. This agreement was approved by the court and filed as an order. In July 2002, the court determined the defendants were bound by the plain language of the agreement and that they were in violation of the order and granted plaintiff's motion to enforce the agreement. In an effort to benefit from the expertise in manatee protection of the various groups involved, the district court then ordered the parties to suggest an appropriate remedy.

Defendant's Argument

The defendants failed to suggest a remedy for the violation and instead argued the Settlement Agreement violated the Administrative Procedures Act and should be vacated. In addition, the defendants argued that if the court determined it had to publish a final rule for manatee refuges and sanctuaries throughout peninsular Florida, they required an extension until December 2, 2002, "one day after the date to which defendants had originally deferred this rule-making prior to this court's involvement."[2]

Ruling

The court stated that the defendants' "submission on the issue of remedy utterly fails to meet this Court's expectation."[3] It held that the defendants had to publish a final rule for manatee refuges and sanctuaries in Florida by November 1, 2002 and granted the plaintiff's request for attorney fees. The Court gave the plaintiffs until August 2, 2002 to submit to the court a proposed order with respect to any other relief related to the emergency designation of manatee protection zones. Finally, it held that all defendants, including the Secretary of the Interior Gale Norton, should show cause as to why they were not in contempt of the court's previous orders.

Conclusion

The court ordered the Corps and the FWS to comply with the settlement agreement they previously entered into with the plaintiff and refused to grant them an extension to publish a final rule for manatee sanctuaries and refugees.

ENDNOTES

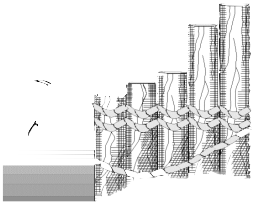
1. *Save the Manatee Club v. Ballard*, 215 F. Supp. 2d 88, 89 (D.D.C. 2002).
2. *Id.*
3. *Id.* at 88.

⚖ Litigation Update ⚖

On November 1, 2002, the U.S. Fish and Wildlife Service (Service) issued a final rule designating twelve manatee sanctuaries for Florida waters, fulfilling the court order issued in *Save the Manatee v. Ballard*. In three of the manatee sanctuaries, all waterborne activities are prohibited, and in nine refuges, watercraft are required to proceed at "idle speed" or "slow speed" and other waterborne activities may be regulated.

On March 31, 2003, the Service proposed an additional three protection areas for the West Indian manatee. This proposal is open for public comment for 60 days after its publication in the *Federal Register*; in addition, three formal public hearings will be conducted. For more information, visit the Service's website:
http://northflorida.fws.gov/Releases-03/002-03-Service-proposes-three-MPAs.htm .

Lagniappe *(a little something extra)*



Around the Gulf . . .

The Florida state cabinet recently approved a preliminary request from environmental officials to require **telecommunications cables** to be installed away from sensitive coral reefs in the future. Currently nearly a dozen fiber-optic cables are located along Florida's southeast coast. According to environmentalists, any movement of the cables along the seafloor disrupts the natural habitat and causes damage to the coral reefs, which may take hundreds of years to heal. Under the new rules, expected to go into effect in early 2003, the cables will be channeled through designated gaps in the reefs.

In an effort to reduce the likelihood of whales becoming trapped in gillnets, the **National Marine Fisheries Service** has enacted a rule banning the nighttime release of gillnets off the coast of Georgia and Florida. The restriction is in effect from November 15th through March 31th of each year, the height of whale migration season, and extends from Savannah, Georgia to Sebastian Inlet, Florida.

Around the Nation

In December, the State of Washington Fish and Wildlife Commission adopted new regulations prohibiting **genetically engineered salmon** from marine fish farms. The ecological consequences of an unintentional release of genetically engineered salmon is still unknown, although the introduction of a modified salmon species poses a significant risk to the endangered native salmon. In addition to the ban, the regulations require the development of new procedures to prevent escapes from fish farms and improved disclosure of drug and pesticide treatments.

The Assistant Administrator of the EPA, G. Tracy Mehan, has reaffirmed the EPA's commitment to watershed management. **Watershed management** is a place-based approach which focuses management efforts within defined boundaries to protect aquatic ecosystems. A Watershed Management Council has been created to facilitate the implementation of the watershed approach into the Office of Water's various programs. The Council membership will consist of representatives from the Headquarters and the Regional offices.

Around the World

In an action designed to prevent future oil spills in European waters, the **European Union** banned single-hulled carriers of heavy fuel oil, tar, bitumen, and heavy crude, from its ports. The ban expanded the EU's previous blacklist that prevented 66 of the oldest and most unsafe ships from entering European ports. These sweeping regulations are in response to the November 19th sinking of the *Prestige*, which spilled 5.3 million gallons of oil off the coast of Spain.

WATER LOG (ISSN 1097-0649) is supported by the National Sea Grant College Program of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration under NOAA Grant Number NA16RG2258, the Mississippi-Alabama Sea Grant Consortium, State of Mississippi, Mississippi Law Research Institute, and University of Mississippi Law Center. The views expressed herein do not necessarily reflect the views of any of those organizations. 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. Graphics and/or photographs by ©Corel Gallery, © Nova Development Corp., the Smithsonian Institution, NOAA.

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

MASGP-02-002-03
This publication is printed on recycled paper.

Upcoming Conferences

May, 2003

American Wetlands Conference: Bogs, Playas, Pools: Protect America's Unique Wetlands
*ht*tp://www.iwla.org/sos/awm/conference/
May 1-4, 2003 Minneapolis, MN

Coastal Development Strategies Conference
http://www.dmr.state.ms.us
May 12-14, 2003, Bay St. Louis, MS

Key Environmental Issues in U.S. EPA Region 4
Conference does not have a website.
For more information, call (312) 988-5724.
May 14-15, 2003, Atlanta, GA

Public Land Law, Regulation, and Management
http://www.rmmlf.org/confrnce/publandnews.pdf
May 15-16, 2003, Santa Ana Pueblo, NM

Wetlands Law and Regulation: ALI-ABA Course of Study
http://www.ali-aba.org/
May 29-30, 2003, Washington, D.C.

WATER LOG
Mississippi-Alabama Sea Grant Legal Program
Kinard Hall, Wing E, Room 262
P.O. Box 1848
University, MS 38677-1848

University, MS 38677

Non-Profit Org.
U.S. Postage
PAID
Permit No. 6