

WATER LOG

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PREFACE

Throughout the earth's history, species have arisen and declined into extinction because of the delicate balance between a population and its habitat. Every ecosystem contains plants, plant-eaters and predators, each carefully balanced by such aspects of its environment as range limits and weather conditions. When a species' range is diminished, either through competition with other species or a change in weather conditions, its population decreases. If the population decreases to the extent that the species no longer has a gene pool sufficiently large to reproduce viable offspring, that species will disappear from the area. The effect of the extinction of one species can be dramatic because of disruption in the food chain (plant-herbivore-carnivore). Although such changes have always occurred naturally, man's ability to manipulate the environment has proven disastrous to this natural balance. Urbanization, wetlands drainage, agriculture, timbering, sophisticated commercial fishing, and pollution have all helped to dramatically accelerate the pace of species' extinction.

This issue of the *Water Log* reviews the current regulatory program that is designed to reverse the decline of coastal terrestrial and marine wildlife species in Alabama and Mississippi.

THE ENDANGERED SPECIES ACT

The Endangered Species Act, which was originally passed in 1973, reflects Congressional findings that unbridled economic growth and development have caused the extinction of many species of fish, wildlife and plants, and brought others to the brink of extinction. 16 U.S.C.A. §§1531 *et seq.* (West 1985). In recognition of the aesthetic, ecological, educational, historical, and scientific value of these species, the Act provides a means whereby endangered and threatened species and the ecosystems upon which they depend may be conserved. To accomplish this purpose, the federal commerce power is utilized to forbid the movement of these species, or products made from their body parts, in commercial activity. The Act also provides for granting states and other interested parties federal money to use in developing state-level conservation programs. This article examines the purposes and policies behind the Endangered Species Act and the means and procedures by which they operate.

Determination of Endangered and Threatened Species

The Act defines endangered species as any species which is in danger of extinction throughout all or a significant portion of its range. The term threatened species means any species which is

likely to become an endangered species within the foreseeable future. The final determination of whether to extend federal protection to a certain species is made by either the Secretary of Interior, acting through the United States Fish and Wildlife Service, or the Secretary of Commerce, acting through the National Marine Fisheries Service.

The determination of a species' status is to be based upon the best scientific knowledge available, using the following criteria: the present or threatened destruction, modification, or curtailment of the species' habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting the species' continued existence.

Critical Habitat

Concurrent with the finding that a species is endangered or threatened, the Secretary must, to the maximum extent prudent and determinable, designate a habitat critical to the species' survival. "Critical habitat" is described as those specific geographical areas inhabited by the species which exhibit the physical or biological features essential to the conservation of the species and which may require special management

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THE MARINE MAMMAL PROTECTION ACT

Introduction

Recent history indicates that man's impact upon marine mammals has been destructive. Degradation of habitat is a severe problem for these animals. Ocean pollution, such as pesticides, heavy metals, and other toxic and non-toxic materials, contaminates their aquatic habitats, while extensive and more sophisticated fishing techniques deplete their food source. Additionally, according to House Report No. 92-707, these highly intelligent animals "have been shot, blown up, clubbed to death, run down by boats," to the point that many species are in danger of extinction.

Congress' response to the situation is the Marine Mammal Protection Act (MMPA). 16 U.S.C.A. §§1361 *et seq.* (West 1985). Recognizing that allowing unbridled utilization of these animals for man's benefit is as unrealistic as an absolute ban on their taking, the Act provides protection for marine mammals, along with a procedure for obtaining a permit whereby, under certain conditions, the permittee may legally "take" such

creatures. This article will examine the purposes and policies behind the Act, and the procedures by which it operates, with special attention given to the permit and exemption process.

General Moratorium and Prohibitions

Marine mammals have proven themselves to be resources of international significance, esthetic and recreational as well as economic. Because some species of these creatures are in danger of extinction or depletion as a result of man's activities, and because marine mammals and marine mammal products either move in interstate commerce or affect the balance of marine ecosystems in a manner which is important to marine mammals and marine mammal products. For the purposes of the MMPA, the term: (1) "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and any item of merchandise which consists, in whole or in part, of a marine mammal; (2) "take" means to harass, hunt, capture, or kill,

or the attempt to harass, hunt, capture, or kill; (3) "marine mammal" means whales, dolphins, porpoises, sea lions, seals, polar bears, walrus, sea otters, manatees, and dugongs, or the dead body or parts thereof; and (4) "depleted" means that either the number of animals in a specific population stock has fallen below the maximum that a habitat can productively support, i.e., its optimum sustainable population, or the species has been placed on the list of threatened and endangered species.

To strengthen the general moratorium and add further protection to marine mammals, the MMPA expressly prohibits certain actions. No person or vessel subject to the jurisdiction of the United States may take marine mammals on the high seas. Also, no foreign person or vessel, except as provided for by an international treaty, may take marine mammals in waters under United States jurisdiction, nor may a United States port or harbor be in any way connected with the taking or importation of marine mammals or marine

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WILDLIFE MANAGEMENT IN MISSISSIPPI

Introduction

Man's ability to manipulate his environment has had disastrous effects upon the world's wildlife. Some of the most devastating human activities include urbanization, wetlands drainage, agriculture, and timbering. These activities affect wildlife by polluting and reducing animal habitats. In recognition of such danger to wildlife and the esthetic and economic benefits gained from wildlife preservation, the Mississippi legislature has passed several laws which provide the state with an expansive and modern program to insure that the state's wildlife is managed effectively. This article will examine the scope and methods of Mississippi's wildlife management program, with particular emphasis given to the composition and purpose of the Commission and Department of Wildlife Conservation, Wildlife Management Areas, the Wildlife Heritage and Natural Heritage Programs, the barrier islands of the Mississippi Sound, the coastal wetlands, and Mississippi's Nongame and Endangered Species Act.

Mississippi's Wildlife Management Agencies

The Commission and the Department of Wildlife Conservation were created by the legislature in 1974. Miss. Code Ann. §§49-4-5, 49-4-7 (Supp. 1984). The Commission, which is composed of five members appointed by the governor (subject to senate approval), formulates state policy regarding wildlife management and promulgates regulations to implement its policies. As the staff arm of the Commission, the Department is generally responsible for conserving, managing, developing, and protecting the state's wildlife through the administration and enforcement of appropriate regulations. The Department is composed of the Bureau of Marine Resources (BMR) and the Bureau of Fisheries and Wildlife (BFW).

A major part of the state's wildlife management program is the enforcement of game laws. By statute, only certain wild animals may be taken for food, furs, or trophy. [For a list of these animals and their respective bag limits, see Miss. Code Ann. §§49-7-1 (Supp. 1984)]. Regulations promulgated by the Commission control the seasons on these and all other game. These seasons and other laws protecting wild animals are enforced by the Department through the conservation officers (formerly called game wardens) of the BFW. Miss. Code Ann. §§49-1-12, 49-1-13 (Supp. 1984).

In addition to regulating the taking of game animals, the Commission also regulates the taking of seafood. Such takings are generally restricted as to manner (for instance dredges are allowed on some oyster reefs while on others only tongs may be used), season, area (for instance oysters can only be taken from certain designated reefs) and, for some species, the amount which can be legally taken. These laws and most other laws pertaining to saltwater aquatic life and the coastal wetlands are enforced by the BMR. Miss. Code Ann. §49-15-11 (Supp. 1984).

Wildlife Management Areas

In Mississippi there are twenty-eight Wildlife Management Areas (WMA's), three Waterfowl Areas, and seven federally managed National

Wildlife Refuges, totalling over one million acres of game habitat, camping area, and esthetically pleasing natural beauty. A WMA consists of land owned and managed by the state for the purpose of either replenishing depleted stocks of game animals, generally increasing wildlife populations, providing scenic recreation for citizens, protecting endangered and threatened species, or any combination of these factors. There are six WMA's in southern Mississippi: the Pascagoula River WMA in George and Jackson counties; the Red Creek WMA in George, Harrison, Jackson, and Stone counties; the Old River WMA in Pearl River county; the Wolf River WMA in Lamar and Pearl River counties; the Little Biloxi WMA in Stone and Harrison counties; and the Leaf River WMA in George and Perry counties. Each of these WMA's has its own special regulations regarding hunting and camping in addition to the general regulations imposed on hunting areas throughout the state. These special regulations, issued by and available from the BFW, are based upon information on wildlife populations gathered by the district biologist and the area manager. An area manager is responsible only for the WMA to which he is assigned. The district biologist, however, supervises all state management plans and their attendant personnel within his district. Because the state is divided into nine districts, each of which may contain more than one WMA as well as other state lands, a district biologist may have responsibilities for more than one WMA at a time.

Recognizing that proper timber management is essential to maintaining optimum wildlife habitats, the Department entered into an agreement with the Mississippi Forestry Commission to develop and implement timber management plans for all state WMA's. A typical timber plan begins with a determination by the district biologist which wildlife species inhabit the area so as to develop a plan most beneficial to those particular species. The WMA is then divided into smaller, more easily managed areas called compartments. The compartments are type-mapped according to the kind of forest, e.g., pine, pine-hardwood, or bottomland hardwood. A work schedule to determine a time frame in which compartments will be manipulated compartments are manipulated is then established by controlled burnings and selective cutting. Controlled burnings reduce the danger of wildfire by ridding the area of easily combustible forest litter (small twigs, sticks, and branches). The removal of forest litter also enhances the growth of leaves, buds, and woody plants (all called browse) which grow on the forest floor and provide food for many wildlife species. Selective cutting of timber also enhances the growth of browse by allowing more sunlight to reach the forest floor. The profits that the Department makes from the sale of timber are put back into the state's wildlife program. MDWC "Woodlands for Wildlife" (1984).

Wildlife Heritage Program

Mississippi's broad-based wildlife management program also includes the means to acquire new land such as the WMA's for intensive state management by purchase, lease, gift, and devise

through the Wildlife Heritage Program. Money for purchases and leases is provided by the Wildlife Heritage Fund and general obligation bonds. The Fund was established by the legislature to allow the Commission to utilize available funds to acquire appropriate areas for public hunting, fishing, recreation, and for the preservation of endangered species. It is composed of money appropriated by the legislature, donations from private citizens, grants from federal, state or local agencies, as well as from a supplemental five dollar fee for nonresident hunting and/or fishing licenses. The money is deposited in an approved state depository and can be spent only after a proper resolution is passed by the Commission and signed by the Chairman of the Commission and the Director of the Department. All expenditures are subject to a state audit. Private citizens are encouraged to participate in the Commission's acquisition of public lands by making cash donations to the fund by donating or bequeathing land to the Commission, or by selling land to the Commission at a reduced price. Most of these actions carry certain tax benefits to citizens but a discussion of them, as well as a discussion of the issuance of state bonds, is beyond the scope of this article. For more information contact the Department. Miss. Code Ann. §§49-5-61 to 49-5-83 (Supp. 1984). See also Miss. Code Ann. §§49-5-86 to 49-5-98 (Supp. 1984) for more information on state bonds.

Natural Heritage Program

Another way for citizens to participate in the preservation of wildlife habitats and natural areas is to register or dedicate their land under Mississippi's Natural Heritage program. While most state land acquisitions under the Wildlife Heritage program have been outright purchases, the Natural Heritage program allows owners to retain all or any part of their rights in the land. Through a registration process, owners of land which contains an element of the states' natural diversity, (such as individual flora and fauna, natural geological areas, habitats of endangered or threatened species), or any other area of unique ecological, scientific or educational interest, may execute a voluntary agreement with the Commission. The owner then has a duty to manage and protect the natural area according to the rules and regulations promulgated by the Commission and to give the Commission first option to purchase the natural area. The owner is given a certificate of registration and the land is added to the states' list of natural area preserves.

Unlike the registration process wherein full title and management responsibilities remain in the owner, the dedication process permits the owner to transfer any or all of his rights, title, and interest in the property to the state. The owner and the state draw up the articles of dedication which confer upon the state an interest in the property and stipulate any other terms of the transfer not inconsistent with the Natural Heritage program. The Commission then either takes over management of the property or appoints an appropriate agency to do so. The Commission is statutorily authorized to acquire articles of

dedication by purchase, donation, devise, or bequest. Also, because not all the land purchased by the Commission is geographically suited to become part of the WMA program, the Commission itself, and any other agency or political subdivision of the state, may also dedicate an area to which it has title as a natural area preserve. Although not all natural areas are under the specific management of the Commission, the Commission must inspect each natural area preserve at least once a year to insure that the terms of the articles of dedication are being respected and that the area is being managed according to the Commission's regulations. Miss. Code Ann. §§49-5-141 to 49-5-157 (Supp. 1984).

The Barrier Islands

Human intrusion upon animal habitats has made the barrier islands an extremely important refuge for several endangered, threatened, and rare species of birds and turtles. These include the Brown Pelican, Bald Eagle, Peregrine Falcon, Mottled Duck, Yellow Rail, American Oystercatcher, Snowy Plover, and the Leatherjack, Atlantic Ridby, and Hawkbill turtles. The islands provide these species with a protected and relatively undisturbed area for feeding and nesting, a wintering habitat for other species, and a stopover resting area for certain migrating species. The islands also support a unique, but delicate, ecosystem in themselves by providing nesting and feeding areas for many other birds, reptiles, mammals, fish, and shellfish.

The four barrier islands, Petit Bois, Horn, Ship, and Cat, (each located approximately ten to fifteen miles south of the Mississippi coast), partially separate the waters of the Mississippi Sound from the open Gulf and are therefore responsible for the Sound's low salinity. This low salinity provides an excellent environment for the growth of oyster reefs and also keeps out many predator fish, thus allowing shrimp, crabs, and other commercially significant forms of seafood to thrive. The northern coasts of the islands also provide an estuarine environment wherein many types of seafood spawn. This last point is significant because coastal urbanization has reduced estuarine environments along the mainland coast. Mississippi Coastal Waters Mineral Lease Sale Area Number 1, Environment Profile, §2-8 (BMR 1982).

While Cat Island is privately owned, Petit Bois, Horn and Ship Islands are part of the Gulf Islands National Seashore and are managed by the National Park Service. According to the Park Service, protecting endangered species is their first priority on the barrier islands. This is accomplished mainly by prohibiting hunting and allowing the public to camp only in designated areas. The Park Service does not practice habitat manipulation, such as timber management, to protect endangered species, but it does "nourish" the beaches, i.e., dump additional sand, when necessary. The Park Service's jurisdiction extends one mile from the irregular shoreline of the island and the Service enforces the state's game laws in this area. The Park Service extends its protection to those species appearing on the state's list of endangered or threatened species in addition to those on the federal list. Enforcing these laws on the islands are National Park Rangers who receive

340 hours of instruction on the enforcement of natural resources law.

The Coastal Wetlands

Another important area of wildlife management involves the coastal wetlands. Under Mississippi's Coastal Wetlands Protection Act, coastal wetlands are defined as all publicly owned lands which are subject to the ebb and flow of the tide, below the watermark of ordinary high tide; all publicly owned accretions above the watermark of ordinary high tide; and all publicly owned submerged water bottoms below the watermark of ordinary high tide. These areas provide spawning grounds for shrimp and other estuarine animals. They also provide approximately 17,000 acres of submerged vegetation and other organic material. These grasses and organic material serve as the base of the food chain which leads to the economically valuable commercial and sports fisheries of the state and which also supports the shore, sea, and wading bird populations of the coast. The majority of these species depend upon the wetlands for nesting areas as well as for food. However, urbanization and industrialization pose a grave threat to the wetlands. For instance, of the original 67,000 acres of tidal marsh, i.e., the land between ordinary high tide and ordinary low tide, nine thousand acres have been destroyed; one thousand before 1930 and eight thousand since. Environmental Profile, App. 4, pp. 2-1 to 2-5 (BMR 1982).

Recognizing the ecological and economic importance of the wetlands, and the danger of its destruction, the legislature enacted the Coastal Wetlands Protection Law. Miss. Code Ann. §§49-27-1 *et seq.* (Supp. 1984). The purpose of the Wetlands Law is to preserve the coastal wetlands and their ecosystems in their natural state except where a specific alteration of a specific coastal wetland would serve a higher public interest. Preservation is accomplished through a permitting system administered in part by the BMR. Under this system, in order to carry out a regulated activity (such as dredging, filling, dumping, killing or materially damaging any flora or fauna in the aggregate in any coastal wetland; erecting any structure which materially affects the tidal flow; and erecting any structure on sites suitable for water dependent industry), a person must apply to the Bureau of Marine Resources for a permit. The BMR then conducts public hearings and investigations to determine the environmental impact of allowing the proposed activity. Although there are certain activities to which the permit requirements do not apply, a person wishing to conduct such an activity must still apply to the BMR for a waiver.

To further protect the wetlands, the legislature authorized the BMR to develop a Coastal Program. The aims of the Coastal Program are to provide for reasonable industrial expansion in the coastal area, to insure efficient utilization of waterfront industrial sites so that suitable sites are conserved for water dependent industry, to conserve the resources and natural scenic qualities of the coastal area, and to insure the effective, coordinated implementation of public policy in the coastal area. Act of April 18, 1979, ch. 492 §5(1), 1979, Miss. Gen. Laws 1024.

The basic concept of the Coastal Program is

to balance the often conflicting public interests of development and preservation. One of the means that the Coastal Program uses to achieve this balance is the designation of specific areas as Special Management Areas (SMAs). These areas are so designated because they present unique opportunities for recreational, economic, and industrial uses. SMAs fall into three general categories: port and industrial areas, such as the Port of Pascagoula; urban waterfronts, such as Gulfport Harbor Square and Biloxi Development area; and shorefront access areas, such as Harrison County Beach. Designating an area as an SMA improves the predictability of permit decisions, helps resolve permit controversies in advance, and serves as a basis for coastal wetlands permit decisions. While seeming to mostly benefit humans, the long range planning evidenced by the SMAs is a boon to wildlife because such planning takes into account factors, such as soil erosion and beach stabilization, which are vital to wildlife habitat preservation. Mississippi Coastal Program p. 1-2, VI-11 (BMR 1980).

Mississippi's Nongame and Endangered Species Conservation Act

Perhaps the most important aspect of wildlife management is the designation and protection of endangered species. Under the federal Endangered Species Act, a species is considered endangered when it becomes threatened with extinction because of habitat destruction; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; or other natural or manmade factors. (See article on the Endangered Species Act elsewhere in this issue.) As an example of the problem's urgency, studies have shown that in the three thousand years of the Pleistocene Age, North America lost about three species per one hundred years, whereas in the last 360 years, it has lost a total of over 500 species. "The Parade of Passing Species: A Survey of Extinctions in the United States", 44 *The Science Teacher* No. 1 (1977).

To help combat species extinction, the legislature passed the Nongame and Endangered Species Conservation Act in 1974. Miss. Code Ann. §49-5-101 to 119 (Supp. 1984). The Act prohibits the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment *within* Mississippi of any species or subspecies of wildlife included in the U.S. lists of foreign and native endangered fish and wildlife. This section of the Act is important because, although the federal Endangered Species Act prohibits the same actions, the federal authority to enforce the national act on non-federally owned land derives from Congress' power to regulate *interstate* rather than intrastate commerce. U.S. Const. art. 1, §8, cl. 2. Even though this federal power is broad and extensive, the Mississippi law complements and augments protection given certain species.

The Mississippi Act also authorizes the Commission to compile a list of those animals indigenous to Mississippi which face extinction within the state. It requires the Commission to review this state list every two years for possible additions. The species on the state list are afforded the same protection within the state as those on

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WILDLIFE PROTECTION IN ALABAMA

Introduction

Man's activities in Alabama, as elsewhere, have had adverse and sometimes devastating impacts on the state's fish and wildlife and the ecosystems upon which they depend. In recognition of this, the Alabama legislature has established a detailed regulatory framework to help protect its wildlife and fishery resources from unnecessary depletion. The Alabama Department of Natural Resources (DCNR), headed by a Commissioner, has the authority to administer and enforce Alabama laws relating to the preservation, protection, propagation and development of all publicly-owned species of wildlife on the lands and waters within the state's jurisdiction. In addition to this plenary grant of authority, the Commissioner enjoys several enumerated powers granted in various statutory provisions with which to meet the task of wildlife preservation. These powers include the formulation of state wildlife policy, designation of protected species of fish, animals, and birds, and regulation of hunting (including the power to close a hunting/fishing season when the DCNR determines the prey's population is dangerously low). Further, the Commissioner may formulate all regulations necessary and proper to achieve the foregoing statutory purposes. Finally, the Commissioner may appoint game wardens and deputy game wardens to aid the DCNR in the task of administering and enforcing wildlife preservation laws and regulations. These wardens work under the Division of Game of Fish of the DCNR discussed below. Ala. Code §§ 9-2-1 *et seq.* (1980 and Supp. 1985).

The Division of Game and Fish of the DCNR aids the Commissioner in preservation of the State's wildlife. At the Division's helm is the Director, appointed by the Commissioner with the Governor's approval. Game wardens bear the responsibility for the enforcement of the laws preserving Alabama's wildlife. Familiar to all for her role as the checker of fishing licenses and enforcer of litter barrel use, the game and fish warden's power over the public far outreaches such custodial tasks. She is clothed with many of the same powers as a policeman, e.g., to carry firearms, execute warrants, and serve subpoenas. In addition, the game warden serves as a community servant in her role of furnishing information and labor for projects such as the construction of fish ponds, establishment of feeding grounds for migratory waterfowl, and the control of predators of useful wildlife.

In order to provide the necessary monies for the preservation, protection, and development of wildlife, the state legislature created the Alabama Game and Fish Fund. The Fund is derived from occupational and sport permits and licenses relating to hunting and fishing, all monies from fines and forfeitures levied because of game and fish law violations, and all monies accruing to the DCNR from any other source. The funds may be used for any activity relating to the welfare of the state's wildlife.

Land/Water Acquisition and Management

The DCNR has the power to acquire and manage land and water areas for the preservation of wildlife. Land management comprises an important component of the statutory/regulatory

framework devoted to wildlife conservation. The Commissioner, with the consent of the Governor, may acquire title to lands on the DCNR's behalf for the protection, preservation, development and propagation of game and fish. Known as state game lands, such realty may be acquired by lease, gift, or any other lawful means. This includes the right to acquire title to lands suitable for maintaining brooding grounds. Game and Fish Fund revenues may be used to erect buildings, purchase equipment, and employ experts to assist in management of the lands. The increase in wildlife from such activities is to serve as brood stock for propagation purposes.

The Commissioner may also establish and maintain state game refuges and sanctuaries on state-controlled land or water for the purpose of preserving game birds, fish, and other animals. Within these refuges, game wildlife may not be hunted or disturbed at any time. The Commissioner may also, with federal consent, establish game refuges in national forests. Violation of the prohibition against hunting on refuges or sanctuaries is deemed a criminal misdemeanor punishable by a substantial fine. Federal authorities may also acquire land within the state to establish refuges for migratory waterfowl in accordance with the Federal Migratory Bird Conservation Act.

The DCNR's power to establish wildlife management areas (WMA) perhaps comprises the most significant land management technique available for wildlife preservation. Ala. Code §§9-11-300 *et seq.* (1980). The law directs the Commissioner to establish as many WMAs as may be in the public interest. To create a WMA he may enter into an agreement with any owner, lessee or administrator of lands necessary and suitable for inclusion in a WMA. These agreements define the boundaries of the WMA, as well as the respective responsibilities of the DCNR and other parties in the areas of restocking wildlife, planting, and cultivating wildlife broods, protecting the area from predatory animals and unauthorized hunting and fishing, and harvesting game and fish crops in accordance with the DCNR's regulations. Hunting and fishing, although allowed on WMAs are carefully monitored by the DCNR and limited for conservation purposes. If ninety percent of a WMA is under a conservation agreement with the DCNR, then the Commissioner may close all fishing and hunting on the total area within the WMA. No doubt, this provides "hold-out" landowners a powerful incentive to preserve wildlife.

Regulations promulgated by the DCNR concerning WMAs specifically enumerate acts deemed unlawful within every WMA. The regulations deal with hunting rules, hunter safety, limited destruction of wildlife, and conservation of the general environment. Each WMA also has further regulations adapted to its particular needs. See *Alabama Regulations Relating to Game and Fish and Fur Bearing Mammals* (1984-85). Violations of these regulations are considered a misdemeanor carrying a penalty of a minimum \$25 fine and/or a jail term of up to one year.

In a related area, the DCNR has power to

establish and conduct fish restoration projects. The DCNR's regulations for publicly owned fishing lakes also lend aid to preservation efforts. Through restrictions on the permission to hunt and fish on such lake areas and broad enforcement powers of the game wardens, the state seeks to insure proper conservation of public wildlife. Lakes that contain fish hatcheries are even more stringently regulated by the DCNR, including restrictions on and monitoring of travel and activity within the lake area. Ala. Code §9-22-19 (1975), *Alabama Regulations Relating to Game and Fish and Fur Bearing Animals* (1984-85).

Alabama Marine Mammal Protection Act

The most comprehensive legislative enactment protecting wildlife appears in the Alabama Marine Mammal Protection Act of 1976. Code §§9-11-390 *et seq.* (1980). The Alabama legislature has determined that certain species of marine mammals are in danger of extinction by man's activities. Therefore, it has decided that such species should not be permitted to diminish below a population level at which they cease to be a significant element in the ecosystem. In fact, they are to be replenished if below that population level. In addition the legislature has found that marine mammals are a resource of great economic, aesthetic, recreational and international significance. To that end, the Act is designed to protect and encourage the development of marine mammals to the greatest extent feasible commensurate with the health and stability of the marine ecosystem.

Like the federal Marine Mammal Protection Act discussed elsewhere in this issue, Alabama's Act places a moratorium on the taking of marine mammals or such products. "Taking" includes harassing, hunting, capturing, and killing such animals, as well as attempting to do so. Exempted from this moratorium are takings of marine mammals pursuant to a federal permit allowed under the Marine Mammal Protection Act of 1972. The Act also allows state and local officials and employees, when acting in their public capacities, to take a marine mammal in a humane manner for the mammal's protection or for the protection of public health and welfare. The officer must include steps designed to assure the return of the mammal to its natural habitat.

Except as provided for by international agreement to which the United States is a party or by any statute implementing any such treaty, it is unlawful for any person or vessel to take any marine mammal in waters or lands within Alabama's boundaries. The use of any port or harbor in Alabama in connection with the taking of a marine mammal is also proscribed. Furthermore, it is illegal to possess, transport, sell or offer for sale any marine mammal taken unlawfully. Finally, the Act makes it unlawful for any person to use any method of commercial fishing proscribed by federal or Alabama regulations because of its adverse effect on marine mammals.

The DNR is given the authority to administer and enforce the Act. Any person who violates the federal or Alabama Marine Mammal Protection Act, or any regulation made pursuant thereto, is subject to a fine from \$50 to \$500 and/or

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CZMA "CONSISTENCY" REGULATIONS AMENDED

Introduction

The National Oceanic and Atmospheric Administration (NOAA) recently amended existing regulations to exclude outer continental shelf (OCS) oil and gas lease sales from the federal consistency requirements of Section 307 (c) (1) of the Coastal Zone Management Act of 1972 (CZMA). 50 Fed. Reg. 35,210 (1985). These changes were brought about as a result of the U.S. Supreme Court decision in *Secretary of the Interior, et al. v. California et al.*, 104 S.Ct. 656 (1984).

In the *California* case, the state of California and other interested parties sued the Secretary of the Interior to enjoin the sale of oil and gas leases on the outer continental shelf, claiming that such sales directly affected the state coastal zones adjacent to such tracts. Both the district and appeals courts held for the plaintiffs. However, the Supreme Court reversed, holding that such sales were not an activity "directly affecting" the coastal zone within the meaning of § 307 (c) (1) of CZMA. Therefore, a determination of consistency with approved state coastal management programs is not required before such sale is held.

What the Court considered determinative in deciding the case is that NOAA has broken down the development of offshore oil wells into four distinct stages: (1) formulation of a five-year leasing plan by the Department of Interior; (2) lease sales (the stage in question in the case); (3) exploration by the lessees; and (4) development and production. Each stage involves separate regulatory review including requirements for consultation with Congress, between federal agencies, or with the states. Formal review of consistency with state coastal management plans is expressly reserved for the last two stages. The Court reasoned that prospective lease purchasers acquire no rights to explore, produce, or develop at the first stage of OCS planning so consistency review provisions of CZMA § 307 (c) (3) (B) are not engaged. The second stage, in dispute here, involves the solicitation of bids and the issuance of offshore leases. By purchasing a lease, a lessee acquires only a priority in submitting plans to conduct those activities. If the plans, when ultimately submitted, are disapproved, no further exploration or development is permitted. The Court held that there is no question that CZMA consistency requirements operate at the third (exploration) and fourth (development and production) stages.

As long as the sale of an oil and gas lease, often at a cost to the lessee of millions of dollars, does not create a presumption at later stages in favor of exploration and production, the ruling of the Court appears to put all the risk on the lessees if the state coastal zones are, in fact, fully protected at these third and fourth stages. For a fuller analysis of the case, see *Water Log*, Volume 3, No. 4 (Oct-Dec. 1983); Volume 4, No. 1 (Jan-Mar. 1984) (cited as *Watt v. California*).

Consistency Regulations

The consistency regulations implement § 307 (c) (1) of the CZMA which requires that each federal agency conducting or supporting activities directly affecting the coastal zone conduct these activities in a manner which is, to the maximum

extent practicable, consistent with approved state coastal zone management programs. The CZMA also requires that federally licensed or permitted activities affecting land or water uses in the coastal zone, including activities described in detail in outer continental shelf exploration, development and production plans, be conducted in a manner consistent with federally approved state coastal management programs. The regulations implementing these sections are found at 15 C.F.R. Part 930 Subparts D and E (1985).

The changes in the consistency regulations have been strictly limited to those clearly necessitated by the Supreme Court's decision. The final rule excludes only oil and gas lease sales from the uses subject to management by state coastal zone management programs through the federal consistency provisions of § 307 (c) (1) of CZMA.

Although oil and gas lease sales have been excluded from the consistency process, the affected coastal states and local governments can still consult with the Department of Interior under § 19 of Outer Continental Shelf Lands Act. In addition, under § 307 (c) (3) (B) of the CZMA, states continue to review consistency of outer continental shelf exploration, development and production plans for their effect on land and water uses in the coastal zone.

Of those who commented on the amended regulations, most supported the narrow scope of the proposed rule. Opposition came from two groups: one opposed the Supreme Court decision and argued that oil and gas lease sales should be subject to consistency requirements; the other opposition group supported the Supreme Court's decision and argued for broader rulemaking which would exclude other activities besides oil and gas lease sales from the federal consistency requirements and/or would address other issues in the consistency process. Fishery management plans are one example that some commenters felt should have been excluded from the federal requirements. Another issue arose when the General Services Administration (GSA) requested the removal of their real property disposals from the group of activities "directly affecting" the coastal zone. However, pending the outcome of a NOAA Federal Consistency Study, GSA is still required to examine the disposal of federal surplus real property on a case-by-case basis to determine whether the proposed sale directly affects the coastal zone. If it does, GSA must follow the provisions of § 307 (c) (1) and the implementing regulations.

NOAA has refused to alter the existing process of determining whether an activity "directly affects" the coastal zone to allow the federal agency, as opposed to the state, to make the initial determination.

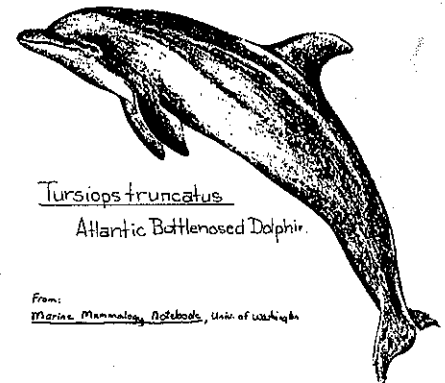
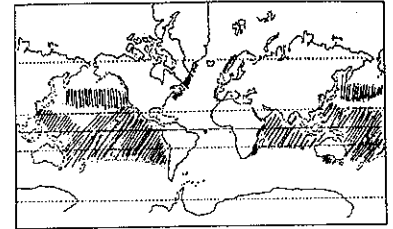
Conclusion

In an effort to review the federal consistency process, a Federal Consistency Study has been initiated by NOAA to create an information base documenting the experience of the states, federal agencies, industry and public interest groups in implementing the consistency program. Pending the results of this Federal Consistency Study, only

minimum necessary changes in the regulations have been made at this time.

NOAA has decided that the Supreme Court decision did not change the requirement that federally licensed and permitted activities which affect land or water uses in the coastal zone and are described in detail in OCS exploration, development and production plans are still subject to § 307 (c) (3) (B). As a result, federal agencies and private parties are strongly encouraged to ensure in advance, through early collaboration with state agencies, that activities to be conducted after the lease sale stage can proceed harmoniously with state coastal management programs.

Martha Murphy



Tursiops truncatus
Atlantic Bottlenosed Dolphin.

From:
Marine Mammalogy Notebook, Univ. of Wash.

THE ENDANGERED SPECIES ACT

(Continued from page 1)

considerations or protection. Areas outside the geographical range of the species which are necessary for the species' survival also can be designated critical habitats. *Placing Animals and Plants on the List of Endangered and Threatened Species*, U.S. Fish and Wildlife Service (1981).

Although the determination of a species' status is made strictly upon biological data, designation of critical habitat takes both economic factors and biological data into account. With every proposed critical habitat designation, the U.S. Fish and Wildlife Service prepares a draft impact analysis which considers the beneficial or detrimental economic impact. This document is available to the public at the time the proposed rule is published in the *Federal Register*. If it is determined that the economic benefits from the development of a certain area outweighs the benefits of conserving the area, the area can be excluded from designation as a critical habitat. However, no area can be excluded if doing so would result in the extinction of a species. Critical habitat designations affect only federally authorized activities and are made primarily to assist federal agencies in locating endangered species and in fulfilling their conservation responsibilities under the Act. Private activities on non-federal lands are not restricted by the Act unless direct harm to endangered and threatened species would result. Although private or state lands may be designated as critical habitat, the designation does not make the area a wilderness sanctuary or close it to human activity. *Placing Animals and Plants on the List of Endangered and Threatened Species*, U.S. Fish and Wildlife Service (1981).

The Listing Process

The heart of the Endangered Species Act is the procedure by which a species is granted federal protection. The Act provides for the compilation of a list of endangered and threatened species by the Departments of Commerce and Interior. The process for determining a species' status begins with presenting the U.S. Fish and Wildlife Service (or, for marine species, the National Marine Fisheries Service) with a petition explaining why a certain species should be granted federal protection. A petition must include general information about the species, such as present and past distribution; estimated numbers; ecological requirements; limiting factors; habitat; and reproductive potential in captivity or by other manipulative methods. The petition must also include the statutorily articulated reasons for listing consideration; i.e., range or habitat destruction or modification; overuse for commercial, sporting, scientific, or educational purposes; depletion through disease, predation, or overgrazing; inadequate laws or regulations; and other natural or manmade factors. According to Marshall Jones of the U.S. Fish and Wildlife Service, the majority of petitions come from the scientific community, particularly professional groups of biologists such as the American Ornithologist Union. State wildlife agencies also submit many petitions.

Within 90 days of receiving a petition, a determination is made on whether the petition presents substantial scientific or commercial information indicating that the petitioned action

may be warranted. The government then commences its own review of the species' status. The findings of this review must be published in the *Federal Register* promptly after they are made. Following this review, which must be completed within a year from receipt of the petition, notice is published in the *Federal Register* that either (1) the petitioned action is warranted, (2) the petitioned action is not warranted, or (3) that the petition is warranted but that action on it must be delayed due to other pending proposed additions to the list. The same time limits and procedures apply to proposals for designation or revision of a critical habitat.

If the petition is found to be warranted, a general notice and the complete text of a proposed regulation to implement such action is published in the *Federal Register*. This publication must be completed within 90 days from the effective date of the proposed regulation. In addition, actual notice of the proposed regulation and opportunity for comment to the state agency in each state, as well as each county or equivalent jurisdiction in which the species is believed to occur is provided. Actual notice and comment opportunity is also given, in so far as is practical, to each foreign nation in which the species is believed to occur, or whose citizens harvest the species on the high seas. Actual notice of the proposed regulation is also afforded professional scientific organizations when appropriate. In addition, a summary of the proposed regulation is publicized in a newspaper of general circulation in each area of the United States in which the species is believed to occur. Finally, one public hearing on the proposed regulation must be held if any person files a request for one within 45 days from the date of publication of general notice in the *Federal Register*.

Within a year after general notice of the proposed regulations is given, the government is required to publish in the *Federal Register* a final regulation regarding the determination or revision of a candidate species' status, along with a designation of its critical habitat. If final regulations are not being promulgated, the government must publish notice that the proposed regulation is being withdrawn, together with the finding on which such withdrawal is based. Extensions may be granted when there is substantial disagreement regarding the sufficiency or accuracy of the available data. Such extensions for the purpose of soliciting additional data may not exceed six months. Although a designation of critical habitat should be made concurrent with a determination that a species is endangered or threatened, this decision may be postponed if it is essential to the conservation of the species to have its final determination published immediately, or if the critical habitat of the species is not determinable. The Secretary can extend this deadline for one year.

Priority System for Listing

After the petitions are reviewed, the candidate species are categorized according to a priority system. 48 Fed. Reg. 43098-43105 (1983). The system covers three areas: listing and reclassification from threatened to endangered; delisting and reclassification from endangered to threatened; and recovery priority. The criteria used

to determine whether a species will be listed are the magnitude and immediacy of the threat and the distinctiveness of the species (taxonomy). To determine whether a species will be delisted or reclassified from endangered to threatened, the management burden of keeping the species listed and the existence of a petition to have it delisted are considered.

Every listing of a species as endangered or threatened requires the development of a recovery plan, except when such a plan will not promote the conservation of the species. The four criteria considered in determining a species' recovery priority are (1) the degree of threat, (2) recovery potential, (3) taxonomy, and (4) the existence of a specific conflict between the species and a construction or other development project or other form of economic activity. For example, a monotypic genus that faces a high degree of threat, has a high probability of a successful and low cost recovery and which is also in conflict with the construction of a dam, will be granted precedence over a similarly rated genus that is not in conflict. Candidates are presented for addition to the list of endangered or threatened species according to their priority rating. Nationwide, fifty to seventy species are proposed each year for addition to the list out of 2,000 to 3,000 potential candidates. (The list of foreign and domestic endangered and threatened species is published in 50 C.F.R. §§17.11)

Protection Afforded Listed Species

Placing a species on the endangered and threatened list protects it from the following acts: importation into or exportation from the United States; taking within the United States or the territorial sea of the United States; taking upon the high seas; possession, sale, delivery, carriage, transportation, or shipment; and sale or offer for sale in interstate or foreign commerce. The terms used in articulating these prohibitions are broadly defined, e.g., commercial activity means all activities of industry and trade; species means the animal or plant themselves, their dead bodies or any parts thereof; and taking means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Additionally, the Secretary is authorized to promulgate regulations which augment these basic protections as he deems necessary.

Severe penalties have been provided for violations of the Act. Civil penalties range from \$500 to \$10,000 for each separate violation, while criminal penalties carry fines of up to \$20,000 and a year in prison. Criminal violations can also result in revocation of federal hunting and fishing permits as well as forfeiture of all guns, traps, nets, vehicles and other equipment. The Coast Guard and the Secretaries of Treasury, Interior, and Commerce are responsible for enforcing the Act. Additionally, any person may bring suit in district court to enjoin violations of the Act and have the Secretary enforce its provisions, so long as the Secretary and the alleged violator have been given notice of the violation at least 60 days prior to the suit.

Federal Cooperation with State Conservation Authorities

The Endangered Species Act authorizes the federal government to enter into cooperative

agreements for plant and wildlife conservation with any state which presents an adequate plan. Such agreement is mandated unless the proposed plan is found to be inconsistent with the purposes of the Act. In order for the state program to be acceptable, it must meet the following criteria: the state must have an agency authorized to conserve resident species determined to be endangered or threatened; the state agency must submit an acceptable conservation plan; the state agency must be authorized to conduct investigations to determine the status and requirements for survival of resident species; the state agency must be authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and provision must be made for public participation in designating resident species as endangered or threatened. All of these requirements apply to both plant and animal species.

Once the state program is established and approved, federal funds may be expended to help finance it. The federal share of the program can be up to 75 percent of the estimated total cost. If two or more states have a common interest in one or more endangered species and those states enter into a joint agreement with the federal government to conserve those species, then the federal share of the program can be increased to 90 percent of the estimated cost.

Exemptions to the Act

There are four basic categories to which the prohibitions upon the taking of protected species do not apply. These are experimental populations, incidental takings, hardship exceptions, and Alaskan natives. "Experimental populations" means any population authorized by the federal government for release outside its current range. This conservation measure was used in the case of the whooping crane. After finding the nesting grounds, biologists collected eggs and incubated them in a laboratory. When a captive flock had been established, it was reintroduced into the wild among the more common sandhill cranes. The result is that the world's whooping crane population has increased from fewer than 20 in the 1940's to over 100 in 1981. *Endangered Species: The Road to Recovery*, U.S. Fish and Wildlife Service (1981).

To come under the incidental takings exception, the person seeking such an exception must apply to the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for a permit. Concurrent with his permit application, the applicant must submit a conservation plan that shows (1) the taking applied for is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; (2) the impact that will likely result from the taking, the mitigation steps or the funding; and (3) alternatives to the taking and why the applicant does not wish to use them. If a finding is made favorable to the applicant on each of the listed criteria, a permit may be granted subject to whatever terms and conditions deemed necessary. If the permittee violates any of these terms, his permit can be revoked.

If a person enters into a contract with respect to a protected species before the date of publication of the species' status in the *Federal*

Register, he can apply for an exemption if the enforcement of the Act will cause him undue economic hardship. No hardship exemption can last for more than one year. Aside from entering into contracts prior to publication of notice, a person can show undue economic hardship if, for the year prior to notice, he derived a substantial portion of his income from the lawful taking of the species or he depended upon the species for subsistence. Exceptions granted under this procedure may be limited as to time, area, or other applicable factors.

Alaskan natives, i.e., Indians, Aleuts, and Eskimos, as well as non-native permanent residents of Alaskan native villages, are exempted from the prohibitions on the taking of protected species under the Act if such takings are primarily for subsistence purposes. Subsistence purposes include hunting the species for food, selling edible portions for consumption within the village, and the manufacture of authentic native articles of handicrafts and clothing, which can be sold in interstate commerce, from nonedible portions. The Act provides, however, that no taking may be accomplished in a wasteful manner. If it is determined that a species being taken is entitled

to federal protection, and that the takings are having a material and negative effect upon the species, regulations to control such takings can be prescribed.

In addition to the provisions discussed above, the Act establishes federal interagency cooperation procedures, an Endangered Species Committee, an exemption process for particular projects, and a means to encourage the international protection of federally protected species.

Conclusion

The Endangered Species Act is one of the most effective weapons currently in place to combat species extinction. Its broadness and flexibility vests those federal agencies charged with its enforcement with many powers. The success of the American alligator and the whooping crane is evidence of the Act's efficacy. Because the Act provides that private citizens may bring suit to have sections of the Act enforced, as well as for many other reasons, it is important that members of the public keep themselves informed on wildlife issues.

Louis Alexander
M. Casey Jarman

WILDLIFE PROTECTION IN ALABAMA

(Continued from page 4)

imprisonment for up to six months. The Act gives any officer employed by the DCNR, or any other state or local law enforcement officer, authority to conduct searches and to execute a warrant to search for any records, equipment, or marine mammals taken in connection with a violation of the Act. These officers also have the power to arrest any person they have probable cause to believe is in violation, as well as the power to search the person's business records at the time of arrest and seize any marine mammal or property used in the unlawful act. Such property is to be held by the DCNR until disposition through court proceedings, which can result in forfeiture to the state for disposal. Prior to forfeiture the Commissioner may send any marine mammals so seized to an institution for safekeeping at the defendant's cost.

Restrictions on the Taking of Wildlife

Regulation of methods of hunting and fishing, utilizing means such as bag limits, closed and open seasons for various game animals, and designation of protected species, also aids in the preservation of wildlife. For example, the use of any artificially placed bait (e.g. shucked corn or apples) to entice any game animal for the purpose of killing it is prohibited. Also, the killing of a protected non-game bird, the sale of such in whole or part, or the molestation of the bird's nest is a criminal misdemeanor. Ala. Code §§9-11-232, 9-11-244 (1980).

Game wardens have the power to confiscate any illegally possessed game bird, fish or animal, along with any equipment used in the killing of

the animal. Each illegal killing, molestation, or possession of an animal is considered a separate offense, thereby increasing the total amount of fines and jail term to which one is subject. As a result, for those disrespectful of wildlife protection law, a seemingly successful day in the hunting fields can be turned into a fiasco.

Flattened Musk Turtle

The Alabama legislature finds the flattened musk turtle, a reptile unique to Alabama, in need of special protection in order to survive. Accordingly, it is illegal to hunt, catch, kill, or sell the turtle, unless such acts are incidental to and not the purpose of otherwise lawful acts. Any individual violating the Musk Turtle's protected status is subject to a fine of up to \$5,000 and/or imprisonment for up to one year. The DCNR may, however, issue permits allowing the otherwise proscribed acts for scientific or survival research, zoological exhibition, or education. Alabama Code §9-11-269 (Supp. 1985).

Conclusion

Alabama has adopted a policy of protecting its publicly-owned wildlife resources from unnecessary and wanton destruction. Establishment of preserves, sanctuaries and wildlife management areas, as well as regulations governing sound hunting practices, all forward the implementation of such policy. For a copy of Alabama's *Regulations Relating to Game, Fish and Fur Bearing Animals*, and any other information regarding wildlife protection in Alabama, contact the Game and Fish Division of the Alabama Department of Conservation and Natural Resources, Montgomery, AL; (205) 261-3465.

David Sabine

THE MARINE MAMMAL PROTECTION ACT

(Continued from page 1)

mammal products. No person may possess, transport, purchase, sell, or offer to purchase or sell a marine mammal product if the animal was taken in violation of the Act. Furthermore, because many porpoises are killed yearly in the course of commercial fishing operations, no such operation may use means or methods of fishing prohibited by a regulation promulgated under the MMPA. Finally, commercial whaling is strictly banned in United States waters.

Permits and Exemptions

The heart of the MMPA consists of the procedures and criteria for granting permits and for allowing exceptions and exemptions from the moratorium. Permits, which can be general or specific, are contingent upon a finding by the Secretary, based upon the best scientific data available, that the species in question is not depleted. Exemption provisions apply mainly to Alaskan natives and cases of hardship. Hardship exemptions, lasting no longer than a year, may be granted by the Secretary upon evidence that enforcement of the Act would work extreme economic hardship upon the applicant. The Alaskan native exemption applies to those Indians, Aleuts, and Eskimos who hunt marine mammals for subsistence purposes. Such natives may continue this practice, along with the manufacture of authentic articles of native handicraft consisting of the inedible portions of marine mammals, so long as those species hunted are not determined to be depleted.

Scientific Research and Public Display Permits

One of the purposes for which the Secretary may grant a permit is a taking for either scientific research or public display. The application for such a permit must be reviewed by the Marine Mammal Commission and its Committee of Scientific Advisors. A taking under any permit must be done in a humane manner, i.e., the method used must involve the least possible degree of pain and suffering to the animal. In the case of scientific research and public display permits, the permit must specify the methods of capture, supervision, care and transportation necessary. If the standards specified in the permit are inadequate, or, though adequate, not complied with, the permit can be revoked and penalties levied. Unlike most other types of permits, scientific and display permits can be issued for the taking of members from a depleted stock. This is allowed because one of the policies announced by the Act is to increase our knowledge of marine mammals.

Commercial Fishing Permits

Aside from depleting the food sources of marine mammals, the commercial fishing industry is responsible for the traumatic death and serious injury of thousands of these mammals every year. Although tragic, these deaths and injuries are usually unintentional and arise mainly incidental to the fishery operation. For example, in 1972, the tuna fishing industry caused the death of 368,000 porpoises. 1981 U.S. Code Cong. & Ad. News 1458, 1461. These deaths occurred because the porpoises became entangled in the fishing nets and drowned, notwithstanding the efforts of some fishermen to release them. Realizing that a certain

number of deaths were unavoidable, but that many porpoises could be saved by the development of safety techniques, Congress provided that, as long as such takings were incidental to, and not the object of commercial fishing operations, and that the takings had a negligible impact on the species, the Secretary can issue a permit allowing the taking of small numbers of marine mammals. Because takings of animals from a depleted stock would necessarily have a significant impact, no permit may be issued with respect to such groups.

Although permits may be issued to members of the commercial fishing industry, one of the goals of the Act is that the incidental kill or serious injury rate of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels. This provision is satisfied in the case of the tuna industry by a continuation of the application of the best marine mammal safety techniques and equipment which the Secretary determines are technologically and economically practicable. The fact that the number of porpoise deaths stemming from tuna fishing declined from 368,000 in 1972 to 15,303 in 1982 illustrates the success of this provision. Permits for taking marine mammals issued to fishing operations outside of the tuna industry must provide guidelines pertaining to the establishment of a cooperative system among the fisherman involved for the monitoring of such taking. A permit will be either withdrawn or suspended for a certain time if the Secretary finds, after notice and opportunity for public comment, that the conditions of the permit are not being met, the taking is having more than a negligible impact on the species, or that the purposes of the Act are better served by revoking the permit.

Other Permits

Permits may be issued to parties, not involved with the fishing industry, who engage in a specified activity within a specific geographical region. For instance, upon a finding that such activity will have a negligible impact, the Secretary, after notice and opportunity for public comment, may issue a permit allowing the taking of small numbers of marine mammals incidental to seismic exploration or core drilling along areas of the Pacific Coast of the United States which contained similar biological and geological characteristics. The specified geographical region should not be larger than necessary to accomplish the specified activity. As with permits issued to fishermen outside the tuna industry, a specified activity permit can be revoked if not substantially complied with.

A permit may also be issued if the Secretary determines that a species has become overpopulated. In such a case, the Secretary must first determine whether it is more desirable to transplant a number of the animals. If not, hunting permits can be granted, with the Secretary regulating such factors as season and bag limits.

Procedure for Obtaining a Permit

Any permit issued for the taking and importing of marine mammals is subject to regulations promulgated by the Secretary. Permitting procedures include an application, notice, hearing, and a review process. Once an application is made, the Secretary publishes notice

of the application in the *Federal Register*, inviting submission from interested parties, within thirty days, of written data or views with respect to the taking or importation proposed. Within sixty days of publication of this notice, and upon request by an interested party, the Secretary may grant a hearing. Within thirty days after the close of the hearing, the Secretary must publish in the *Federal Register* his decision on whether to grant or refuse the permit. In the event of an adverse ruling, an interested party can seek judicial review in the appropriate United States District Court. Once a permit is granted, the Secretary, for cause, can modify, suspend, or revoke it after due notice and opportunity for a hearing are provided to the permittee.

Enforcement

Two cabinet-level departments enforce the Act. The Department of Commerce, acting through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service, is responsible for whales, dolphins, porpoises, sea lions and seals. The Department of Interior, acting through the Fish and Wildlife Service, is charged with protecting polar bears, sea otters, manatees and dugongs. Additionally, the Secretary (either Commerce or Interior) may, by agreement, utilize personnel from other federal agencies and may also designate state officers to help enforce the Act. All authorized enforcement officers can make arrests and conduct searches, without a warrant, upon a reasonable suspicion that the person or vessel is in violation of the Act. Although the MMPA provides for the federal government to totally relinquish management of marine mammals to the states, the procedures and criteria for such a program are complicated and lengthy and thus far, no state has satisfied them.

Penalties

Violations of the MMPA entail both civil and criminal penalties. After notice and an opportunity for a hearing, a person found liable for a civil violation can be fined up to \$10,000 for each violation. However, if a person has imported a contraband marine mammal product for his own or his family's use, he has the option of merely abandoning the object at the port of entry.

A person who knowingly violates the Act is guilty of a crime and can be fined up to \$20,000 or receive a prison sentence of up to one year. Also, a vessel subject to the jurisdiction of the United States that is found in violation of the Act can be seized along with its cargo, held in forfeiture, and sold at a judicial sale. Such vessels are also subject to a civil penalty of up to \$25,000.

The Marine Mammal Commission

In order to enhance the protection afforded marine mammals, the Act establishes a Marine Mammal Commission. The Commission is composed of three members, each appointed by the President, with approval of the Senate and the recommendation of at least one of the heads of several scientific governmental departments. In addition, each one must be knowledgeable in the fields of ecology and resource management. The commissioners serve three year terms and are not eligible for reappointment.

The Commission serves in an advisory role. It is required to review and study United States activities pursuant to existing laws and international

conventions relating to marine mammals and to recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals. The Commission must also conduct a continuing review of the condition of the stocks, methods of protection, research programs conducted or proposed, and of humane means of taking marine mammals. All applications for permits for scientific research are subject to review by the Commission.

In conjunction with its various studies, the Commission recommends such steps to the Secretary and other federal officials as it deems necessary to enhance marine mammal protection and conservation, including such revisions of the endangered and threatened species list as may be appropriate with regard to marine mammals. Although the appropriate Secretaries and the Commission may consult with each other at any time, the Commission must furnish them a copy of its annual report, before publication, for comment.

Because the Commission serves in a strictly advisory capacity, no agency is obligated to follow the Commission's recommendations. However, all recommendations must be responded to within one hundred and twenty days, and, if disregarded, the agency must provide the Commission with a detailed explanation.

The Commission is aided in its various studies and reviews by the Committee of Scientific Advisors on Marine Mammals. This Committee consists of nine members, appointed by the Commission. Each member must be a scientist knowledgeable in marine ecology and marine mammal affairs. The Commission must consult with the Committee on all studies and recommendations. Any recommendations made by the Committee which are not adopted by the Commission must be transmitted to the appropriate federal agency and congressional committee, along with a detailed explanation of the Commission's rejection.

Conclusion

Although much has been done to protect and understand marine mammals in the past few years, much more is required. The failure of some species of whales to recover in spite of the ban on whaling indicates that the problems faced by marine mammals are multifaceted. Not only must these highly intelligent creatures be saved from extinction, but also their aquatic homes must be kept habitable. Such laws as the Ocean Dumping Act help, but because the majority of the earth's surface is covered by water, any successful effort to protect marine creatures must be international in scope. By providing stringent protections and encouraging world-wide development of similar programs, the Marine Mammal Protection Act helps set the stage for the recovery of a vital part of the earth's ecosystem.

Louis Alexander

WILDLIFE MANAGEMENT IN MISSISSIPPI

(Continued from page 3)

the federal list unless it is shown that takings are necessary to the species' survival. Such takings require a permit from the Commission.

The Act grants the Commission broad powers to gather information on species populations, distribution, habitat needs, and limiting factors from any available source in order to determine the management measures necessary to protect these species. Some management measures that the Commission is empowered to take include acquisition of habitats deemed critical to the species' survival; issuance and enforcement of appropriate protective regulations; and cooperation with any federal agency, political subdivision of the state, or private person for administration and management of endangered species. These programs are funded by legislative appropriations, federal grants, private donations, and the sale of endangered species stamps.

Although the Commission makes the final determination of whether a species will be added to the state list, much of the groundwork required for that determination is handled by the Natural Heritage Museum. According to Ken Gordon, Director of the Museum, professional biologists, either working independently of the state or by contract with the Commission, submit to the Museum biological data on a potentially endangered species' population, range, critical habitats, and likelihood of survival. These professional biologists are frequently university professors or employees or members of private organizations, such as the American Ornithologist Union. While state-employed district biologists are not prohibited from recommending additions to the endangered species list, they seldom have the time or the funds to amass sufficient data. Mr. Gordon evaluates the data submitted and makes recommendations to the Commission. The Museum is currently compiling a list of endangered plant species that should be available in the near future.

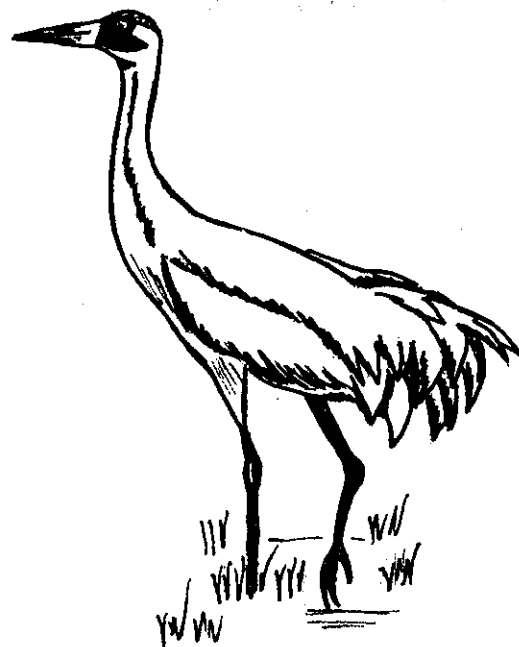
Conclusion

Since about 1974, Mississippi has made great progress in wildlife management. The reorganization of the previous wildlife agencies into the Department of Wildlife Conservation and its bureaus has provided the state with an effective means of enforcing the state's wildlife laws and programs. These laws and programs not only help insure that Mississippi will always have efficiently managed areas where wildlife can thrive and where the state's natural beauty will be preserved, but have also been praised as providing Mississippi with one of the most modern and effective wildlife management programs in the nation. Public support and awareness of wildlife issues are necessary to assure continued success. The Department and its bureaus have much information concerning matters touched upon in this article which they will gladly distribute. For further information contact the Department of Wildlife Conservator in Jackson, the Bureau of Fisheries and Wildlife, also in Jackson, and the Bureau of Marine Resources in Long Beach.

Louis Alexander

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Whooping Crane

WATER LOG

This newsletter is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. The purpose of the newsletter is to increase public awareness of coastal problems and issues.

If you would like to receive future issues of the WATER LOG free of charge, please send your name and address to: Sea Grant Legal Program, University of Mississippi Law Center, University, Mississippi 38677. We welcome suggestions for topics you would like to see covered in the WATER LOG.

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NOTES

On July 29, the U.S. House of Representatives passed H.R.1027 reauthorizing the Endangered Species Act for three years. A similar bill, S.725, has not yet reached the full Senate for a vote. On July 30, the House voted to reauthorize the Coastal Zone Management Act for five years (H.R.2121). A similar bill, S.959, is pending in the Senate.

The U.S. Geological Survey, in conjunction with the British Institute of Oceanographic Sciences, has begun deep water mapping of the sea floor in the U.S. Exclusive Economic Zone off the coasts of Florida, Alabama, Mississippi, Louisiana, and Texas. The purpose of the three-month effort is to produce basic "road maps" needed for future protection and development of deep-water resources in the Gulf of Mexico.

Cornelia Burr, former associate editor of the *Water Log* and staff attorney with the Mississippi-Alabama Sea Grant Legal Program, has returned to the University of Wisconsin to complete her Ph.D. program in the field of resource management. The staff of the Legal Program wish her continued success in her career.

The U.S. Navy has officially established a new Institute for Naval Oceanography in Bay St. Louis, Mississippi. Operating under the Office of Naval Research, the Institute's mission is to develop state-of-the-art technology for global ocean forecasting. Capt. Roger P. Onorati is the officer in charge.

Regulations to establish a coastal construction control line in Baldwin County were adopted by the Alabama Environmental Management Commission at its meeting on October 9. The Alabama Department of Environmental Management reports that the regulations, modified as a result of a public hearing on July 11, were adopted effective immediately. The customary 45-day period is in effect for appealing the decision. For further information, contact the Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, AL 36130.

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