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Dorinda Dallmeyer

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## FISH AND OTHER MIGRATING SPECIES IN THE CANADA/U.S. CONTEXT

### *Introduction – Dorinda Dallmeyer<sup>†</sup>*

I presume I get this session because I migrate pretty faithfully to Cleveland each year for this conference. Yesterday, when Henry King was describing the agenda for the Conference, he noted we would be discussing fish, birds, and butterflies in this session, I noticed that a titter went through the audience. So, unless you think this is going to be the “Bambi hour,” I want you to recall that we have a long history of bilateral cooperation on species migrating between the United States and Canada. In fact, discussions about issues concerning migratory species go back to the founding of the U.S./Canada relationship and to the Treaty of Paris.<sup>1</sup>

Yet, despite our long history, we had a relatively poor track record when it comes to managing our impacts on migratory organisms with which we share the North American eco-region. For it is the environmental boundaries, and not the arbitrary political boundaries, that birds, fish, and other migratory species recognize and respect. After all, birds, butterflies and aquatic organisms exist in a three-dimensional fluid medium that does not square very neatly with our concepts of property law and boundary-drawing. So we have two major problems: problems with what we do not know, and problems with what we have forgotten. The panelists have asked me, since they are going to focus on the Great Lakes and on fresh water ecosystems, to talk a little bit about oceans.

An example of what we do not know is how we manage tuna in the Atlantic Ocean. We conveniently divided the North Atlantic basin into two halves; Canada and the United States predominantly govern what happens to tuna on the western half, and the European Community governs the tuna in the eastern half. It has only been in the last year or so that satellite tracking enabled the people working with western Atlantic tuna to find out that these fish traveled all the way into the eastern Mediterranean, where they were

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<sup>†</sup> Vice President, American Society of International Law; Associate Director, Dean Rusk Center for International and Comparative Law, University of Georgia School of Law, Athens, Georgia. B.S., M.S., J.D., University of Georgia.

<sup>1</sup> Treaty of Paris, Sept. 3, 1783, U.S.-Gr. Brit., art. 3, 8 Stat. 80 (giving Americans “unmolested the right” to gather and cure fish in certain areas, subject to certain limitations).

subject to much heavier fishing pressure than was allowed in the western Atlantic.<sup>2</sup>

The above example illustrates the things we still do not know. We are just beginning to figure out how to manage these migratory species. Then, there are things we used to know that we forgot; this is particularly exemplified by both the freshwater and saltwater fisheries. The United States and Canada, along with nearly every other fishing nation in the world, have managed our fisheries right into oblivion. One only needs to think what has happened to the Atlantic Cods or Pacific Salmon to see what I am talking about. We sequentially eliminate a larger food fish, moving to smaller and smaller fish. We do what the Canadian fisheries biologist Daniel Pauly has described as “fishing down the food web,”<sup>3</sup> where we take lower and lower trophic levels of fish, so that what our grandparents called fish bait we now call calamari.

We also need to have reminders of which fish we can afford to eat with a clear conscience, like the wallet cards that are sponsored by the Sustainable Seafood Coalition. I brought some of those for those of you who might be going out to dine when you get home.

And that brings to me the issue about what we have forgotten. We can no longer even imagine the species richness and abundance that we have encountered in our coastal ecosystems in North America, even at the time of European contact, much less aboriginal contact. So I urge you, if you are interested in this, to get a copy of last year’s July 27th issue of *Science* magazine and read the article about historical overfishing and the recent collapse of coastal ecosystems.<sup>4</sup> It is a wonderful explanation of how we have forgotten exactly what the ecosystems used to look like, and gives suggestions on how we might restore the ecosystems that have been damaged.

These kinds of losses have major implications for generational equity. We talked a little bit about that yesterday in terms of long-term planning about the impacts we will have. So while management thus far has seen some spectacular failures, there is a growing impetus among the governments of United States and Canada and Mexico to stop the slide towards oblivion. Two weeks ago, I was in Monterey, California at a joint workshop sponsored by U.S. National Oceanographic and Atmospheric Administration (NOAA) and by the Department of Fisheries and Oceans that examined how to more

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<sup>2</sup> Barbara A. Block et al., *A New Satellite Technology for Tracking the Movements of Atlantic Bluefin Tuna*, 95 PROC. NAT’L ACAD. SCI. USA 9384, 9384 (1998), available at <http://www.tunaresearch.org/9384.pdf>.

<sup>3</sup> Daniel Pauly et al., *Fishing Down Marine Food Webs*, 279 SCIENCE 860 (1998).

<sup>4</sup> Jeremy B.C. Jackson et al., *Historical Overfishing and the Recent Collapse of Coastal Ecosystems*, 293 SCIENCE 629 (2001).

effectively implement marine protection areas, not only to give fish a break from fishing pressures but also to provide a wide array of benefits.

We also have the example of the Commission for Environmental Cooperation (CEC), which has produced a directory of key sites for migratory birds in the United States, Canada and Mexico.<sup>5</sup> These are important, as nearly 20 percent of the 1400 species in the United States, Canada and Mexico actually migrate between the three countries.

Monarch butterflies, which are used by the CEC as a living logo of the interconnectedness of the North American eco-region, recently received guarded protects in their winter roost in Mexico. Funds were used to help pay the local people from cutting down the trees which are not only needed for fuel and firewood for the people of the area, but also provides the home for these symbols of the interconnectedness of North America. Closer to home (at least to my home state of Georgia), the highly endangered white whale, the Georgia State marine mammal, which comes to the waters off the southeast Georgia and northeast Florida coast to calve in January and then migrates northward all the way to the Bay of Fundy in summertime to feed. The northern white whale is the object of an integrated protection scheme involving both the United States and Canada.

If I seem like I am warming to this subject, it is because before I went to law school, I worked in marine conservation biology. So, in a sense, my role here is to provide safe passage for our fishery experts who appear here in Cleveland out of their environment in this lawyer's forum, otherwise known as shark-filled waters. And, yet, they came very well prepared. In addition to Bill Taylor from Michigan State, a fisheries biologist, whose Canadian counterpart, Henry Regier from the University of Toronto, they brought with them their own lawyer. Tracy Dobson, Professor of Fisheries and Wildlife at Michigan State who is also a J.D., will also serve as one of the panelists. She was on the Board of Technical Experts for the Great Lakes Fishery Commission. In addition to her research work in the Great Lakes on aboriginal fisheries, she also works in Malawi on fisheries.

With that, I will give the podium to our first speaker, Bill Taylor.

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<sup>5</sup> See *North American Conservation Network Planned; IBA Program Identifies Bird Conservation Sites*, at [http://www.cec.org/pubs\\_info\\_resources/ecoregion/eco2-4/eco2-41.cfm?varlan=english#next](http://www.cec.org/pubs_info_resources/ecoregion/eco2-4/eco2-41.cfm?varlan=english#next) (last visited Aug. 22, 2002).

