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A Review Of Developments In Ocean And Coastal Law 2001

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A REVIEW OF DEVELOPMENTS IN OCEAN AND COASTAL LAW 2001

*Denis Culley, Katherine Joyce, Chad Olcott,
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INTERNATIONAL

I. PROTECTED SPECIES

A. Several Nations Agree to Reduce Threats to the Endangered Albatross

Seven countries have signed an agreement to take steps to reduce threats facing the albatross. The albatross is a large migratory bird that can spend up to eight years at sea. Australia, Brazil, Britain, Chile, France, New Zealand and Peru all participated in a multinational agreement that seeks to address the problem of declining seabird populations that result from pollution and longline fishing. Longline fishing has proven to be particularly threatening to the albatross because the bird will often dive for the baited hooks that are set out by fishing vessels and end up being pulled under and drowning. It is estimated that roughly a quarter of a million seabirds have been killed within the last three years, principally from this fishing technique. Scientists believe that extinction is likely for some albatross species. However, this widely used practice is the preferred method for many fishermen in the southern hemisphere. Education, not regulation, is the first step established by this agreement, which begins with outreach to fishing fleets to educate them about fishing techniques that are less harmful to the species. Also, an international committee will meet yearly to discuss, and then report on, progress and new methods used to protect the albatross and its habitat. *Seven Fishing Nations Sign Pact to Save Albatross*, at <http://www.planetark.org/dailynewsstory.cfm?newsid=11255&newsdate=20-Jun-2001> (last visited Oct. 22, 2001).

* Members of the University of Maine School of Law, Class of 2003.

*B. Multi-National Agreement is Reached
to Preserve Endangered Sea Turtles*

A major victory was reached in the long-standing struggle to secure protection for endangered sea turtles in the Indian Ocean and the waters of South East Asia. For the first time, several countries in the region have agreed upon a comprehensive plan designed to conserve six at-risk species. The plan was a result of the June 2001 Convention on Migratory Species (CMS), which brought together twenty-one delegates from countries bordering the region. The CMS is linked to the United Nations Environmental Programme (UNEP). The motivation behind the agreement was the disturbing depletion rate of the loggerhead, olive ridley, green, hawksbill, leatherback and flatback turtles. These species are faced with a number of hazards, including over harvesting for their meat and eggs, destruction of nesting and feeding habitats and being the accidental victims of major fishing operations. The unfortunate result is that these once plentiful species of cultural and ecological significance are now facing a bleak and uncertain future. The agreement reached at the CMS has been acclaimed as being the first of its kind, and a multinational response to the problem. The agreement involves the implementation of twenty-four programs and over one hundred specific projects that are designed to prevent the further decline of the six critical species. *Pioneering Sea Turtle Recovery Plan Agreed for South East Asia and the Indian Ocean*, at <http://www.unep.org/Documents/Default.asp?DocumentID=204&ArticleID=2876> (last visited Oct. 22, 2001).

C. Congo Enacts Ban to Protect Sharks

Beginning in June 2001, shark fishing was banned in Congolese waters. The prohibition on shark fishing was announced in a circular issued by Henri Djombo, the Minister for Forest Economy, who also oversees marine resources. The ban comes in response to severe over fishing spurred by intense demand for shark fins by Asian markets.

Trawlers and small fishing boat operators had been hunting sharks for many years. The strong Asian demand for fins, coupled with the introduction of "kouta" shark nets by traditional cottage industry style fishermen, has led to an explosion of shark fishing.

While shark fishing was supposed to be controlled by permits costing 100,000 CFA francs, poaching was common. One kilogram of shark fins sells for between 15,000 and 20,000 CFA francs in Pointe-Noire, Congo. One U.S. dollar equals about 700 CFA francs. A similar ban on shark fishing was issued in 1998 at the beginning of the current shark fishing

boom. Shark Fishing Banned in Congo, Press Release, Inter Press Service, by Lyne Mikangou (June 6, 2001).

D. Australian Government Grants Authority to Kill Sharks on Sight

Beginning October 2001, fisheries officers and police in western Australia were authorized to shoot sharks on sight. In anticipation of the spring-summer water sport season in Australia, officials have been allowed to shoot sharks that might represent a hazard to swimmers.

John Hammond, the mayor of Cottesloe, a Perth beach town, has asked the government to try out a new sonar technology that would provide early warning of shark activity to swimmers and lifeguards. Cottesloe beach has been the scene of numerous shark attacks on humans. Recently, a swimmer at Cottesloe died after his leg was torn off during an attack by a fifteen-foot long white pointer shark.

A state taskforce set up after the recent Cottesloe attack is scheduled to report to Parliament by early November. According to a spokeswoman for the State Fisheries Department, the Department and others have been using the sonar to provide early warning of sharks for years. *Australian Sharks to be Shot on Sight*, at <http://ens.lycos.com/ens/oct2001/2001L-10-08-02.html> (last visited Jan. 28, 2002).

II. INTERNATIONAL TRADE

A. The World Trade Organization Allows the United States to Continue its Ban on Imported Shrimp

The World Trade Organization (WTO) has declared that the United States may continue its ban on the importation of shrimp that have been caught from vessels not designed to protect against the further demise of sea turtles. The ban was first imposed in 1996, and has been a source of controversy, especially from the point of view of several developing Asian countries. In deciding to impose the ban, the United States insures that importation will only be from shrimp sellers who have equipped their shrimping vessels with the necessary turtle-safe devices. However, in the eyes of many developing countries, the rationale for the ban has less to do with protecting endangered sea turtles than providing a means of protecting the U.S. shrimping industry from foreign competition. The strongest criticism has come from Malaysia, India, Pakistan and Thailand, who had been successful in developing formidable export markets for their shrimp in the United States before the ban was imposed. In 1998, the WTO received a complaint from Malaysia that the ban was in violation of

established trading rules and should be amended. The dispute has also received attention from environmental groups from the United States and other Western countries who are concerned with the tension existing between WTO rules and environmental conservation. The recent WTO ruling to allow the ban to continue was a rejection of the Malaysian complaint and a clear victory for the United States shrimping industry. However, the WTO panel deciding the case has indicated that the ban is only justifiable if the U.S. maintains serious good faith efforts to reach an international agreement that will ensure sea turtle conservation. *WTO Panel Says US Can Keep Shrimp Import Ban*, at <http://www.plantenark.org/dailynewsstory.cfm?newsid=11217&newsdate=18-Jun-2001> (last visited Oct. 22, 2000).

III. FISHERIES MANAGEMENT

A. *U.N. Declares the Need For More Effective Fisheries Management Programs*

The United Nations (U.N.) has issued a declaration designed to foster a more responsible attitude to the world's declining fish stocks. The essence of the declaration was that more effective management plans need to be implemented immediately in order to bring fishing production down to sustainable levels. The declaration was the product of a four-day conference in Iceland that was organized by the U.N.'s Food and Agriculture Organization. Delegates from seventy countries attended the conference entitled Responsible Fisheries in the Marine Ecosystem. The conference was the first time that delegates met on an international level and was in response to a growing sentiment that effective fisheries management must come from greater cooperation. The problem of excessive fishing has grown increasingly more pressing in the last fifty years. Fish production globally has increased from 19 million tons in 1950 to roughly 130 million in 2000. Regulations that are currently in place have been only marginally successful, and in general, management plans have failed to maintain stocks at levels that ensure maximum productivity. U.N. officials at the conference emphasized that this ineffectiveness is due largely to a system of rules that are designed to focus only on individual species. The conference was unique in that it stressed the benefits of an alternative approach calling for fishery management systems to focus on the sustainability of whole ecosystems rather than on specific species. *U.N. Says Management Plan Needed*, at http://www.gofish.com/cgi-bin/WebObjects/Gofish.woa/wa/gotoAtricle?document_id=168 (last visited Oct. 22, 2001).

IV. CRIME AT SEA

A. *Piracy on the Rise*

The age-old specter of armed privates boarding ships, looting and attacking crew members seems out of place in the twenty-first century. Yet, a compilation of year 2000 figures released on February 1, 2001, show that piracy and its attendant violence is very much a part of life on the high seas.

According to the report issued by the International Chamber of Commerce (ICC) through its International Maritime Bureau (IMB) pirate attacks rose 57% compared with figures from 1999. According to the IMB there were a total of 469 attacks on ships at sea or in port. Underreporting and non-reporting are believed to be widespread.

In all, seventy-two seafarers have been killed and ninety-nine others injured in attacks documented by the ICC. These figures show an alarming increase in violence, as the total number killed in 1999 was only three seafarers.

This increase in both the frequency of attack and the violence of those attacks has not been evenly spread throughout the world. Indonesia alone has recorded one quarter of the attacks worldwide, with a total of eighty-six ships boarded in 119 separate incidents. These attacks, often carried out by pirates armed with knives, were also among the most violent. The Malacca Straits saw an increase from two attacks in 1999 to seventy-five in 2000 despite stepped up efforts by the Royal Malaysian Police that led to the capture of two groups of pirates. Bangladesh (55 attacks), Ecuador (13 attacks), and India (35 attacks) all saw significant increases in piracy and its associated violence. The southern part of the Red Sea, which had previously been free of piracy, saw thirteen attempted boardings on ships in the year 2000. Only the Singapore Straits were singled out in the IMB report as having seen a significant downturn in piracy, reporting five incidents in 2000 in contrast to the fourteen incidents the year before. *Piracy Attacks Rise to Alarming New Levels, ICC Report Reveals*, at <http://www.iccwbo.org> (last visited Oct. 15, 2001).

B. *Worldwide Increase in Smuggling of Humans*

A new study released on July 16, 2001 by the International Chamber of Commerce Crime Services documents a lucrative and steadily growing industry at sea, that of smuggling human cargo. According to the German Intelligence Service and the BND, 400,000 people are entering the European Union illegally each year. The shadow industry that smuggles

many of these illegal migrants now has an income of over four billion dollars annually. While entering a foreign state illegally often involves a long chain of road, train and air journeys, the last leg is often by sea.

This sea journey can be extremely treacherous because people are often crammed in shipping containers (some with specially built bunks inside) or hidden elsewhere on ships. Fifty-eight Chinese nationals died in a failed attempt discovered in Dover, England last year. Another 173 people drowned in the Adriatic attempting to cross from Albania to Italy.

Despite these tragedies, there is no shortage of willing, paying customers ready to go to sea in dangerous vessels manned by unskilled crews. The short trip from Albania to Italy on a speedboat will bring a smuggler \$500 per person. There are plenty of customers willing to pay over \$40,000 to be smuggled from mainland China to the European Union.

Stowaways can be not only a headache for commercial shippers, but also a significant financial liability. Even after high deductibles on shippers' protection and indemnity (P&I) coverage, the International Group of P&I Clubs spends about ten million dollars annually on fines assessed by immigration authorities against shippers found to have stowaways. In the United Kingdom authorities are authorized to fine shippers £2000 per stowaway.

Michael Howlett, head of the International Chamber of Commerce Bureau's Transit Fraud Department, noted that individual immigration authorities are often ineffective against the international crime rings behind the smugglers. Howlett called for ". . . a central body to quantify all illegal immigration worldwide and provide centralized assistance to organizations dealing with the problem around the globe." *People Smuggling is on the Rise*, at <http://www.iccwbo.org> (last visited Oct. 15, 2001).

C. Australia Confronted With Boat People

On October 7, 2001, the ongoing struggle between asylum seekers from the Middle East and the government of Australia came to a startling crisis when the asylum seekers began throwing their children into the sea. The Australian Navy ship HMS Adelaide had earlier intercepted a boat, flying an Indonesian flag, carrying about 200 asylum seekers. Most of the asylum seekers were from Iraq and were fleeing the troubled Middle East. When the boat was ordered to turn back, some passengers began throwing their children into the sea and then jumping overboard after them.

All of the children and adults were rescued and returned to the boat, which was then escorted out of Australian waters. The episode was characterized by Australian Immigration Minister Philip Ruddock as "one of the most disturbing practices I've come across."

More than 5000 asylum seekers have come to Australian territory this year by boat. Most of these refugees come from the Middle East and Afghanistan, with the help of Indonesian smugglers.

As part of Prime Minister John Howard's hard line policy on acceptance of asylum seekers, the government has contracted with tiny impoverished Nauru to accept some refugees. Other refugees have been sent to New Zealand and still others remain at sea. *Asylum Children "Thrown into Sea" off Australia*, at <http://www.cnn.com/2001/WORLD/asiapcf/auspac/10/07/aust.boatchildren/index.html> (last visited Oct. 25, 2001).

V. OCEAN POLLUTION

A. *Rising Ocean Threatens Island States*

Earth Day, April 21, 2000 saw the tiny island nation of Tuvalu, home to 10,600 people living on nine coral atolls, looking to the future with mixed emotions. There is pride and hope in the result of the February vote by the United Nations Security Council recommending that Tuvalu be admitted as the 189th member state. At the same time, there is real concern that part or all of the island nation that lies only a few meters above sea level may be flooded by rising water levels due to global warming. Small islets in Tuvalu, Kirabati and Bougainville have already been drowned by rising water levels.

In addition to flooding and the possible loss of entire islands due to rising ocean level, Tuvalu and other island states face salinization of farmland, loss of aquifers and damage to fisheries.

In response to the threat posed by rising ocean levels, the thirty-seven member Alliance of Small Island States (AOSIS) has issued a call for strong action to slow global climate change. The small island states are themselves very small contributors of greenhouse gases, yet they have moved to the forefront of those advocating control of greenhouse gases. AOSIS Chairman Tuiloma Neroni Slade of Samoa said "We are least responsible for, but most vulnerable to the effects of climate change, and so we find ourselves at the forefront in the fight against global warming." Delegates from St. Lucia, Grenada, the Maldives, Jamaica, Kiribati and the Cook Islands announced their support for renewable resources at an Earth Day ceremony at the United Nations. Many of the assembled delegates also called on the United States to lead the world community in taking steps to address global warming. According to Tangent Vavia, Minister of Energy of Cook Island, "The Kyoto Protocol is central to global efforts to address human-induced climate change, but the lack of support from the United States, to whom we look for principled leadership in many respects,

makes those steps very difficult for us.” *Tiny Tuvalu is Poised to Join U.N.*, at <http://www.cnn.com/2000/ASIANOW/australasia/02/17/tuvalu.02/index.html> (last visited Oct. 25, 2001). Press Release, by Jennifer Sieg, Inter Press Service, Small Islands Step up to Combat Global Warming (Apr. 21, 2001).

B. Multinational Team Plans Black Sea Revival

On October 10, 2001, scientists from Ukraine, Turkey and the European Union joined together as members of the Global International Waters Assessment (GIWA), sponsored by the United Nations Environment Programme (UNEP) gathered in Kalmar, Sweden for their inaugural meeting. A GIWA research team characterized the Black Sea as spiraling into decline due to chronic pollution, over fishing and the impact of alien species. The team also noted that the people and ecosystems of the Black Sea are threatened by raw sewage discharges, coastal erosion and the effects of dredgings dumped at sea. The team also found that the impact of pollution in the Black Sea has been exacerbated by destructive fishing practices, such as bottom trawling, that has destroyed shellfish and by over fishing along the mouths of the tributary rivers.

The GIWA report on the Black Sea water system, compiled by Professor Felix Stolberg, an environmental engineer from the Ukraine, noted that only six of the twenty-six species fished commercially in the 1960's remain in commercially feasible quantities. Research team scientist, Dr. Ahmet Kideys, noted that, although the anchovy catch by the Turkish fleet had been rebounding, a dramatic collapse of the fishery in the late 1980's and early 1990's showed the increasing impact of pollution and alien species.

In an effort to reverse the dramatic decline of the Black Sea's ecosystems, UNEP is sponsoring a \$100 million plan, the Black Sea Basin Strategic Partnership. This initiative, undertaken in coordination with the Global Environmental Facility (GEF) and the UN Development Programme (UNDP), will target the reduction of phosphorous and nitrogen levels entering the Black Sea. Other initiatives are under way to reduce pollution entering the Black Sea region from industrial and municipal sources as far away as Slovenia and the Czech Republic. *International Team Combats Black Sea Decline*, at <http://ens.lycos.com/ens/oct2001/2001L-10-10-01.html> (last visited Oct. 25, 2001).

VI. PROTECTED AREAS

A. *United States Proposes International Measure to Further Protect Florida Keys*

Using the state of Florida and the National Ocean Service, an agency of the Commerce Department and NOAA, as a conduit, the United States has submitted a proposal to the International Maritime Organization (IMO) to designate the Florida Keys a "Particularly Sensitive Sea Area" (PSSA). If approved, this measure would make the coral reef ecosystem in the Keys only the third designated PSSA in the world. The other two are Australia's Great Barrier Reef and the Sabana-Camaguey Archipelago in Cuba.

PSSA designation would be aimed at reducing threats to coral reefs, sea grass meadows and mangrove forests from international shipping. A designation would serve notice to the shipping industry by establishing "Areas To Be Avoided." Ships greater than fifty meters would be on notice to avoid the area. With an estimated forty percent of the world's commerce passing within a day and a half sail from Key West, the Keys are at great risk through groundings, anchorage damage, collisions and spills.

Final designation of the Keys as a PSSA will be considered by the IMO when it meets in November of 2002. *NOAA Receives Initial Green Light to Extend International Protection to the Florida Keys*, at <http://www.sanctuaries.nos.noaa.gov/> (last visited Sept. 30, 2001).

B. *Australian Aborigines Rights to 2000 Square Kilometers of Ocean Defined*

An October 2001 ruling of the High Court of Australia has clarified the rights of six clans of Croker Island aborigines in relation to the sea off the coast of that Northern Australian territory. The High Court, in upholding a 1998 Federal Court decision in a case brought by Mary Yarmirr, has said that the six clans have rights over the seas to the extent that they do not impinge on the commercial rights of fishermen, oil companies and tourism industries. These aboriginal sea rights are basically a right to be consulted by, but not a right to exclude, other users of the sea who have been issued various licenses by the Commonwealth and the Northern Territory.

Yarmirr had appealed the 1998 Federal Court decision in hopes of confirming a more extensive property right. The Australian government had also appealed. By a six to one vote the High Court rejected both appeals leaving the 1998 Federal Court decision in place.

While environmental groups and aborigine groups have cautiously welcomed the decision, it falls short of the rights Mary Yarmirr had sought

for the clans. Earlier this year she had identified the rights sought as including rights to the seabed, reefs, the aquatic life, the air and clouds above the sea and sacred sites.

Aboriginal groups own approximately 85 percent of the coastline in the Northern Territory. *Aboriginal Sea Rights Confirmed in Australia's High Court*, at <http://ens.lycos.com/ens/oct2001/2001L-10-17-02.html> (last visited Oct. 25, 2001).

DOMESTIC

I. LITIGATION

A. *Columbia River Crab Fishermen Sue Dredgers*

Recently, a suit was brought by the Columbia River Crab Fisherman's Association against the Army Corps of Engineers (Corps) and filed in the federal district court in Portland, Oregon. At issue is the Corps' practice of dumping material dredged from the Columbia's shipping channel at the mouth of the river. The Fisherman's Association alleges that the dredged material has significantly amplified wave height in an already notoriously rough area. Further, the fishermen allege that the Corps has acted in violation of a 1998 court approved agreement to minimize wave amplification caused by the dredged material. That agreement would have limited the wave amplification to no more than ten percent of then-existing wave heights. In July of 2001, the Corps acknowledged that one of its dump sites has raised wave heights above this threshold percentage. In August, two fishermen lost their lives when their boat capsized while crossing the bar. Thereafter, the Corps had the dump site dredged. However, the Corps insists that newly developed computer models demonstrate that it is still acting within the terms of the 1998 agreement.

Local Fisherman and the Columbia River Channel Coalition argue that the dredged material should be used to replenish nearby Benson Beach, a Washington beach that has been recently wracked by erosion. The Corps argues that replenishing eroded beaches is significantly more expensive and hazardous than simply dumping the dredged material at the mouth of the Columbia. *Fishermen Sue over Hazards on River*, at <http://www.colombian.com/10112001/clark-co/221680.html> (last visited Jan. 22, 2002).

B. *Feds Win (Another) Atlantic Salmon Debate*

In August 2001, the First Circuit Court of Appeals upheld a decision allowing the federal government to defend its designation of the wild

Atlantic salmon as endangered. In November 2000, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service designated the Atlantic salmon found in seven Maine rivers as endangered, pursuant to the Endangered Species Act of 1973. The designation requires, among other things, that there be no takes of the protected Atlantic salmon, that a recovery plan be developed and critical habitat be identified. Following the designation, Maine state and business groups challenged the designation. The ensuing case, *Maine v. Director, United States Fish and Wildlife Service*, arose when several environmental groups, in favor of the designation, moved to intervene in litigation between those opposed to the designation—the State of Maine and various business groups—and the services. The environmental groups alleged that the two federal services were not in a position to defend the salmon, as the services had recently opposed the designation when challenged by the environmental groups. The First Circuit affirmed the decision of the district court, which ruled that the two federal services adequately represented the interests of the environmental groups. Intervention would have allowed the environmental groups, in the place of the federal services, to defend the endangered designation of the salmon. <http://www.nero.nmfs.gov/atsalmon/botframe.html> (last modified Nov. 29, 2001); *Maine v. Director, United States Fish and Wildlife Service*, 262 F.3d 13 (2001).

C. Feds Take a Hit on Protection of Pacific Salmon

A September 2001 decision of the U.S. District Court in Oregon ruled that the National Marine Fisheries Service (NMFS) improperly listed only the naturally spawned Oregon coast coho salmon under the Endangered Species Act of 1973 (ESA). The NMFS designation did not include hatchery populations of the Oregon coast coho, even though NMFS had earlier ruled that the hatchery population and the naturally spawned population were part of the same population segment, pursuant to the ESA. The two populations interbreed and share the same rivers and habitat. NMFS has argued that its distinction “prioritize[s] ‘natural’ salmon populations and ‘genetic diversity’ within those populations.” The court found that NMFS’s distinction between the two populations was arbitrary because NMFS “may consider listing only an *entire* population segment . . . of any species” [emphasis in original]. Further, the court found that maintaining “genetic diversity” and “natural” populations was only “one of many underlying goals of the ESA” and that genetics cannot justify a listing distinction that distinguishes between populations that are, by all accounts, identical. As a result of the decision in this case, the Oregon coast coho salmon was removed from the Endangered Species list. Appellate review

has not yet been sought by NMFS. The repercussions of this case have yet to be felt, but it is likely that this decision will color the applicability of the ESA to many other species. *Alsea Valley Alliance v. Evans*, 161 F. Supp. 2d 1154 (2001).

D. Certiorari Denied in Marine Lien Decision

The U.S. Supreme Court refused to hear a case arising out the of the First Circuit Court of Appeals, which found that federal fishing permits go with a boat when the boat is seized to pay a loan. Prior to the decisions by the U.S. District Court in Portland, Maine and the First Circuit Court of Appeals, it had not been settled whether the permits would stay with the previous owner, or remain with the boat and the new owner after the boat has been sold to satisfy a lien. The permits are often worth more than the boat itself, as many fishing permits represent a rare key to lucrative, and essentially closed, fisheries. The permits are supposed to be nontransferable, but fishermen are able to sell permits by selling a boat with a permit and then buying the boat back without the permit. In this case, counsel representing the boat owner argued that the permits should be considered intangible because when a permit holder's boat sinks, the owner can transfer the permit to a new boat. That situation, counsel argued, is analogous to a situation in which the boat is seized to recover on a debt. However, the district court judge ruled that the permits should go with the boats because they are as integral as the "nets and tackle" in determining the boat's value. This case will have implications throughout the fishing world, from banks' credit decisions for fishermen to potential suits against the federal government based on the property rights of the fishing permits. *Gowen v. F/V Quality One*, 244 F.3d 64 (1st Cir. 2001), *cert. denied*, 122 S. Ct. 196 (2001).

II. FISHERIES

A. Stellar Sea Lions May Get More Help

Recent harvest restrictions on Alaskan pollock, cod and mackerel could cut takes on those fish by five to ten percent if implemented for the 2002 season. These measures were proposed by the North Pacific Fishery Management Council and are being forwarded to the National Marine Fisheries Service (NMFS) for final approval. The cuts are designed to protect the ever dwindling population of Stellar sea lions, a Western Alaska marine mammal whose diet is primarily composed of pollock, crab and mackerel. Scientists are unsure of exactly why the sea lions numbers have

dropped so steeply, but it is uncontested that the sea lions have been disappearing as the fishing pressures in the region have increased in recent decades. The new measures are a compromise between environmental groups, who sought to reduce the harvest by thirty-one to fifty-five percent, and fishing groups, who would leave current take restrictions unchanged. Some fishery industry experts estimate that the new restrictions may cost the fishery up to \$100 million in reduced catch. Last year, a federal judge found that an earlier management plan had violated the Endangered Species Act and further jeopardized the sea lions. As part of that finding, an injunction was issued that temporarily banished the fishing fleets from a large portion of the North Pacific's richest fishing grounds. These recent measures were in response to last year's ruling. It is clear that conservation groups concerned with the Stellar sea lion are dissatisfied with the new measures; a joint letter from Greenpeace, the Alaska Oceans Campaign and the Sierra Club accused both NMFS and the North Pacific Fishery Management Council of "a myopic focus on commercial fishery production." *Plan Approved to Limit Fish Harvest*, at <http://www.gofish.com/> (last visited Oct. 11, 2001) (on file with the *Ocean & Coastal Law Journal*).

B. New England Groundfish Stocks on the Rise

The year 2000 showed a marked improvement in the stocks of several groundfish populations under the management of the National Marine Fisheries Service (NMFS) and the New England Fishery Management Council. The improvements come in a fishery that was recently seen by many as shattered beyond repair. Specifically, the year 2000 calculations show a two and a half fold improvement for eleven groundfish stocks since 1994—including gray sole, Georges Bank yellowtail flounder, redfish, Georges Bank cod, white hake and others. While most stocks are rising, the gray sole and the Georges Bank yellowtail flounder have been rebuilt to the point of sustainability. The improved fisheries are evident in area ports: Gloucester, New Bedford and Boston ports reported a 400,000 pound increase in cod landings in the period from March 1999 to March 2000. Haddock and yellowtail flounder are up significantly, as well. In Portland, Maine, the landings for 2000 were up thirty-three percent from 1999. Between 1994 and 1999, Rhode Island's ports experienced an approximately fifty-three percent improvement in groundfish landings. Improvements in the fisheries have paralleled better management by the federal agencies, improved scientific information and pro-active measures by fishermen to improve the channels of communication between the scientific and fishing communities. The New England Fishery Management

Council's director, Paul Howard, however, suggests that it would be folly to abandon federal regulations in the wake of good news about the fisheries. He says, "without a doubt, many stocks are improving, but for a number of groundfish species, reductions in fishing mortality must still occur to rebuild stocks to sustainable levels. Our collective efforts to date should not be wasted by abandoning our conservation goals mid-stream." *New England Fish Stocks Recovering*, at <http://www.nefmc.org/news/releases/recovering-stocks.htm> (last modified June 7, 2001).

III. PROTECTED AREAS

A. Bush Endorses Clinton's Marine Protected Areas Executive Order

On June 4, 2001, the current administration endorsed Executive Order # 13158 on Marine Protected Areas (MPAs). This Executive Order was signed last year by then-President Bill Clinton, "direct[ing] the Departments of the Interior and Commerce to work together to create new marine protected areas using both agencies land and resource protection programs, and to improve the management of existing MPAs." *Task Force Atlantis—Reviving the Wild Gulf of Maine*, at <http://www.atlantisforce.org/mpabarhbr.html> (Last visited Feb. 8, 2002).

The Executive Order defines MPAs as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." *Presidential Documents, Executive Order 13158 of May 26, 2000*, 65 Fed. Reg. 34,909 (May 31, 2000).

The United States does not currently have an integrated system of marine protected areas representing the Nation's ocean and coastal environments. *The Marine Protected Areas of the United States; The National MPA Initiative*, at <http://mpa.gov/mpadescriptive/natinitiative.html> (last modified Feb. 3, 2002). However, the Bush Administration's approved budget included three million dollars to establish a National Center for Marine Protected Areas under NOAA. Misty Edgecomb; *Marine Protected Areas Spur Trepidation*, at <http://www.meepi.org/files/42024.htm> (Last modified Sept. 26, 2001).

The MPA program consists of conducting an inventory of protected areas and revising management and strengthening enforcement at thirteen national marine sanctuaries. Pamela Ferdinand. *A Sea Change in Saving Ocean Resources: Zoning*, Special to the *Washington Post*. July 2, 2001, at A07, available at <http://www.clf.org/hot/home.htm> (last visited Feb. 8, 2002). The National Oceans Commission and the Pew Oceans Commission are also re-evaluating ocean management policies in order to make

recommendations to Congress. Misty Edgecomb. *Marine Protected Areas Spur Trepidation*, at <http://meepi.org/files/42024.htm> (last modified Sept. 26, 2001).

B. Proposed: Gulf of Maine International Ocean Wilderness

The federal government is actively considering at least one major marine wilderness proposal: the Gulf of Maine International Ocean Wilderness. This proposal would protect fish, shellfish, marine mammals and other wildlife and natural and historic resources from extractive exploitation inside a ten-mile wide band of habitats along the offshore border between Maritime Canada and New England. Programs to designate a system of Gulf of Maine undersea wildlands and Marine Protected Areas are well underway. On September 25, 2001, a Marine Protected Area Forum was held near Bar Harbor, Maine. Forums are being held to help NOAA develop a process for the establishment of MPAs that is acceptable to the public. Misty Edgecomb. *Marine Protected Areas Spur Trepidation*, at <http://meepi.org/files/42024.htm> (last modified Sept. 6, 2001); *Task Force Atlantis—Reviving the Wild Gulf of Maine*, at <http://www.atlantisforce.org/mpabarhbr.html> (last visited Jan. 24, 2002).

IV. LEGISLATION

A. Fishing Recovery Act of 2001

Introduced by Representative Sam Farr (D-CA), the Fishing Recovery Act of 2001 is a bill to make conservation of ocean resources the primary goal of fishing regulation. The Act would strengthen federal laws to stop overfishing (partly by prohibiting the overfishing of fish stocks living in mixed species fisheries), avoid bycatch, protect essential ocean habitats from damaging fishing practices, such as bottom trawling and dredging, fund the development and introduction of less damaging fishing practices, and fund improved research and reporting to help ensure compliance with fishing laws. The funding would come from customs duties on imported seafood. Cat Lazaroff, *Fisheries Bill Would Put Conservation First*, at <http://ens.lycos.com/ens/jul2001/20011-07-19-07.html> (last modified July 19, 2001); SeaWeb, *Ocean Update—Marine Conservation News*, at <http://www.seaweb.org/resources/52update/recoveryact.html> (last modified Sept. 2001).

B. A Bill to Amend the Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act was passed due to concern that foreign fleets were exploiting fish stocks sought by U.S. fishermen, and international agreements were failing to alleviate the problem. The Act was intended to prevent overfishing but still achieve each fishery's optimum yield. Thus far, foreign overfishing has been eliminated, but it has been replaced by domestic overfishing. Center for Marine Conservation; *The Magnuson-Stevens Fishery Conservation and Management Act*, at http://www.cmc-ocean.org/2_bp/msfcma.php3 (last visited Feb. 8, 2002).

An amendment has been proposed to help control domestic overfishing. The amendment to section 303 of the Act would authorize, subject to referenda approval, the establishment of individual fishery quota systems. *S.637 March 28, 2001*, at <http://thomas.loc.gov/> (last modified Mar. 8, 2001).

C. Coral Reef and Coastal Marine Conservation Act of 2001

The Coral Reef and Coastal Marine Conservation Act of 2001, a bill increasing protection for the world's coral reefs, has passed in the House. The Act (HR 2272) amends the Foreign Assistance Act of 1961 to provide debt relief to developing countries who take action to protect critical coral reef habitats. The bill authorizes swapping debt for nature, buying back debt, and debt restructuring instruments to help protect coral reefs.

"The funds derived from these debt reduction instruments will be deposited in locally managed funds that will support coral reef conservation efforts throughout the world. The Congressional Budget Office estimates that implementing the Act will cost thirty-seven million dollars over the 2002-2006 period.

Each country that enters into a coral reef related debt reduction agreement with the U.S. must establish a Coral Reef and Other Coastal Marine Resources Fund to provide grants to groups that will conserve, maintain and restore its coral reefs and other coastal marine resources." *Coral Reef Act Passed in the House*, at <http://ens.lycos.com/ens/oct2001/2001L-10-17-09.html> (last modified Oct. 17, 2001).

D. Marine Mammal Protection Act

"While P.L. 103-238 authorized the MMPA through September 30, 1999, Members of the House Resources Committee will have an opportu-

nity to examine how the 1994 amendments to the Marine Mammal Protection Act have been implemented by the National Marine Fisheries Service and the Fish and Wildlife Service and to begin discussion which will lead to the reauthorization of the Act this year." *NOAA Office of Legislative Affairs*, at <http://www.legislative.noaa.gov/mammal.html> (last visited Feb. 8, 2002).

On August 21, 2001, FWS received a petition under section 115 of the MMPA from the Center for Biological Diversity. The petition requests that FWS list the Alaska stock of sea otters as depleted under the MMPA. Marine Mammal Protection Act; Notice of Receipt of Petition to List the Aklaska Stock of Sea Otters as Depleted, 66 Fed. Reg. 46,651 (last modified Sept. 6, 2001).

V. ENDANGERED SPECIES

A. *Maine Gets Help Protecting Atlantic Salmon*

Maine has received a two million dollar grant from the U.S. Department of the Interior, through U.S. Fish and Wildlife, for the protection of Atlantic salmon in the Machias River and tributaries. These funds are part of a larger nationwide scheme that seeks to create effective partnerships between the public and private sector in order to acquire and protect crucial habitats. Interior Secretary Gale Norton announced the plan, stating that over sixteen million dollars will be distributed to twenty-five states for similar projects. Secretary Norton stated that "States will use these grants to strengthen and build vital cost effective conservation partnerships with local communities and willing private landowners." Norton described the grants as in line with her philosophy that states should be given "more resources and greater flexibility to protect habitat and conserve threatened and endangered species." The award of these grants, the first under the Recovery Land Acquisition and Habitat Conservation Planning Assistance Grant programs, were funded by Congress to assist private landowners and states to achieve their goals in preserving endangered and threatened species by protecting their habitats. Funds in Maine are being used to create an easement, spanning some 22,000 acres of Machias River land, which will protect vital Atlantic salmon habitats. The Maine project, which required years of planning, involves a collaboration between private and public efforts to preserve and strengthen the Atlantic salmon. Dr. Mamie Parker, acting regional director for the Northeast Region of the U.S. Fish and Wildlife Service, announced that the Maine project will "permanently protect 86% of Atlantic salmon habitat in the Machias River system, [representing] 20% of the nation,s remaining wild Atlantic salmon

spawning and nursery habitat.” *\$2 Million Awarded to Maine for Atlantic Salmon Conservation in Machias River*, at http://news.fws.gov/news_releases/ (last visited Oct. 15, 2001) (the FWS website had been taken offline for an indefinite period as of the time this article went to press); *U.S. Fish and Wildlife Service Awards \$16 Million in Grants to States for Endangered Species Conservation*, at http://www.waterchat.com/news/environment/01/Q3/env_010926-02.htm (last modified Sept. 25, 2001).

B. Navy Technology Assists Florida Manatee

Acoustic sensors originally designed by the United States Navy for underwater mine detection are being employed to protect slow moving manatees from being crushed by Florida’s underwater canal gates. While these deaths only account for a small proportion of the species’ overall mortality, dwindling numbers and slow reproduction rates makes the prevention of these incidents critical. Manatee deaths in 2000 were the second highest in history, leaving only approximately 3000 remaining. A reported 145 manatees were crushed in the closing canal doors between 1974 and 1999. According to the Office of Naval Research, an impressive seven manatees were saved in the first two weeks of the program at the Port Canaveral lock gates in Florida. Prior to the installation of the sensors, the only means of protecting the slow moving manatees, weighing between 1000 and 1500 pounds, was to “spot them from above and manually hold the gates open until they had passed through.” This cumbersome system often resulted in manatees being crushed in the swiftly closing doors. Canal doors equipped with the new Manatee Protection System are retrofitted with 320 individual sensors. The system is designed with built in “redundancy” so that if a single sensor goes off line the system will still function. The system detects objects in the path of the gates by emitting an acoustic signal which, if broken, immediately arrests the moving canal doors so that the manatees can safely pass. Funding for the project came from the Office of Naval Research’s Small Business Innovation Research program, as well as the Defense Advanced Research Projects Agency. *Navy Comes to Aid of Florida Manatees*, at <http://http://www.cnn.com/2001/NATURE/01/30/manatees.enn/index.html> (last visited Feb. 8, 2002); *Manatees Saved by ONR-Supported Technology at Port Canaveral, Florida*, at http://www.onr.navy.mil/news/3_24_00.htm (last modified Mar. 24, 2000).

*C. Scaleshell Mussel to Receive Protection
as Endangered Species*

According to Bill Hartwig, U.S. Fish and Wildlife Service regional director for the Great Lakes-Big Rivers region, "Nearly 75 percent of historically known river populations of scaleshells have disappeared." This small freshwater mussel, once occurring in "55 rivers or streams in 13 states" now inhabits only fourteen rivers in three states. This species of mussel thrives in medium and large rivers with high quality water. It is approximately one to four inches wide and possesses a thin shell. Nearly all of the remaining populations of this once widespread mussel are in decline. The dwindling population of scaleshell mussels face threats similar to other mussels. The pollution of their natural habitats from industrial waste, as well as mining, damming and the introduction of foreign mussel species, have been particularly problematic for mussels as they are unable to move away from harmful elements in their habitat. The decline of mussel populations is an indication of the overall decline in the quality of the water they inhabit. Efforts to ensure the rehabilitation of scaleshell mussel populations will utilize existing technology to combat pollution and erosion. The U.S. Fish and Wildlife Service has listed the scaleshell as endangered, making it unlawful to directly or indirectly take the mussel and ensuring that federal agencies gain approval before initiating any action that could adversely impact the designated species. A 'recovery' team will be assembled to oversee the species' rehabilitation. All such designations are made only upon extensive research and the opportunity for public comment. *Service Lists Scaleshell Mussel as Endangered Species*, at <http://www.eparka.com/news/28/sd/r9/128sdr9m9/index.html> (last modified Oct. 9, 2001); *Service Conservation Groups Reach Agreement to List New Species under the Endangered Species Act*, at <http://www.doi.gov/news/010830.htm> (last modified Aug. 29, 2001).

D. Plan To Protect Right Whales Stirs Controversy

A plan published in the Federal Register in October of 2000, seeks to protect endangered right whales from becoming entangled in nets and lobster traps by requiring that traps and nets be removed whenever three or more whales are seen swimming together in that area. The proposed rule would authorize the National Marine Fisheries Service to order the removal of the gear within fifteen miles of the area in which the whales were spotted. The proposal inspired criticism from the lobster industry in Maine, claiming that the costs and effort required to move equipment make the plan 'unworkable.' Lobsterman also claim that whale sightings are too

unpredictable for such a plan to work. The plan could require the removal of hundreds of lobster traps upon short notice, causing economic hardship on local lobsterman. Conservationists also criticized the proposal claiming that it relies upon individuals in the industry to report sightings, which they may be hesitant to do. Whale disentanglement expert Bob Bowman cautioned that any plan which depends upon sightings will have only a limited impact, given the capacity for moving up and down the coast without being seen. An alternate plan that would involve requiring the purchase of new equipment that poses less of a threat to whales has received greater support. Notwithstanding a record number of right whale births, the species remains critically endangered with as few as 300 to 350 northern right whales remaining. The National Marine Fisheries Service, who published the proposal, is facing two lawsuits which demand that steps be taken to assist the right whale. The right whales were hunted to near extinction prior to receiving federal and international protection. Currently, the primary threat to these whales comes from collisions with large vessels and entanglement in fishing nets and lobster traps. John Richardson, *Plan to Protect Right Whale Criticized*, 140 Portland Press Herald 1A (Oct. 25, 2001); *Baby Boom for Northern Right Whales*, at <http://www.cnn.com/2001/TECH/science/03/12/baby.whales/index.html> (last modified Mar. 12, 2001).